

HIGHLAND HILLS MAINTENANCE COMMISSION  
Board of Trustees

Dated: 20 Sept 1992  
Last Revised: Dec.1998

(Notice: This Policy supersedes all previous HHMC Board actions related to this subject)

**TITLE: BOARD POLICY DEVELOPMENT AND ENFORCEMENT**

**1. STEPS AND FACTORS INVOLVED IN THE DEVELOPMENT OF POLICIES:**

- A) Determine the basis of authority to enact a policy.
  - 1) Covenants may withhold, as well as grant, authority to amend By-Laws or Board adopted policies.
  - 2) Laws of State of Washington may provide guidance, as well as limitations, on the authority of the Board of Trustees.
- B) Determine the need for the proposed policy.
  - 1) Identify the problem to be dealt with.
  - 2) Verify that existing policies are inadequate to deal with the problem.
  - 3) Verify that no existing outside entity (county, state, and federal law) can address the problem.
  - 4) Is the problem of sufficient consequence to justify creating a policy and an enforcement process -- what are the tradeoffs?
- C) Set the scope of the policy -- Define who and what is to be encompassed and the time periods for implementation.
- D) Define the specific parameters of the policy, the actions required, and the penalties for the violation.
  - 1) Make it simple, clear and concise. Ambiguity will be construed against the Commission.
  - 2) Set the initial standards.
- E) Evaluate the policy on rights.

- 1) Policies must comply with standards of reasonableness, impartiality, due process, fairness, equal protection, etc.
- 2) Check for inconsistency with existing documents (requirement for notice, procedures for adoption, penalties that may be imposed).

F) Build agreement.

- 1) Publish policy.
- 2) Upon adoption, provide ample notice and date when enforcement begins.
- 3) Publish a Commission's Policies Booklet and distribute to owners every two or three years, at a minimum.

## **2. COMPLIANCE AND ENFORCEMENT**

A) Importance of compliance/enforcement

- 1) The law presumes that owners have purchased their property in reliance upon the conditions set forth in the legal documents, including the enforcement of the PC&R's.
- 2) Failure to enforce will jeopardize the protection of common property, destroy a harmonious living situation, and weaken the Commission's legal powers.
- 3) The legal documents not only give the Commission and the Board the authority to enact a policy; they also give the authority and duty to enforce policies.

B) Factors in successful enforcement:

- 1) Voluntary compliance -- Give ample notice of the existence of a policy -- Build agreement -- Make timely amendments when circumstances change -- Avoid litigation, but do not fear it. Litigation is a legitimate tool of power.
- 2) Timely enforcement -- Failure to act timely results in lack of confidence and may result in the involuntary waiver of the Commission's rights and powers.
- 3) Reasonable policies and reasonable penalties for violations.

- 4) Provide adequate information and guidelines on the policy.
  - 5) Consistency and uniformity of enforcement.
  - 6) Adherence to procedure.
  - 7) Provide a mechanism for due process.
    - a) Provide notice to the owner before taking action to impose penalties.
    - b) Provide the owner an opportunity to be heard before a decision is made.
    - c) Provide an appeal mechanism.
    - d) Utilize mediation.
  - 8) Clearly establish enforcement responsibility and the chain of command.
    - a) The Board has both the power and the duty to enforce all restrictions and policies. Responsibility may not be delegated.
    - b) The Homeowner may have the right to enforce restrictions: however, the Board is provided to relieve the homeowner of this necessity.
    - c) Some of the restrictions and policies may reflect Local Government policies. Local government may be called upon to enforce those restrictions and policies.
- C) Mechanics of the enforcement process: Establish written procedures for violation detection, confronting violators, and remedy.
- 1) Detection -- As of 1990 there was no case law that required associations to “surveil” for violations. There should be a published process for receiving and reviewing complaints.
    - a) Monthly physical inspections.
    - b) Owner complaints -- procedures must be in place to protect the Board against erroneous or malicious complaints.
      - (1) Should be in writing.

(2) Accurately describe who, what, where, and when.

(3) Confirmation, if possible, by others.

c) Observation by appropriate committee chair and/or Board member.

2) Processing of violations:

a) Notice of violation -- Should restate the rule violated, a penalty, and request some specific action to cure the violation: should allow for appearances before appropriate authority to rebut or defend against the charge.

b) Conduct hearing -- Failing voluntary correction of the violation, hear the evidence, defense, and make finding. If there is finding against the owner, allow for a formal appeal to a higher authority.

3) Remedies and penalties:

a) Imposition of fines -- Authority to assess for costs or restoration must be clear in legal documents.

b) Self help -- With an expressed power in legal documents, an association may take direct action to correct violation, but should first give notice and then take care to preclude damage to an owner's personal or real property.

c) Seek help from county authorities.

d) Variances -- Only within the power of the Board of Trustees, and should be used judiciously. Granting of variance establishes new policy; all similar cases must be handled in the same way.

e) Waivers -- Power to enforce may be waived without establishing a binding precedent. Waiver is a relinquishing of power because proper procedures were not followed, policy too ambiguous, unreasonable delay in enforcement, etc.

f) Legal actions -- Ultimate recourse to restrain, restore and/or reimburse.