

CAI Board Leader Workshop

Training for Your Board



Part 4:

Association Rules, Conflict Resolution, Legal Remedies

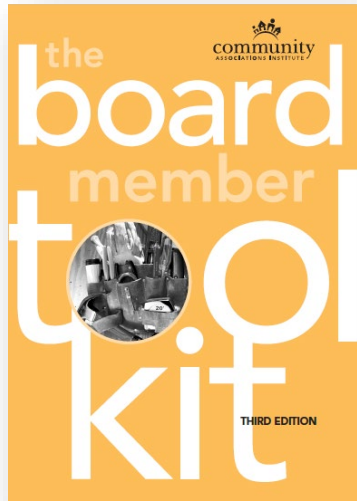
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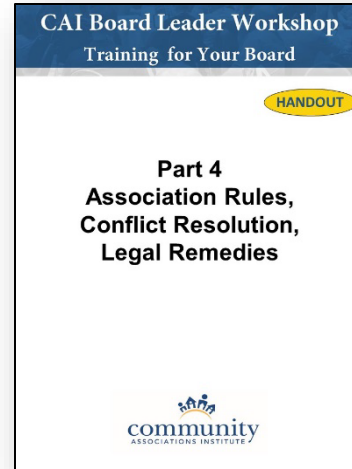
INTRODUCTION



Workshop Resources



The Board Member Tool Kit: A Guide for Community Association Leaders



Program Handout including slides and speaker contact information



Condo Media magazine annual leadership issue

SPEAKER

NORM ORBAN

Allcock & Marcus, LLC

norm@amcondolaw.com

WELCOME



Board Leadership Development Workshop

Part 4:
Association Rules, Conflict
Resolution, Legal Remedies

WHAT DO YOU THINK?



What percentage of residents believes their association rules protect and enhance their property values?

- a) 90%
- b) 71%
- c) 68%
- d) 20%

IMPORTANCE OF RULES

Protect commonly-owned resources and property values

Clarify and administer provisions found in the governing documents

Provide certainty and order



OBJECTIVES

Lesson 1

You will learn to:

- Apply criteria to determine whether a rule is valid
- Describe the procedure for developing association rules

Making Association Rules

HOW DO YOU KNOW IF A RULE IS VALID?



Courts apply criteria in determining the validity of a rule.

A rule is legal when it:

- Does not restrict a constitutional right
- Is consistent with applicable federal, state and local statutes and the community's governing documents
- Does not exceed the scope of the board's rule-making authority

A rule has a legitimate purpose when it:

- Relates to the operation and mission of the association

HOW DO YOU KNOW IF A RULE IS VALID?



A rule is reasonable
when it:

- Is just and sensible
- Is not excessive or petty

HOW DO YOU KNOW IF A RULE IS VALID?



A rule is fair when it:

- Does not single out or discriminate against a separate class or group of people to be treated differently without reason

HOW DO YOU KNOW IF A RULE IS VALID?



A rule is enforceable
when it:

- Can be applied uniformly, rather than selectively or arbitrarily

HOW DO YOU KNOW IF A RULE IS VALID?



A rule is clear when it:

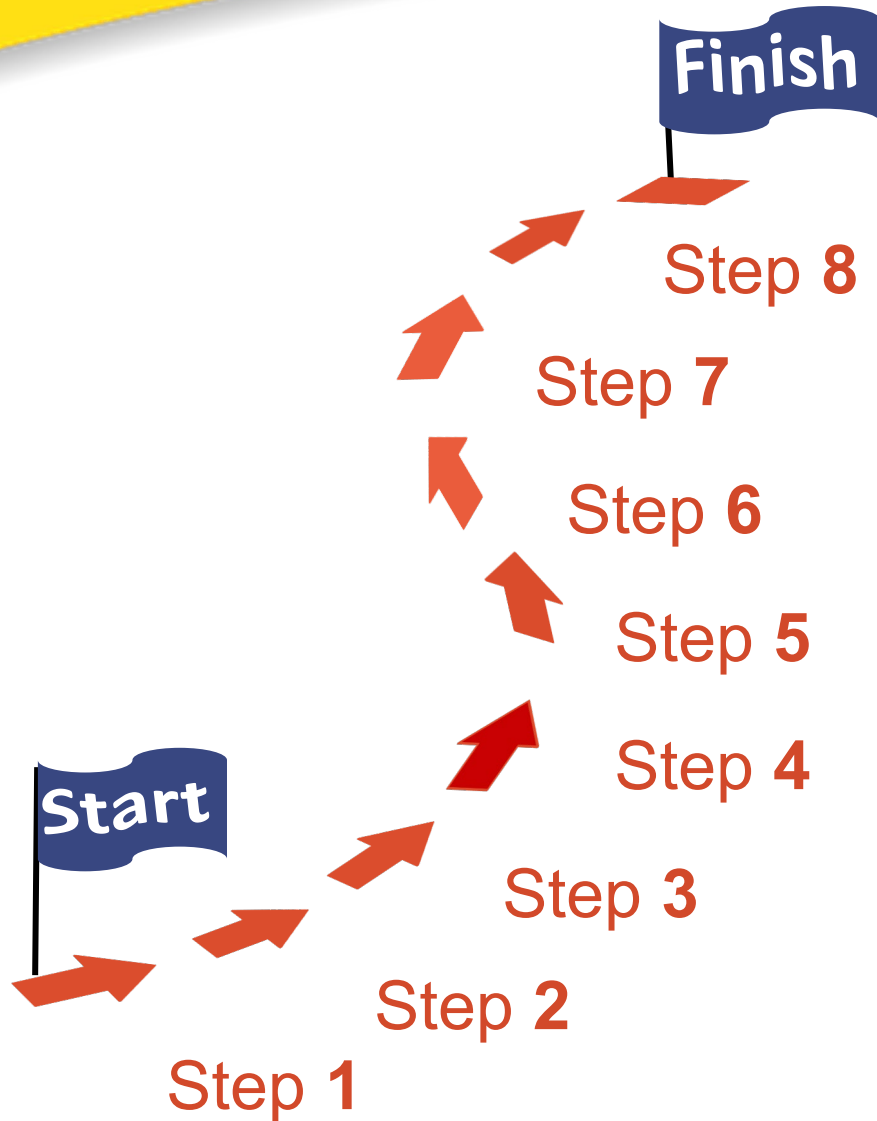
- Is stated in a way that eliminates ambiguity and confusion in compliance and enforcement

HOW DO YOU KNOW IF A RULE IS VALID?



The best practice is to consult with your attorney on the validity of rules, versus relying solely on your interpretation of these criteria.

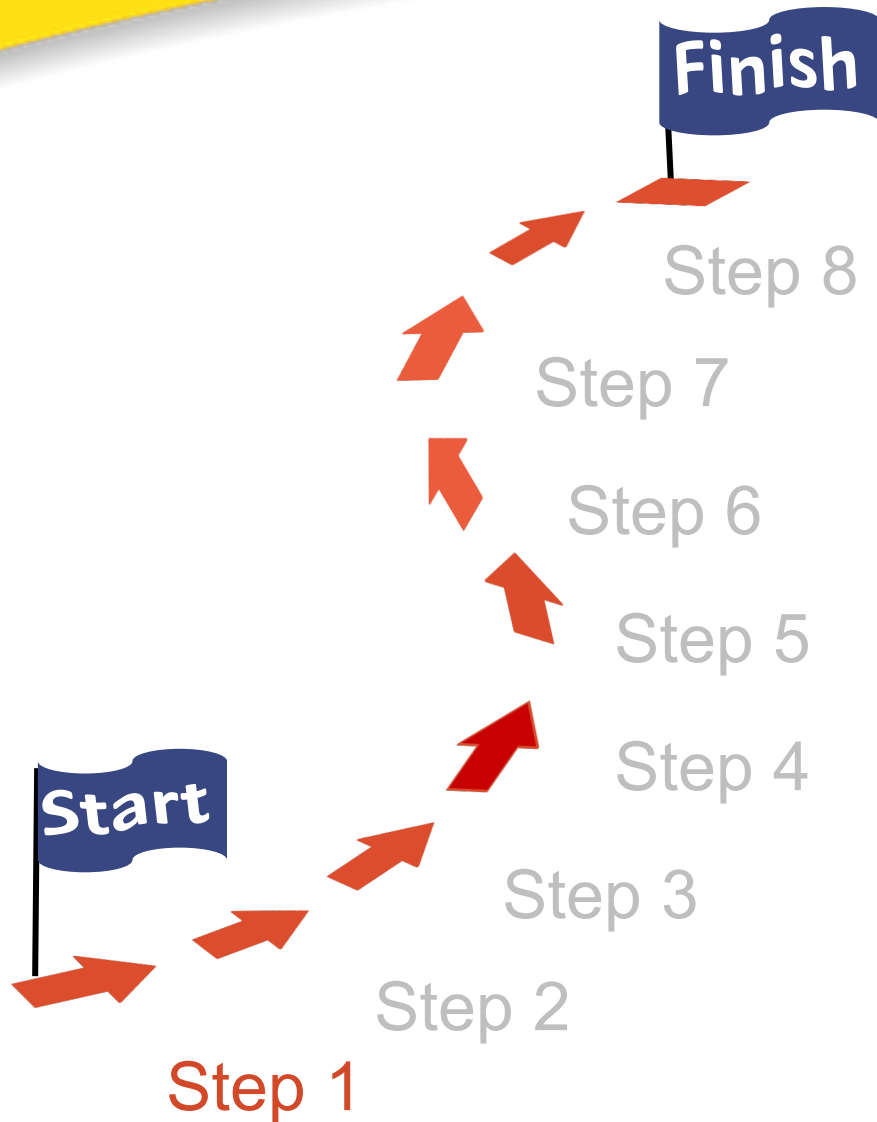
Procedure for Developing Rules



Invalid rules can often be traced to the absence of a formal rule-making procedure or failure to follow an existing procedure.

There are eight basic steps for developing rules.

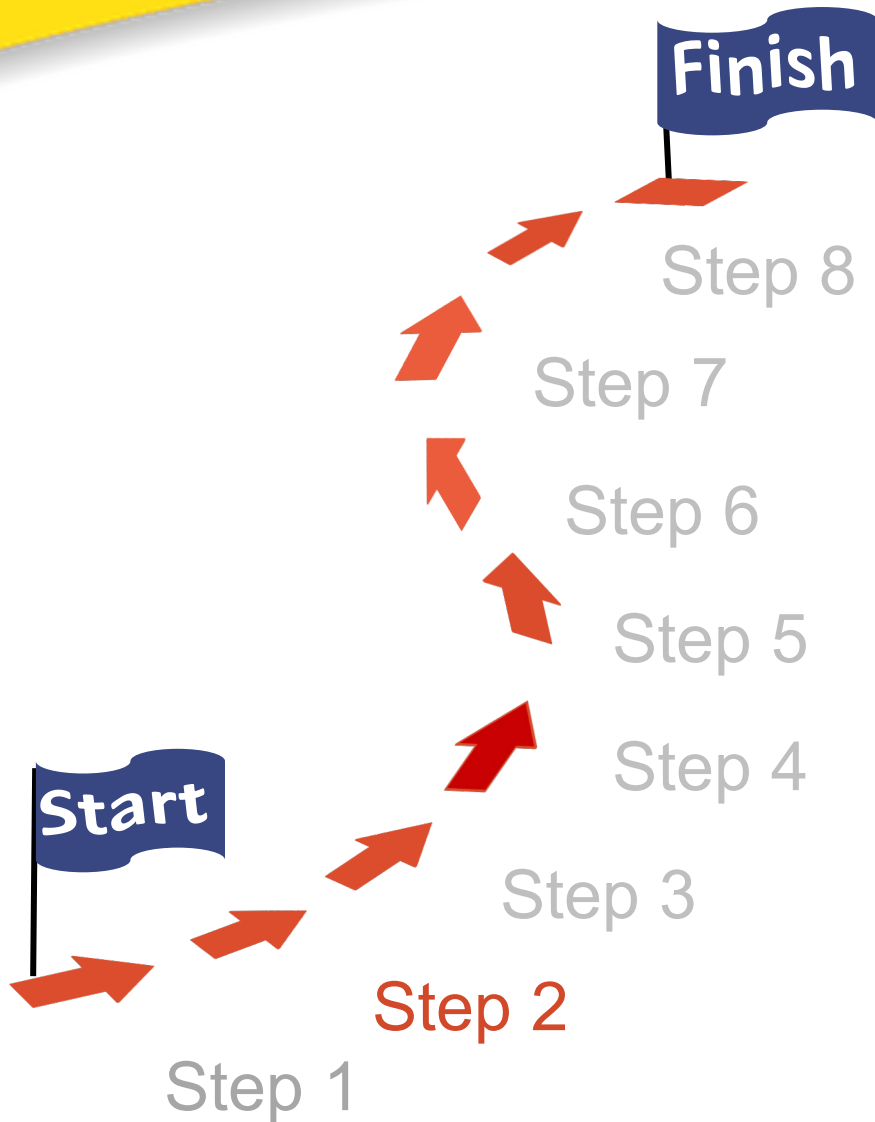
Identify the Board's Authority



The first step is to identify or confirm the board's authority to make a rule on the matter.

Enlist the help of your attorney to make sure the board is not overstepping its authority.

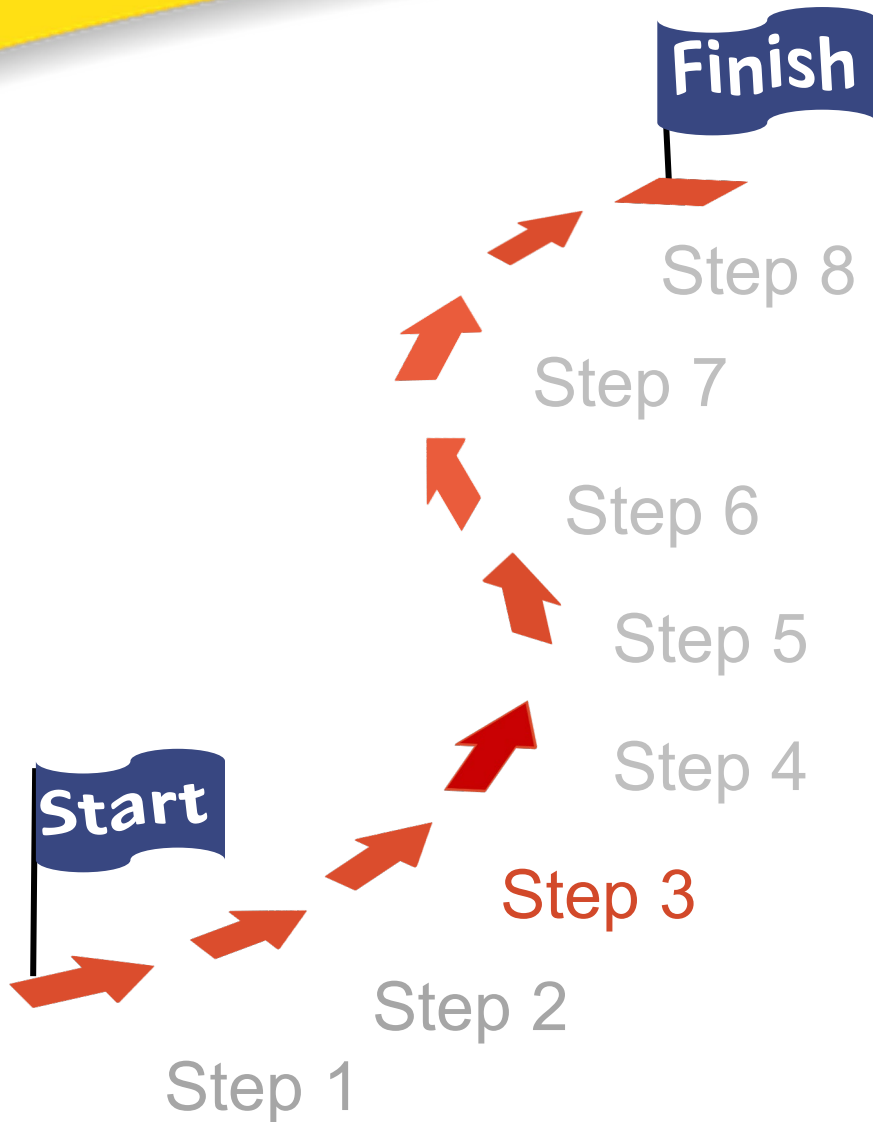
Evaluate the Need



The second step is to evaluate the need for the rule.

Ask yourself, “Why is this important?”

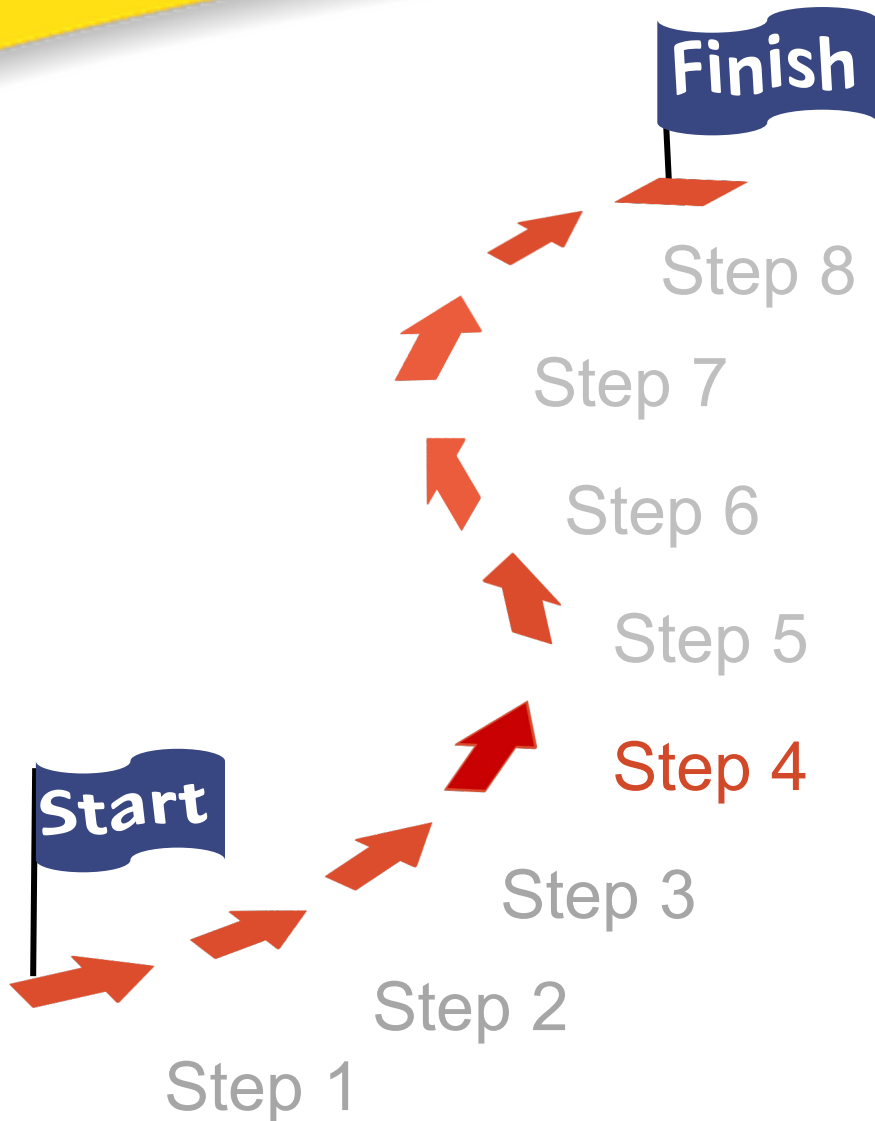
Consider Impact and Implications



The third step is to consider the:

- Immediate impact
- Long-term implications

Define the Scope; Write a Draft

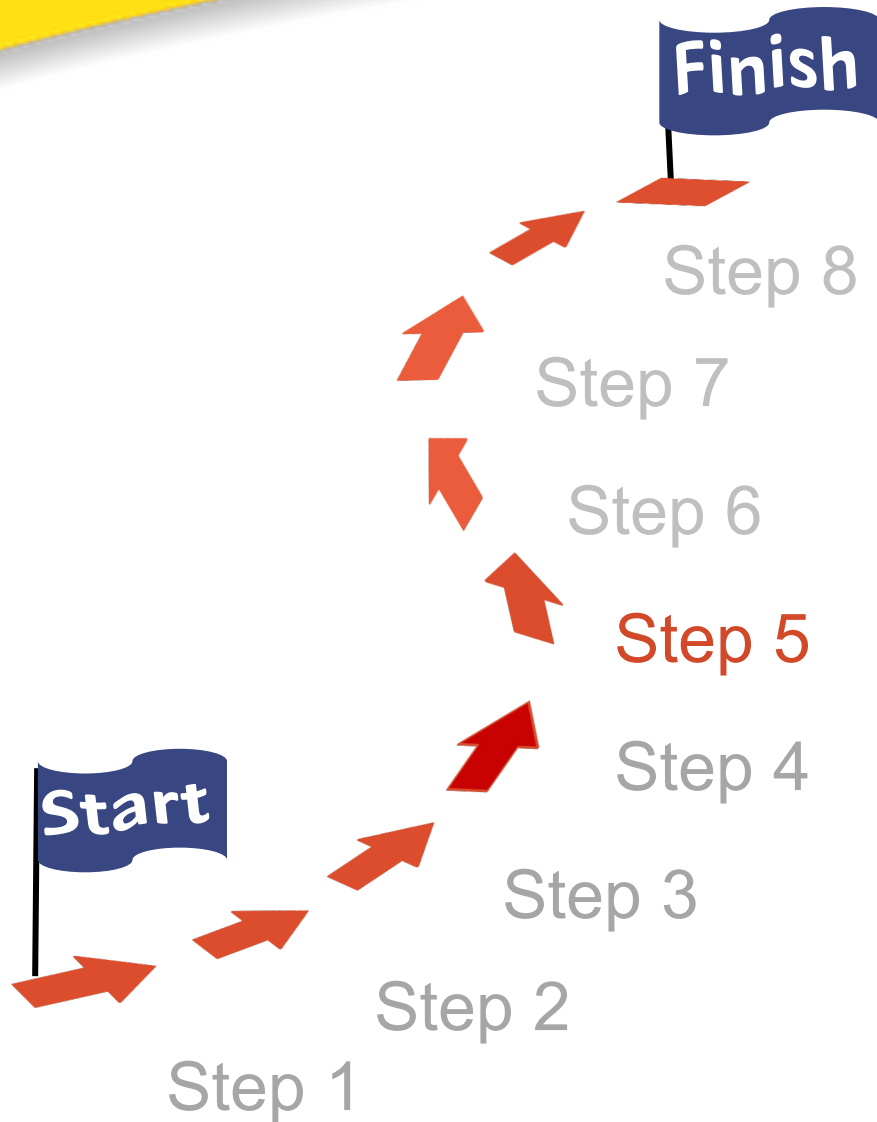


The fourth step is to define the scope and write a draft of the proposed rule.

Specify:

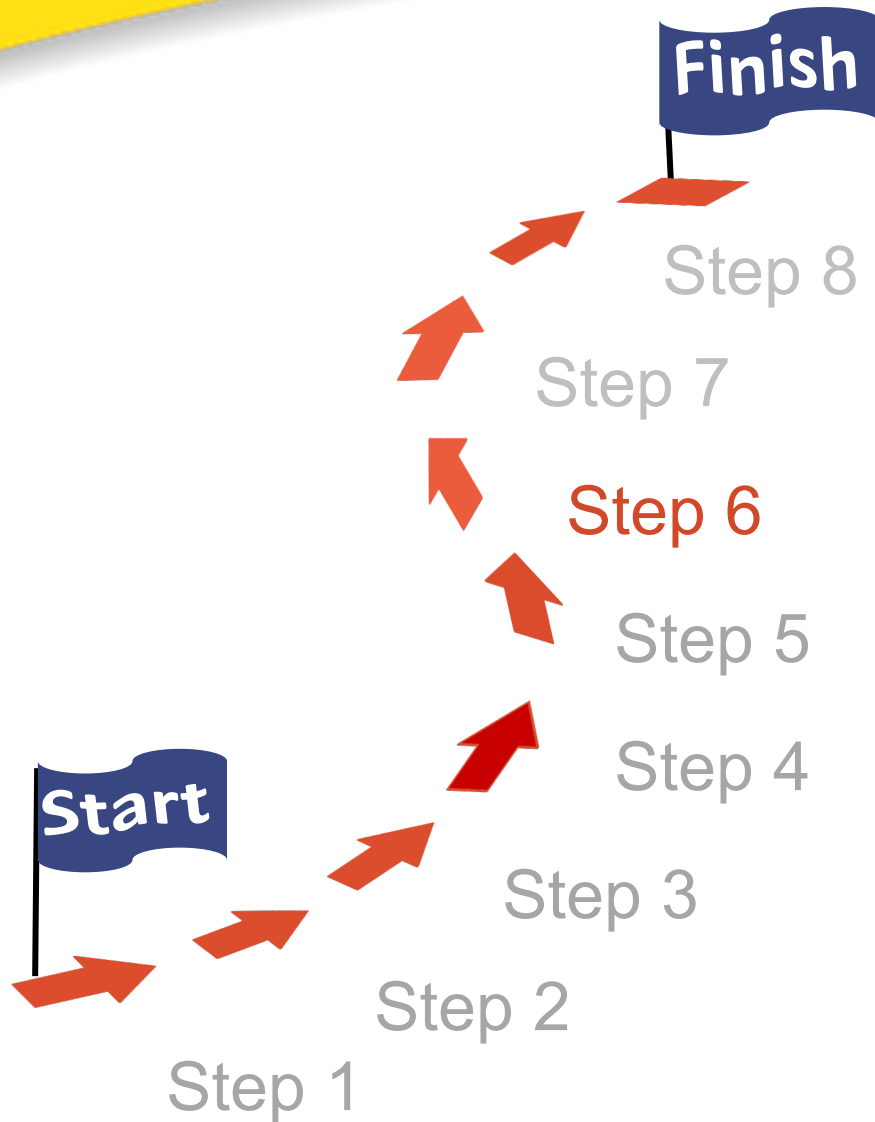
- Who is covered
- Required steps, acts, or prohibitions
- Enforcement procedures
- Penalties for violations
- Due process procedures

Verify Validity and Enforceability



The fifth step is to verify the proposed rule is valid and enforceable with your attorney.

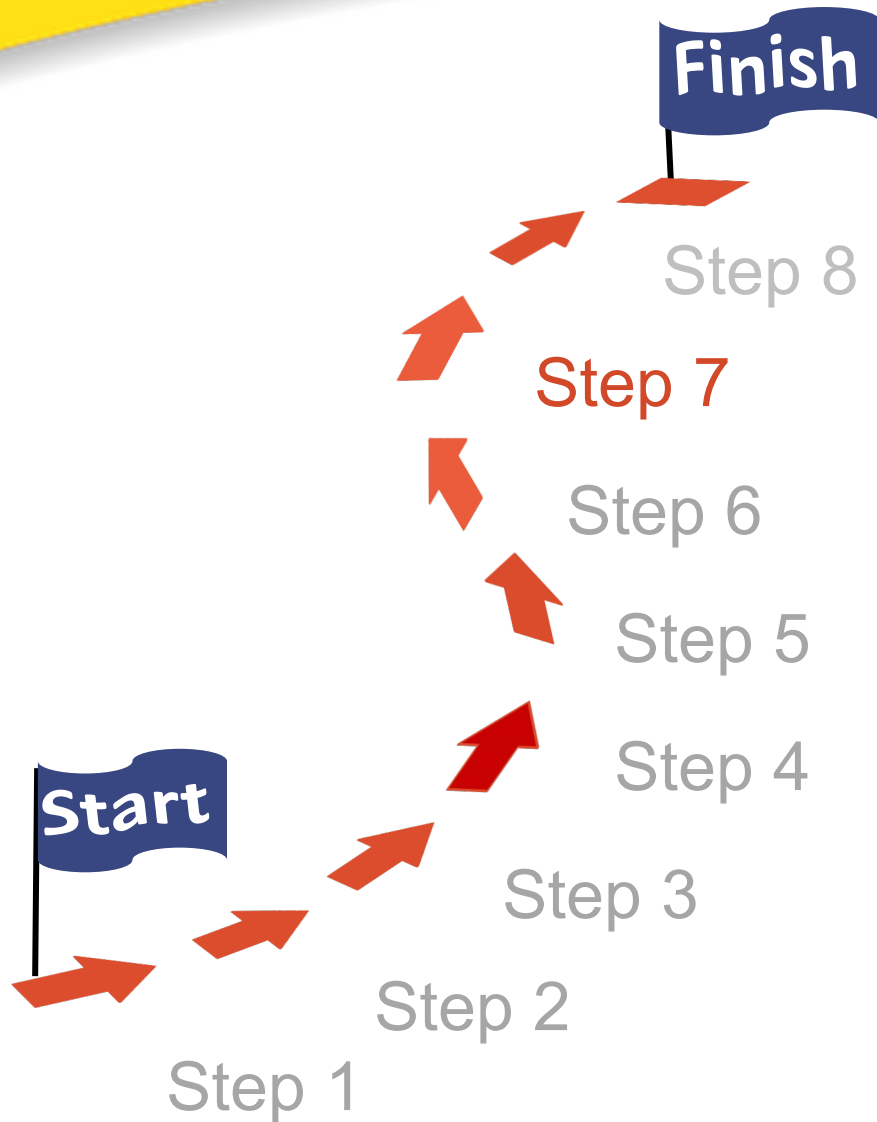
Give Notice and Solicit Comments



The sixth step is to:

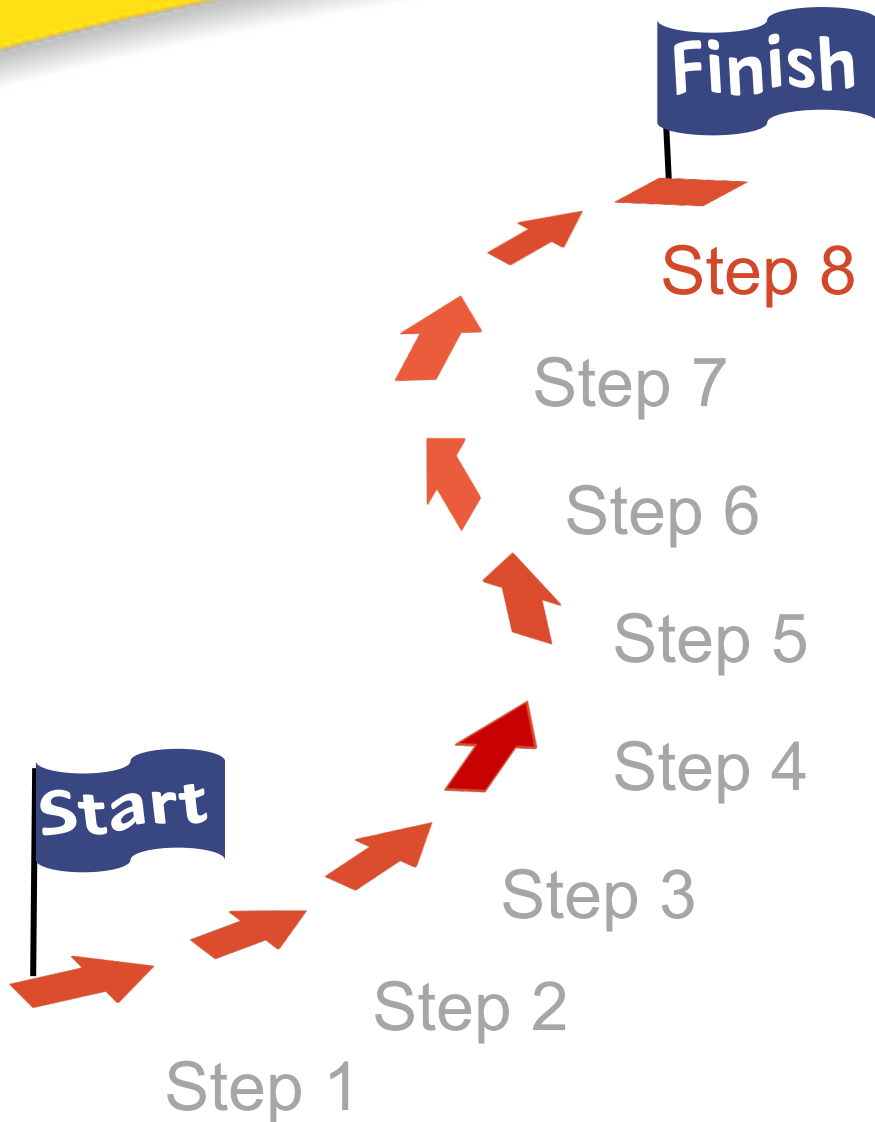
- Give notice of the proposed rule to the owners and residents
- Solicit their written comments

Vote on the Rule



The seventh step is to vote on and approve the proposed rule at the next regularly scheduled board meeting.

Give Notice Before Enforcement Begins



The final step is to give notice of the adopted rule to all owners and residents before enforcement begins.

Following a formal procedure:

- Discourages reactive rule-making
- Clarifies the scope of the board's authority
- Eliminates the possibility of creating invalid rules
- Provides a formal record of all rules made
- Protects owners from arbitrary board action

Benefits to Following the Procedure



OBJECTIVES

Lesson 2

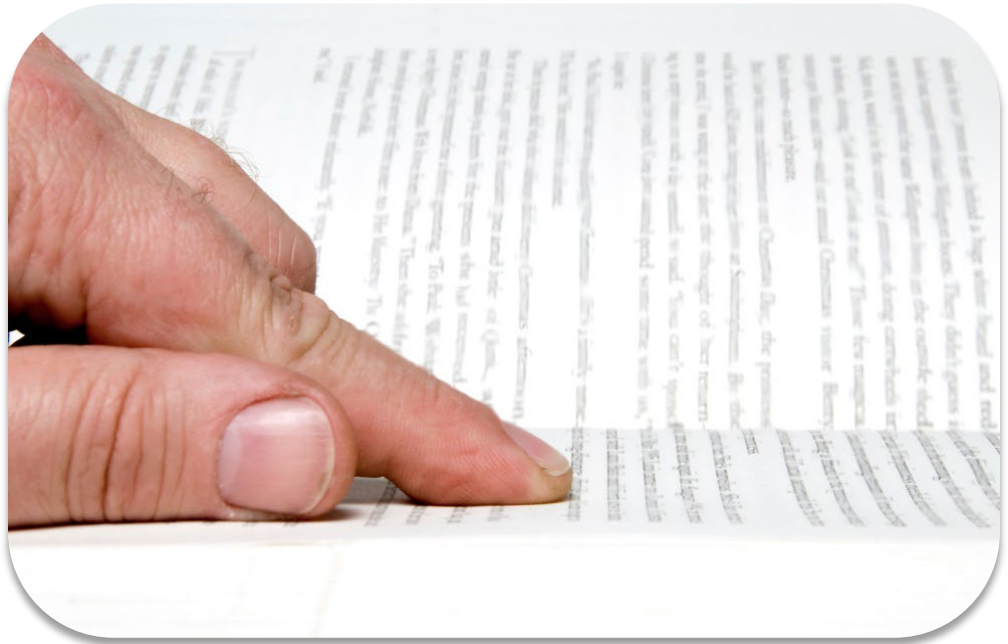
You will learn to:

- Describe the basic steps for enforcing association rules

Enforcing Rules

RULES REQUIRE ENFORCEMENT

Due process is the official or formal way of doing things in accordance with established rules. It guarantees the principle of fairness will be applied in all legal matters.



Having rules on paper isn't enough.

Enforcement means having a due process procedure in place.

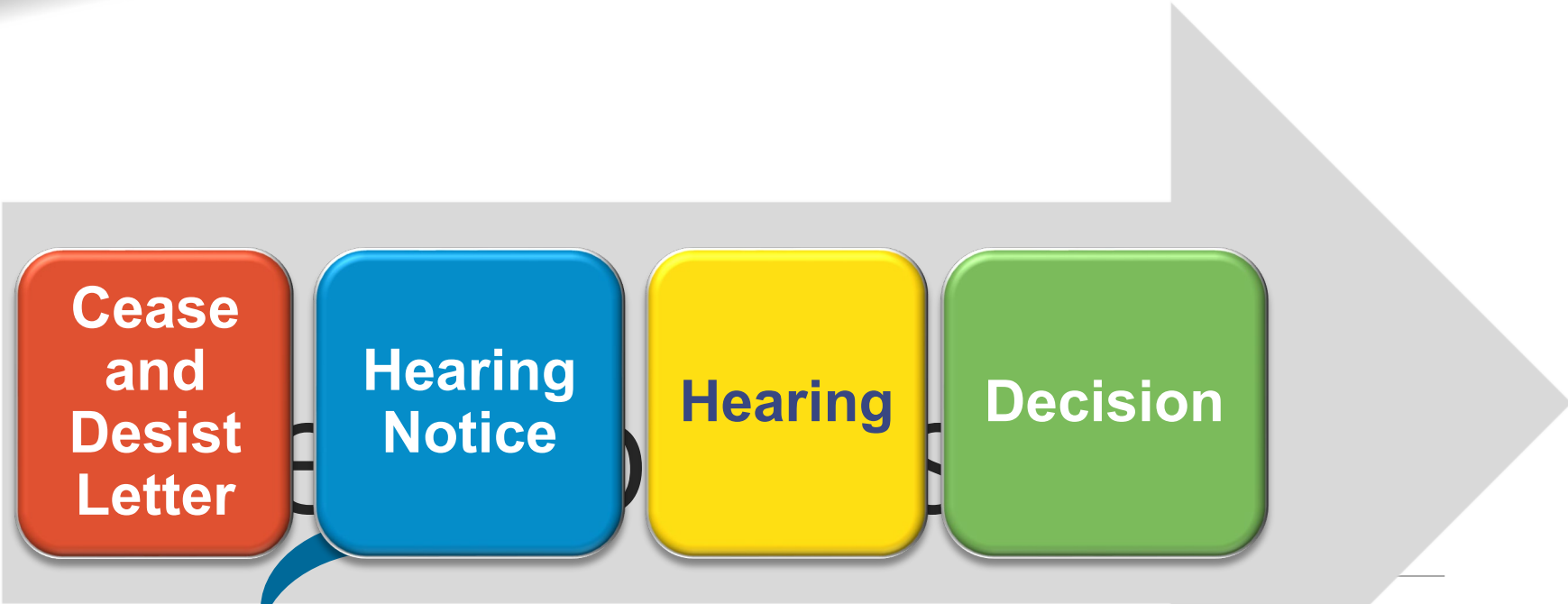
↑ Informal Process ↓



Official notice of the alleged violation which includes:

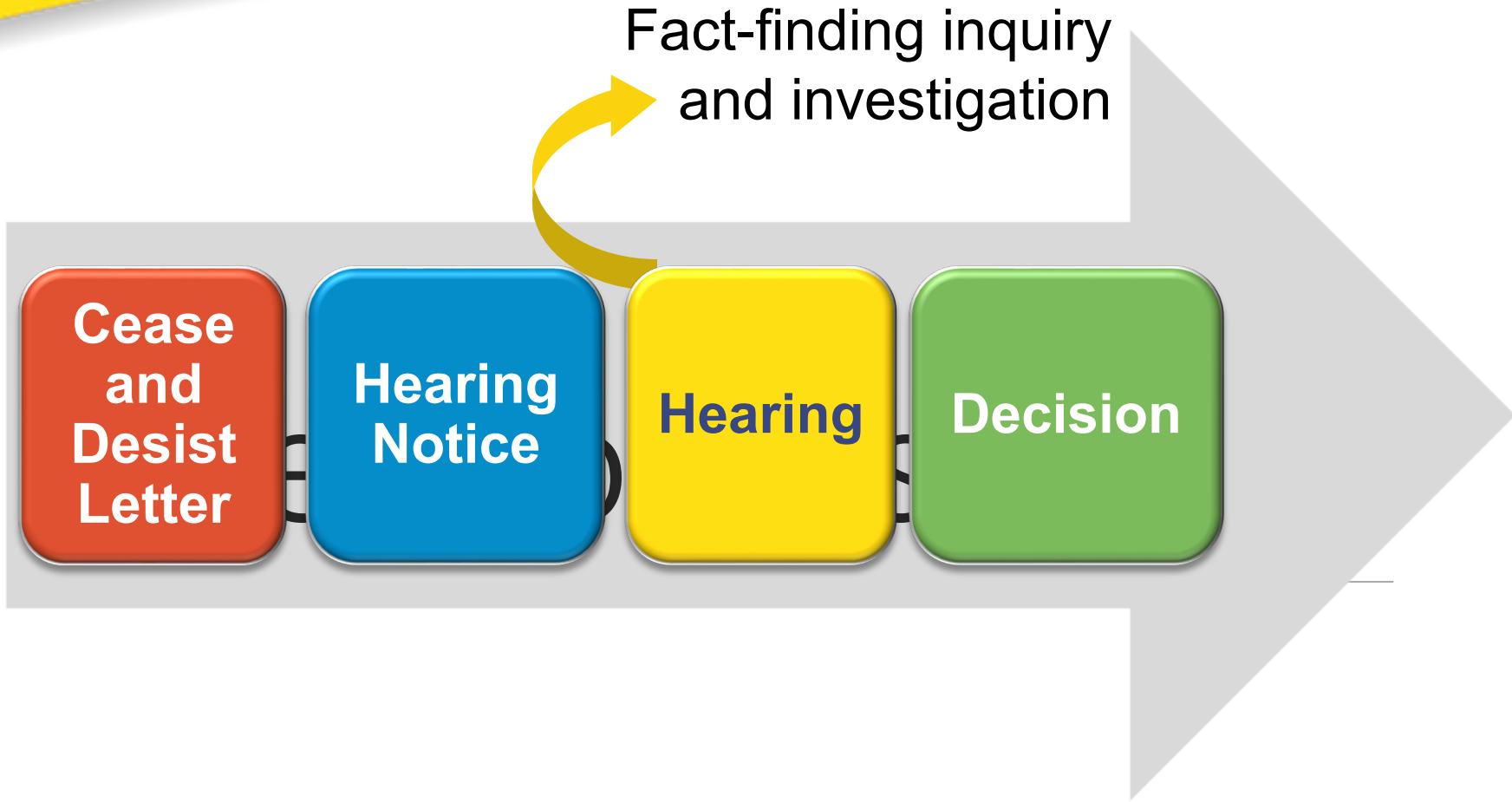
- Action required
- Specific timeframe
- Penalty that may be imposed

Informal Process



Written notification to the alleged violator that a hearing will be held if the alleged violation is not addressed within a specified time frame

Informal Process



Fact-finding inquiry
and investigation

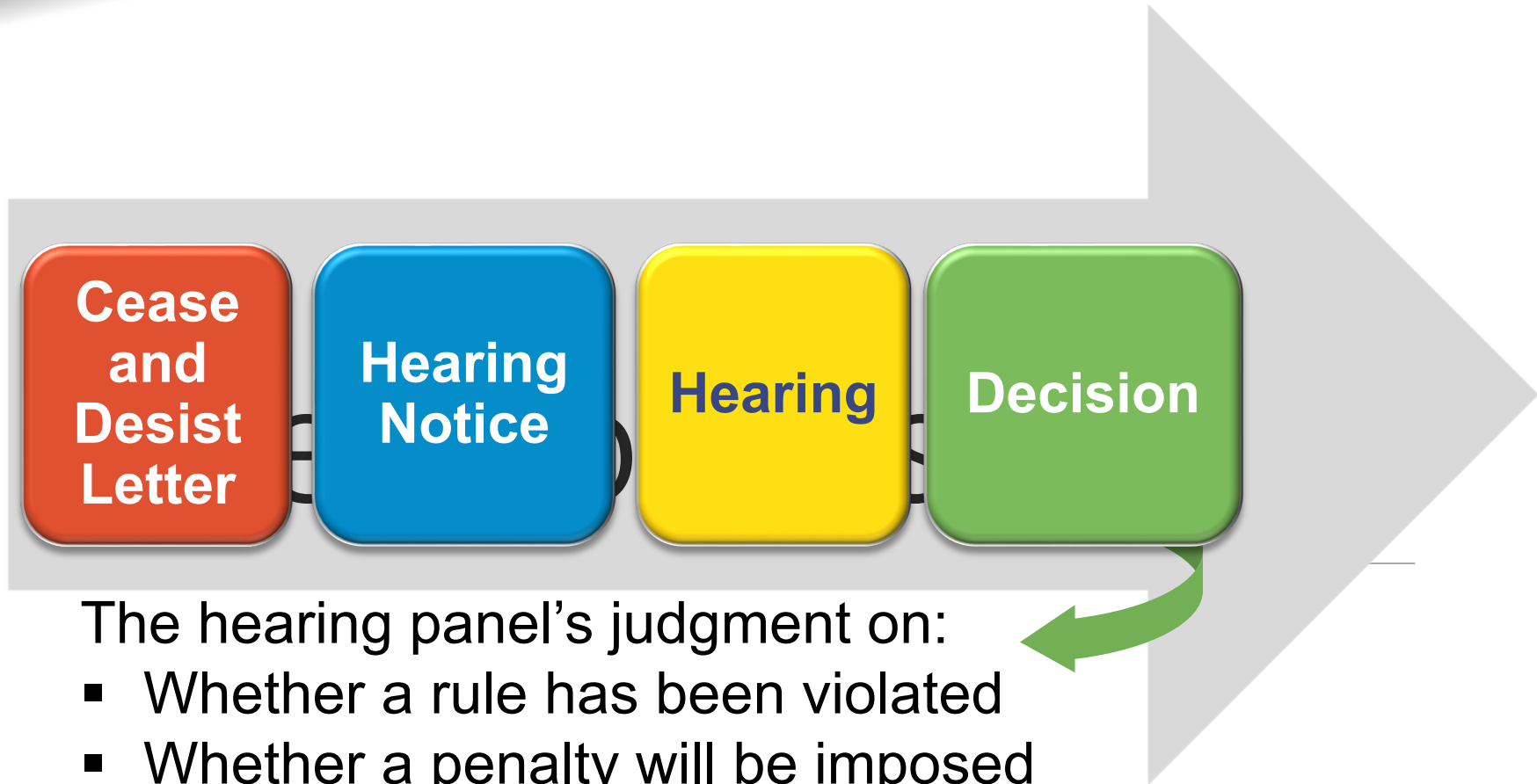
Cease
and
Desist
Letter

Hearing
Notice

Hearing

Decision

Informal Process



The hearing panel's judgment on:

- Whether a rule has been violated
- Whether a penalty will be imposed and, if so, the type of penalty, terms and enforcement date

BENEFITS OF USING DUE PROCESS

- All alleged rule violations are handled in the same manner.
- The courts recognize due process as an indication of legally valid rule enforcement.
- The majority of rule violations can be resolved with this procedure.
- The opportunity to be heard in a non-threatening, fact-finding forum is often enough to result in voluntary compliance.



DETAILS OF THE CEASE AND DESIST LETTER

Be sure to include:

- A description of the alleged violation
- The legal authority for the rule
- The required action
- The compliance time frame or deadline
- The penalty for failure to comply
- Contact information



Keep the tone neutral to encourage compliance and avoid offending the recipient.

Send it by certified mail, as well as regular mail.

Includes:

- Description of the violation
- Description of the action requested
- Time and place of the hearing
- Invitation for witnesses and legal counsel to attend
- Description of the potential consequences for failure to appear

DETAILS OF THE HEARING NOTICE



PROCEDURES AND GUIDELINES FOR HEARINGS

1. The chair opens the hearing.

2. The chair invites the complainant to speak.

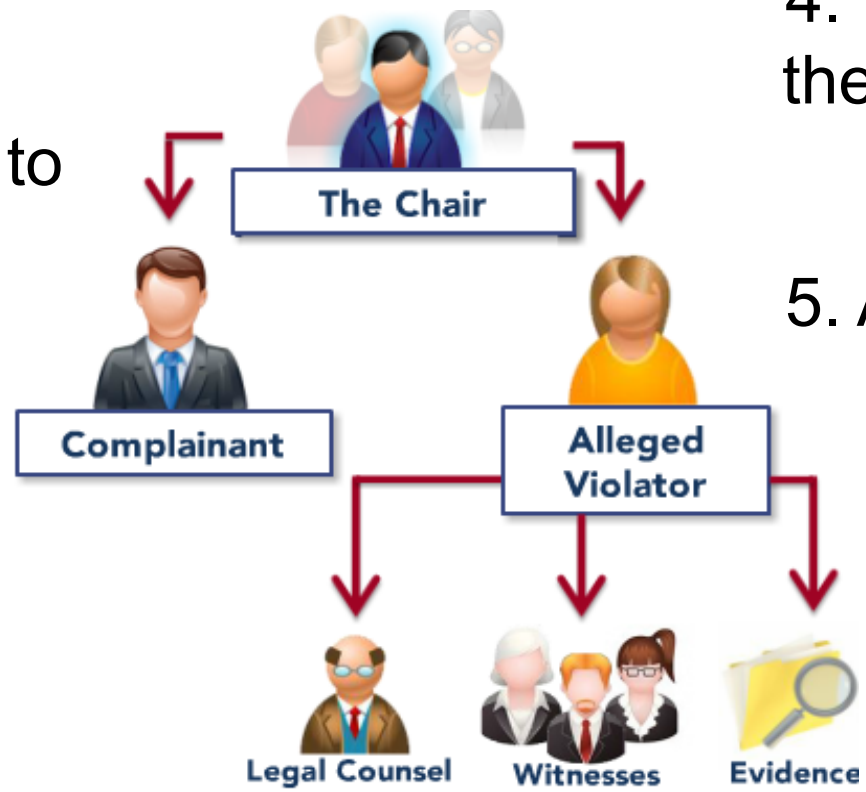
3. After the complainant speaks, the panel asks questions.

4. The chair invites the alleged violator to speak.

5. After the alleged violator speaks, the panel asks questions.

6. The chair invites others to speak.

7. The chair adjourns the hearing.



OBJECTIVES

Lesson 3

You will learn to:

- Describe procedures and guidelines for conducting hearings
- Describe alternative methods for resolving conflict without going to court
- Recognize other legal remedies

LITIGATION

Associations that sue their owners often pay a high price, both financially and emotionally.

The damage can outweigh the benefits.



Variance/Exception

Make every effort to approve a variance if the request is reasonable.



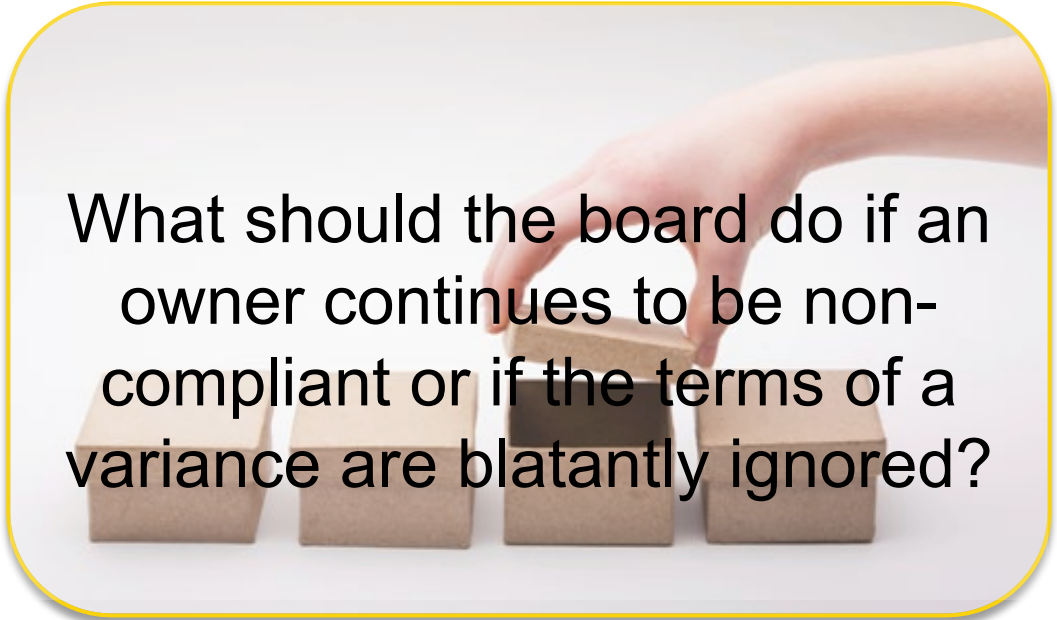
Allowing variances:
wise or unwise?



ALTERNATIVES IN HANDLING DISPUTES

Use a third party to provide alternative dispute resolution (ADR) services.

Don't rely strictly on written correspondence—pick up the phone.

A hand is shown placing a fifth block on top of a stack of four brown cardboard blocks. The blocks are arranged in a row on a white surface. The hand is positioned above the top block, with fingers slightly curled as if about to place it.

What should the board do if an owner continues to be non-compliant or if the terms of a variance are blatantly ignored?

Obtain expert opinion on the issue.

Extend an offer from the board to meet with the owner to discuss the issue in person

Apply rules consistently, but be flexible.

The ultimate goal of rule enforcement is to:

- Protect the community
- Promote harmony



LEGAL REMEDIES TO ADDRESS DELINQUENT ASSESSMENTS

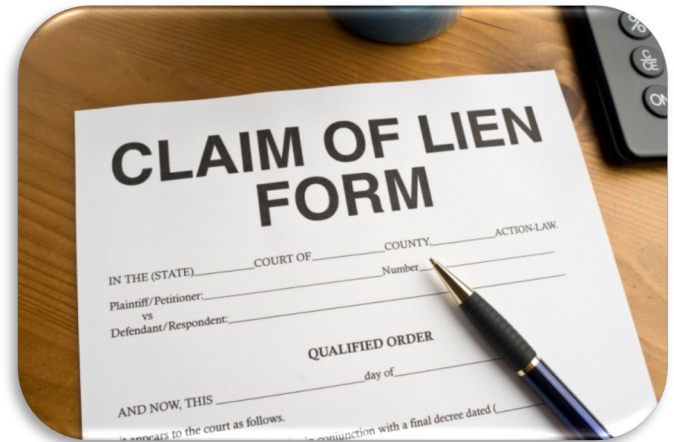
Extra-Judicial Remedies



Lawsuit



Property Lien



Foreclosure



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Extra-Judicial Remedies

Examples of remedies outside the court system that can encourage a delinquent owner to pay what is owed (unless prohibited by state statutes):

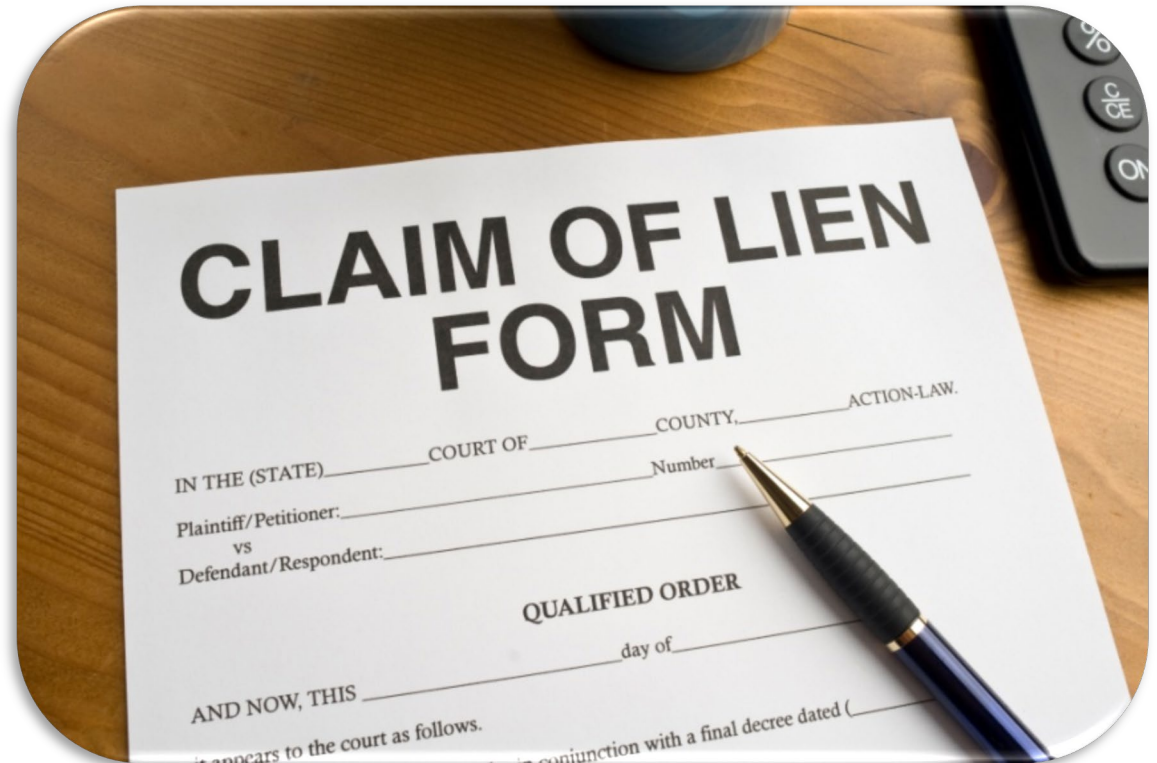
- Impose a late charge
- Require a security deposit from an owner with a history of delinquency
- Require acceleration
- Suspend owner privileges and rights



Property Lien

A property lien:

- Is a legal claim against the delinquent owner's property
- Prevents the owner from selling or transferring the unit without settling the debt
- Is subordinate to mortgage or government claims, unless otherwise specified in state statutes



Lawsuit

A community association may initiate a claim on the owner's personal property to settle a delinquent account.

A judge's decision to allow the claim is called a *personal money judgment* or *summary judgment*.



FORECLOSURE

Foreclosure is a legal proceeding filed in court whereby a party with a claim against an owner can claim ownership of the unit in order to recover the money owed.

Foreclosure should be initiated only as a last resort because of the time and effort involved.



Legislation in some states limits the right of community associations to foreclose on delinquent assessments.

CHOOSING A REMEDY/PROCEDURE

Factors to consider:

- Amount of the delinquency
- Severity of the solution
- Cost
- Effectiveness
- Ease of implementation

Imposing late fees

Suspending owner's right to vote

Suspending owner's use of amenities

Perfecting a lien on a unit

Suing the owner for personal money judgment

Foreclosing on the unit

ISSUES & TRENDS THAT IMPACT RULES & REGULATIONS

Technology in Communities

- Video Door Bells
- Electric Vehicle Charging Stations
- Drones

ISSUES & TRENDS THAT IMPACT RULES & REGULATIONS

In-Unit Maintenance

- Maintain Units in a Dry and Clean Manner
 - Min/Max Temperature
 - Clean, Dry & Disinfect Liquid Spills
 - Ensure Unit Remains Free of Leaks or Condensation
- Adopting Resolutions

ISSUES & TRENDS THAT IMPACT RULES & REGULATIONS

Miscellaneous

- Home Based Businesses
- Vacation Rentals i.e. Airbnb
- Pets vs. Emotional Support Animals (ESA) vs. Service Animals
- Smoking



QUESTIONS

RESOURCES

Online Resources



CAI New England Chapter (CAI-NE)

www.caine.org

Community Associations Institute (CAI)

www.caionline.org

CAI Foundation for Community Association Research (CAI-RF)

www.cairf.org

Community Association Managers International Certification Board (CAMICB)

www.camicb

CAI New England Chapter Office

888 Worcester Street, Suite 20

Wellesley, MA 02482

781-237-9020

www.caine.org

Claudette Carini,
Chapter Executive Director

ccarini@caine.org

 @CAINewEngland

 @CAINewEngland

 Community Associations
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