

**THE CITY OF ALEXANDRIA
COMMON INTEREST COMMUNITIES
EDUCATION SERIES**



RULES AND RULE COMPLIANCE

MARCH 25, 2023

PRESENTED BY

**LUCIA ANNA TRIGIANI, ATTORNEY AT LAW
MICHAEL L. ZUPAN, ESQUIRE
MERCERTRIGIANI LLP**

MERCERTRIGIANI



Program Overview

- Authority
- Drafting
- Adopting Rules
- Compliance
- Consequences



Authority



Rule-Making Authority

The board of directors has the power to establish, adopt, and enforce rules and regulations with respect to the common areas and such other areas of responsibility assigned to the association in the declaration, except where expressly reserved to the members.

Property Owners' Association Act, § 55.1-1819A



Rule-Making Authority

The executive board shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common elements and with respect to such other areas of responsibility assigned to the unit owners' association by the condominium instruments, except where expressly reserved to the unit owners.

Condominium Act, § 55.1-1959A



Rule-Making Authority

Governing Documents and Condominium Instruments

The governing documents for a property owners association or the condominium instruments for a condominium unit owners association may also establish rule-making authority.



Drafting



Purpose

- Preserve or enhance property values.
- Promote community harmony.
- Balance individual freedom with neighbor use and enjoyment.



The Players

- Board
- Committee
- Owners
- Management
- Legal Counsel



The Process

- Identify the problem.
- Recognize the need for the rule.
- Research enabling authority: law, governing documents, and prior association actions.
- Draft proposed rule.



Checklist of Considerations

- Does Board have authority to adopt rules?
- Resolution or amendment needed?
- Is the rule *still* needed?
- Does the rule address a current problem?
- Does the rule create new problems?
- Does the rule make sense?



Checklist of Considerations

- Is the rule acceptable to residents?
- Is the rule enforceable?
- Is this the least restrictive way to address concerns?
- Does the rule achieve intended goals?
- Is there a clear path to compliance?
- Is compliance possible?



Components of a Good Rule

- Transparency.
- Less is more.
- Easy compliance.
- Efficient.
- Enforceable.
- Flexible.



What Does It Mean to be Reasonable?

- A reasonable rule rationally and directly relates to an identified problem or concern.
- Should be drafted to address problem or concern.
- Should be logical and specific enough to cover what is necessary, but not too broad.



Standards of Reasonable Rules

- Logical
- Fair
- Relevant
- Rational
- Sensible



Is a Rule *Really* Necessary?

- Does an existing rule address concerns?
- Is there an existing rule not being enforced?
- Are governing document restrictions sufficient?
- Is the condition or conduct regulated by someone else (county, city, state)?



Is a Rule *Really* Necessary?

How many residents have raised concerns?

- **0** - Rule may not be necessary.
- **1** - Talk with resident; is the concern an isolated issue or an issue that requires attention?
- **2-5** - Is the issue reoccurring or ongoing?
Calendar issue for review in 3-6 months.
- **5-10** - Appoint committee to investigate and develop recommendation.
- **10+** - Intervene immediately; move forward to enact rule.



Rule Drafting

- State the rule in plain language.
- State rule positively (eliminate the culture of “no”).
- Include reason for the rule.
- Explain the consequences for non-compliance.
- Do not be too specific or too broad.



Adopting Rules



Adopting New Rules

- Rules must be based on proper authority.
- Be reasonable. Rules should not create overburdensome limitations on activities or be retaliatory.
- The rule adoption process may be as important as the rule.

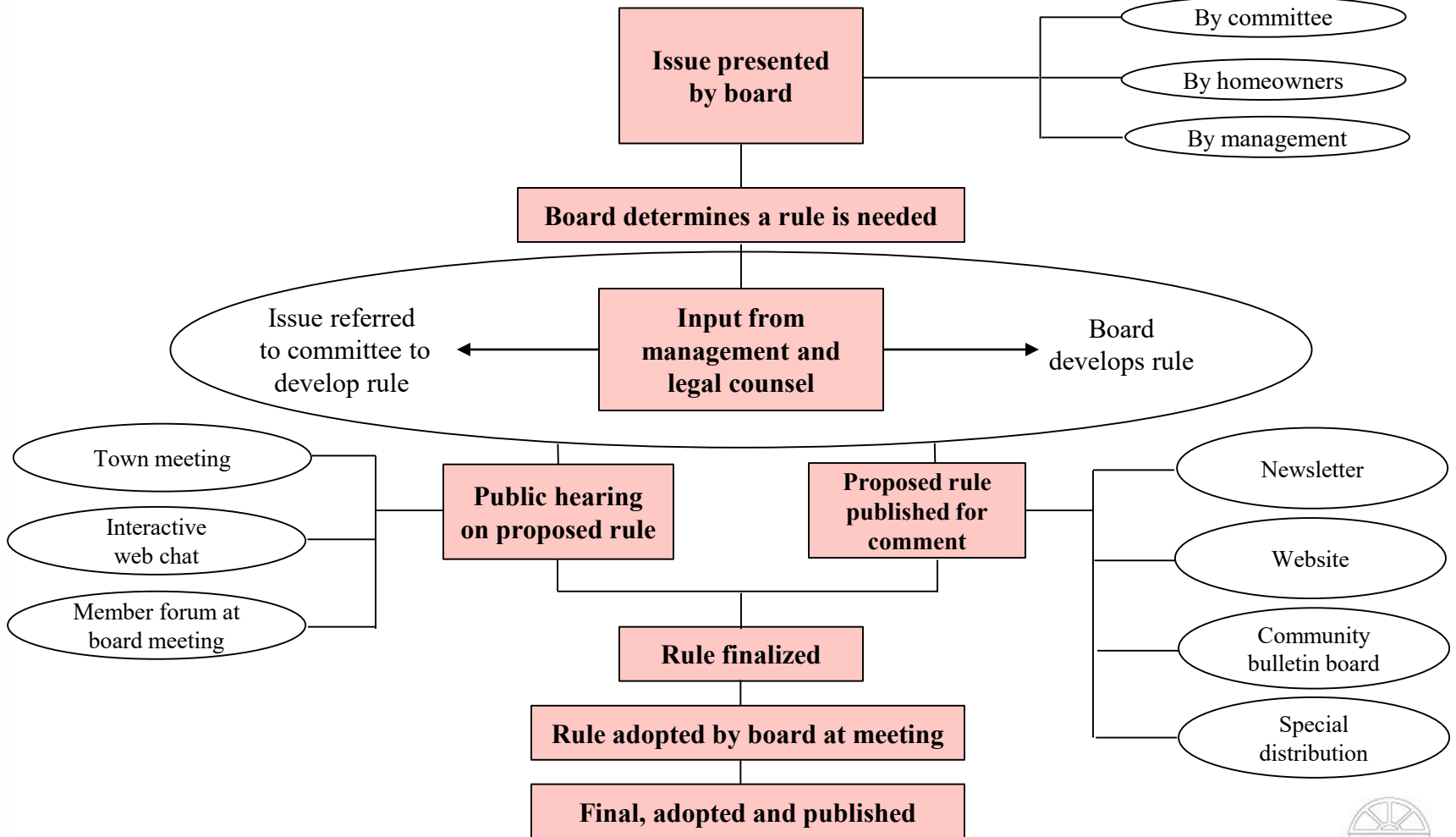


Summary of the Process

- Draft proposed rule
- Present proposed rule to community
- Invite public comment
- *Listen* to the community
- Finalize rule
- Adopt officially
- Document steps taken to adopt & enact
- Publish adopted rule in community
- Periodic review



Adopting New Rules



Getting the Word Out – *Prior to Adoption*

- Newsletter.
- Web site.
- Bulletin board.
- Special distribution.
- Town-hall style meeting.
- Interactive web chat.



Notifying Owners About *Adopted Rules*

Rules and regulations may be adopted by resolution and shall be **reasonably published or distributed** to the community.

Property Owners' Association Act, § 55.1-1819A
Condominium Act, § 55.1-1959A



Notifying Owners About Adopted Rules

The best rules in the world will not do the association any good if the residents don't know about them!

- Resale disclosure
- Association handbooks
- New resident orientations
- Web site
- Bulletin boards
- Signs
- Newsletter



Repealing Rules

At a special meeting of the association convened in accordance with the provisions of the association bylaws, a majority of votes cast at such meeting may repeal or amend any rule or regulation adopted by the board of directors.

Property Owners' Association Act, § 55.1-1819A

Condominium Act, § 55.1-1959A



Rule Compliance



Compliance

Goal is **compliance**, not *punishment*.

- Encourage communication
- Verbal Communication
 - Conciliatory approach
 - Listen to concerns
- Written communication
 - Focus on compliance – opportunity to cure
 - Be specific but consider tone



Approaches to Voluntary Compliance

- Educate and notify.
- Gain consensus.
- Review rules periodically.
- Act promptly.
- Be reasonable with rules & consequences.
- Give time to comply.
- Provide clear information and guidelines.
- Be consistent and uniform.
- Be flexible.



No Voluntary Compliance

If compliance is not voluntary:

- Have a plan to compel compliance – a policy that establishes a process.
- Ensure due process.
 - Notice
 - Hearing
 - Representation
- Act in a consistent manner.



Authority to Enforce – Statutory

Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including application for injunctive relief or actual damages, during which the court shall award to the prevailing party court costs and reasonable attorney fees.

Property Owners' Association Act, § 55.1-1828
Condominium Act, § 55.1-1915



Authority to Enforce – Document Authority

Established in the declaration for communities governed and administered by a property owners association and in the bylaws of a condominium unit owners association.

Based on court trends – **document-based**
authority is fundamental – **REQUIRED!**



Who Enforces the Rules?

- Board
- Committee
- Manager
- Legal counsel
- Local government



Enforcement Roles

Board - Board typically has both the authority **and** duty to enforce restrictions and rules.

Committees and Management - Board may delegate to a committee or management, but delegate with care. **Confirm and document authority.**

Local Government - Association covenants may reflect municipal ordinances and standards or proffer and site plan conditions, and may be enforceable by the local government.



The Seven Deadly Sins of Enforcement

1. Regulating the personal lives of residents.
2. Giving into political pressure.
3. Going to extremes.
4. Imposing harsh consequences for small infractions.
5. Failing to make exceptions in exceptional circumstances.
6. Acting on anonymous, unverified, or unsubstantiated complaints.
7. Failing to be flexible, creative, and reasonable.



Identifying Rule Violations

Before addressing rule violations, make sure there really is a problem.

- Gather the Facts
- Conduct Periodic Physical Inspections
- Resident Input
- Verify Complaints



Periodic Physical Inspections

- The Board, management or appropriate committees should periodically inspect the property.
- Observations should be noted in writing.
- Photographs, noting dates and times, if appropriate, should be made.
- Inspection should include routine inspections of approved architectural applications.



Owner Complaints

- All complaints should be in writing.
- The complaint should contain an accurate, complete and specific description with details - time and place of the alleged violation.
- To the extent possible, confirmation of the violation from one or more additional parties (including management and volunteer leaders) should accompany the complaint.



Owner Rights

Owners have the right to:

- Notice of any proceeding against owner to enforce any rule or regulation;
- Opportunity to be heard;
- Opportunity to be represented by counsel; and
- Due process in the conduct of hearing.

Property Owners' Association Act, § 55.1-1807(4)

Condominium Act, § 55.1-1939(4)



Initiating Due Process

- Notice and opportunity to cure
- Notice of Hearing
 - At least 14 days prior
 - Date of hearing
 - Description of noncompliance
 - Action that may be taken if left uncorrected
 - Hand-delivered or via certified or registered mail, return receipt requested

Property Owners' Association Act, § 55.1-1819C

Condominium Act, § 55.1-1959C



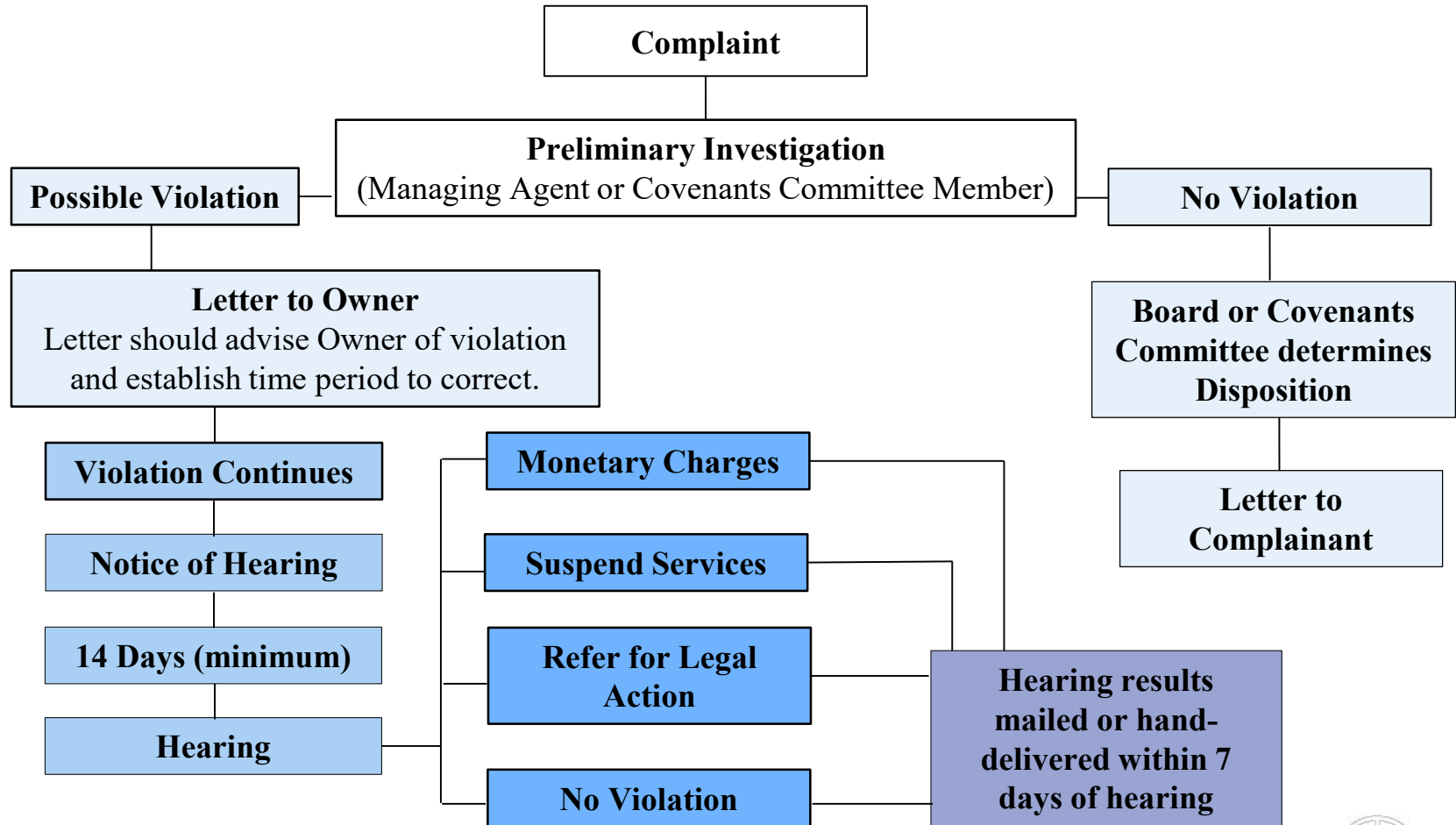
Due Process

- Hearing (Board function unless delegated to committee).
- Hearing results
 - Hand-delivered or via certified or registered mail, return receipt requested
 - Within 7 days of hearing

Property Owners' Association Act, § 55.1-1819C
Condominium Act, § 55.1-1959C



Due Process Procedures



Do's and Don'ts of Conducting a Hearing

The Do's:

- Keep it simple and informal.
- State the case against owner.
- Let the owner respond in their own words.
- Listen carefully to the owner's explanation.
- Require complainants to attend hearing.
- Obtain Compliance.



Do's and Don'ts of Conducting a Hearing

The Don'ts:

- Use a court-like setting.
- Confront or cross-examine owner.
- Engage in an argument.
- Ask questions unless you need clarification.
- Act on anonymous complaints that place the Association in the role of the accuser.
- Inflict punishment.



Remedies



Authority

- Based on recorded governing documents.
 - Declaration – property owners association
 - Bylaws – condominium unit owners association
- Relevant case law:
 - *Shadowood Condominium Association v. Fairfax County Redevelopment and Housing Authority*
 - *Sainani v. Belmont Glen Homeowners Association, Inc.*



Association Remedies

Remedies are limited to remedies established in **recorded governing documents**.

- Monetary charges.
- Suspending privileges for assessments unpaid for more than 60 days.
- Governing documents should be reviewed for other authorized remedies.

Property Owners' Association Act, § 55.1-1819B
Condominium Act, § 55.1-1959B



Monetary Charges

- Monetary charges may not exceed:
 - \$50.00 for a single violation; or
 - \$10.00 per day for a continuing violation, not to exceed 90 days.

Property Owners' Association Act, § 55.1-1819D
Condominium Act, § 55.1-1959D



Suspension of Privileges

- The association **must** adopt a policy resolution expressly enacting the power to suspend privileges.
- The owner must be provided with minimum standards of due process before suspension is imposed.
- Suspension cannot preclude access to the property through common elements/area.
- Suspension cannot endanger the health, safety or property of any owner, tenant or occupant.



Suspension of Privileges

- Access to & use of facilities – pool, gym, community center, tennis courts, etc.
- Access to association books & records.
- Utility Services.
- Parking.
- Voting.



Other Remedies

Alternative Dispute Resolution

- Mediation
- Arbitration

Property Owners' Association Act, § 55.1-1828C
Condominium Act, § 55.1-1915C



Other Remedies

Legal Action

- Circuit Court – *Injunction*
- General District Court – *Abatement*

Property Owners' Association Act, § 55.1-1819E
Condominium Act, § 55.1-1959E



Circuit Court – Injunction

- **Prerequisite** – Association must show that the violation cannot be remedied at law and threatens irreparable harm to association.
- **Standard of Review** - The court will review whether enforcement of the covenant or rule is reasonable. Factors the court will consider:
 - Has the Association followed its own internal procedure for enforcement?
 - Is the rule or covenant based upon implied or express fundamental association interest?



Circuit Court – Injunction

- **Recovery of Attorneys' Fees** - Prevailing party is entitled to recover reasonable attorney's fees from the losing party.
- **Penalty for Violation of Injunction** - If owner does not correct violations after the court awards an injunction, the owner can be found in contempt of court and fined or imprisoned.



General District Court – Abatement

The process:

- Warrant in Debt
- Service of Process
- Hearing
- Judgment



Abatement – Warrant in Debt

- If court determines there is a violation, association asks the court to direct owner to take corrective action within a specified time frame.
- If owner fails to take corrective action, the court may authorize the association to take corrective action and collect the costs of the action ***as well*** as award the association court costs and attorney fees.

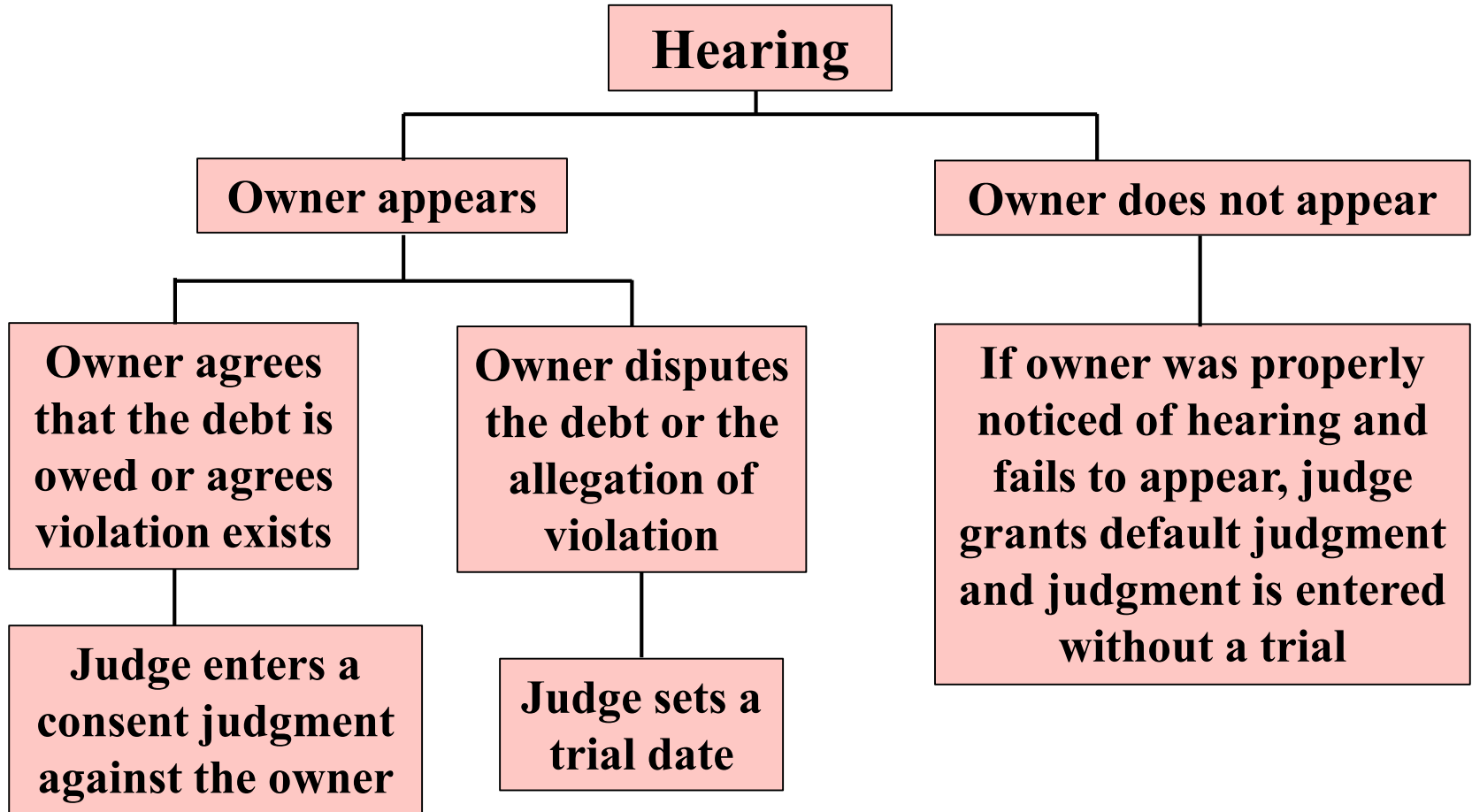


Abatement – Service of Process

- Sheriff requested to serve a copy of the warrant on the owner at the address of record with the association.
- Owner provided with notice of court hearing, notice that legal action is being initiated and the scheduled date when the matter will be reviewed by the court.



Abatement - Hearing



Abatement - Judgment

- Once judgment is entered:
 - Record judgment among the land records
 - Begin action to collect debt or remedy the violation.
- If the owner fails to take action ordered by the Court, judge may enter an order granting permission for the association to enter the lot or unit to remedy the violation.
- Judgment may also include an award of costs and attorney fees.



Appeals

- Judgments of the General District Court may be appealed to the Circuit Court for a new trial.
- Judgments of the Circuit Court may be appealed to the Virginia Court of Appeals on the record (not a new trial). Bonds may be required.
- Judgments may be appealed to the Supreme Court of Virginia, but the Supreme Court does not consider every case on appeal.



Resources

- *Reinventing the Rules - A Step by Step Guide for Being Reasonable* by Lucia Anna Trigiani, CAI Press, 2002
- Guides for Association Practitioners (“GAP”), CAI Press
- Best Practice Series, CAI Press
- CAIonline.org



Discussion



**THE CITY OF ALEXANDRIA
COMMON INTEREST COMMUNITIES
EDUCATION SERIES**



RULES AND RULE COMPLIANCE

MARCH 25, 2023

PRESENTED BY

**LUCIA ANNA TRIGIANI, ATTORNEY AT LAW
MICHAEL L. ZUPAN, ESQUIRE
MERCERTRIGIANI LLP**

MERCERTRIGIANI

