

PALAZZO CONDOMINIUMS

Rules and Regulations – Due Process Guidelines

DUE PROCESS RULES ENFORCEMENT PROCEDURES

1.1 Owner Responsibility

It is the sole responsibility of each owner to know the terms and provisions of the Declaration, the By-laws of the Association. In addition, it is the sole responsibility of each owner to know the terms and provisions of these Rules and Regulations and any modifications of these Rules and Regulations. Each owner is obligated to fully advise any tenant or guest of any provision of the Declaration, By-laws or Rules and Regulations, which apply to the tenant or guest. These Rules and Regulations are provided as a supplement to the Declaration and By-laws, but are not meant to relieve any owner from the obligation to know the terms and conditions of the Declaration and Bylaws. Owners shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force or which may hereafter be in force, pertaining to the use of the Palazzo or the parking garage.

1.1.1 Compliance

Each owner or tenant of a Unit shall comply strictly with the provisions of the Declaration, By-laws and Rules and Regulations of the Palazzo Condominium Association. The same may be lawfully amended from time to time, and with all decisions adopted pursuant to the Declaration, By-laws and Rules and Regulations. Failure to comply shall be grounds for an action to recover sums due, damages, or injunctive relief, or any or all of them, maintainable by the Board, the Association's agent on its behalf, or by the aggrieved owner.

1.1.2 Fines

The Board of Directors, to enforce the Rules and Regulations, may levy monetary fines. See Appendix A.

1.1.3 Notice

The Board Through its legal representative may give written notice of the violation, and state a reasonable period of time for correcting the violation. If the violation is not corrected within the time stated, the Board can itself make the correction, and any costs incurred in connection therewith shall be imposed on the Unit owner and added to the monthly maintenance fee for

the first month following the correction. Payment of such costs shall be enforced in the same manner as is provided for the enforcement of assessments.

1.2 Due Process Procedure

This Due Process Policy establishes fourteen steps meant to provide a fair and meaningful process for deciding whether the Governing Documents have been violated and what consequences should be imposed in response to the violation. The word "Policy" used in this document means the due process steps described below.

1.2.1 Step One – Pick A Hearing Board.

The Board of Directors ("the Board" or "the Association Board") shall pick three Board Members as the Hearing Board. The Hearing Board shall select from among its members a Chair and a Secretary.

The Hearing Board has authority to investigate, hear and determine any complaint about a violation of the Governing Documents. The Hearing Board also has authority

- a) To impose fines, as described in Step 11 below, and
- b) To require the losing party to reimburse the Association for its costs, including reasonable attorneys' fees, incurred in the matter.

The Board may pick other Board Members or Owners as alternates. An alternate may serve when a regular Hearing Board Member cannot.

The Board may pick a Temporary Hearing Board to hear a particular case. A Temporary Hearing Board has the same powers and duties as the regular Hearing Board. The Temporary Hearing Board shall consist of one to three persons.

Only Board Members and Owners are eligible to serve on a three person Temporary Hearing Board. The person who serves on a one person Temporary Hearing Board must be competent to conduct the hearing but need not be a Board Member or Owner. For example, a judge, an arbitrator, a community association lawyer, or a disinterested property manager would probably be competent to conduct the hearing.

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1.2.2 Step Two – Encourage Owners To Resolve Their Own Disputes Through Alternative Dispute Resolution.

The Association strongly prefers that disputes between people be resolved quickly, effectively and inexpensively. It wants people to resolve differences directly and informally when possible. Therefore, the Association recommends that Owners take part in a meaningful alternative dispute resolution process before filing a Complaint with the Board.

The Hearing Board has discretion to accept an Assurance of Voluntary Compliance (“an Assurance”) from a Respondent. The Hearing Board may do this in lieu of or in addition to calling a hearing. Giving an Assurance does not necessarily mean that the Respondent admits violating the Governing Documents or violating a Board Decision. An Assurance may include a person’s promise to reimburse the Claimant, the Association, or both for associated expenses. Associated expenses may include actual damages, costs and attorneys’ fees incurred in connection with the dispute. The person who has given an Assurance must give the Board information the Board reasonably requests to determine whether the person is complying with the Assurance. A person’s failure to keep a promise made in an Assurance is grounds for further action by the Board, the Hearing Board, the Claimant, or the Association.

1.2.3 Step Three – Require A Written Complaint.

The actual filing of a written Complaint starts the process specified in this Policy. The Complaint shall be filed with the Association’s President or Secretary. The person who files the Complaint is called the Claimant. The Complaint is meant to furnish the reader with information helpful in determining whether a violation exists and how to cure it. This is why the Complaint:

1. Shall be signed by the Claimant;
2. Should describe the Claim in clear, simple words, which (a) Tell what section of the Governing Documents or what Board Decision is being violated, (b) Tell what facts support the Claim, and (c) Tell what action, if taken, would resolve the Claim;
3. Should include other information helpful in considering the Claim, such as names of people and copies of documents that lend support to the Claim; and

4. Should describe what steps were taken to try to informally resolve the dispute and what became of those efforts. This Policy is also triggered by a request for a hearing timely received by the Board in response to a notice of violation. When this Policy is triggered by such a request, Step Five is the next step in the process.

1.2.4 Step Four – Have The Board Consider It First.

The Association Board should review the Complaint at its next Board Meeting. It should then do one of four things:

1. Decline to act on the Complaint;
2. Require further attempts to resolve the dispute and postpone acting on the Complaint until those attempts have run their course;
3. Proceed to the Hearing Process described below; or
4. Postpone any action until it gathers information it believes it needs to have before it can choose which action to take.

The Association Board may decline to act on the Complaint, for example, when it determines that the Complaint lacks real merit or that the dispute does not affect the interests of the Association as a whole. Or the Association Board may, for example, recommend that the parties participate in a mediation process and postpone acting on the Complaint until that process has run its course.

1.2.5 Step Five – Check For Any Conflict Of Interest.

The Hearing Process starts with the Association Board notifying the Chair of the Hearing Board that the Association Board has decided to authorize a Due Process Hearing on the Complaint.

Once the Chair of the Hearing Board is so notified, the Chair should promptly check with the Hearing Board Members for possible conflicts of interest and for available hearing dates. The Chair should promptly furnish the Hearing Board Members with a copy of the Complaint.

Each Hearing Board Member should then promptly look through the Complaint to see if he or she has some connection to people or facts involved in the dispute. Any Hearing Board Member who spots a connection should promptly tell the Chair about the connection.

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If the Hearing Board Member with the connection believes it may in some way influence his or her participation in this Hearing Process, the person should promptly tell the Chair that the person cannot participate as a Hearing Board Member in this case. Likewise, if the Chair believes a Hearing Board Member's connection to people or facts involved in the dispute may in some way influence that person's participation in this Hearing Process, the Chair should replace that person with an alternate who does not have such a connection.

1.2.6 Step Six – Set A Hearing Date.

The Chair should also promptly set a date, time and place for the hearing that works for the people who will serve as Hearing Board Members in the case. To provide an opportunity for the parties to prepare for the hearing, the hearing should be set at least thirty (30) days after the Chair is notified by the Association Board to start this process.

1.2.7 Step Seven – Notify The Parties Of The Hearing.

The Chair or Secretary of the Hearing Board shall then promptly serve all significantly affected Owners, Tenants or Occupants, including the Claimant and the Respondent, with a notice of the scheduled hearing. The notice shall state the proposed action and the date, time and place of the hearing, which date shall be not less than five days from the date the notice is delivered to the person against whom action is proposed. A copy of the Complaint and of this Due Process Policy should accompany the notice. A demand for a Voluntary Assurance of Compliance may accompany the notice if the Hearing Board chooses to do so.

The notice is "served" on a person by handing it to the person, or by leaving it with an adult at the person's residence or by mailing it first class to the person's mailing address. If a person has given the Association a specific address to use for mailings, that is the address to which the notice should be mailed.

The person who "serves" the notice should then promptly do a memo to the Chair describing who was served, what was served, who served it, how it was served and when it was served. Mailed notice is considered "served" three days after its mailing.

1.2.8 Step Eight – Make The Parties Exchange Information.

The Claimant and Respondent shall exchange with one another information about witnesses and evidence before the hearing. This should take place at least seven days before the hearing. This should include a list of people who may testify, a summary of what each is expected to testify about, and copies of documents that may be offered into evidence at the hearing. Each party shall, at that time, furnish the Chair with a copy of what is furnished to the other party.

1.2.9 Step Nine – Let The Chair Handle Preliminary Matters.

The Chair has authority to decide preliminary matters. For example, if one party asks that the hearing be rescheduled and the other party opposes it, the Chair may decide whether or not to reschedule the hearing. Before deciding a preliminary matter that may affect a party, the Chair should try to find out what position the affected party takes on the matter. The Chair is authorized to decide preliminary matters (and to confirm such decisions in writing) because leaving such matters to the entire Hearing Board to decide risks delaying the hearing due to trouble that may be encountered in trying to gather all three Hearing Board Members together to decide the preliminary matter.

1.2.10 Step Ten – Hold The Hearing.

The Claimant and Respondent should be present at the hearing. The Hearing Board may choose to conduct the hearing in executive session, but shall still allow the Claimant and Respondent to be present during the hearing. If a party does not attend the hearing, the Hearing Board has discretion to proceed with the hearing or reschedule it. If the Claimant does not attend the hearing, the Hearing Board has discretion to terminate the matter.

1.2.10.1 Party's Rights

The parties and the Hearing Board have certain rights in connection with the hearing. A party has the right to:

1. Be present during hearing
2. Have an attorney represent them
3. Give testimony orally, in writing or both, and otherwise present evidence
4. Object to evidence

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5. Cross-examine a witness who testifies in person at the hearing
6. Make a closing statement to the Hearing Board, and
7. Receive a written decision from the Hearing Board.

1.2.10.2 Board's Rights

As the purpose of the hearing is in part to assist the Hearing Board in its investigation of a Complaint so that its decision in the matter is an informed one, the Hearing Board or its Chair has the right to:

1. Rule on objections
2. Allow evidence in, even if it might be inadmissible in a court of law
3. Ask questions of witnesses and parties
4. Accept testimony or documents not offered by the parties, and
5. Deliberate in private, outside the presence of the parties.

1.2.10.3 General Order of Proceedings

The Chair presides over the conduct of the hearing. The Chair rules on any objections to evidence. The hearing is meant to be fair, but informal. The general order of proceedings is this:

1. The Chair opens the meeting, welcomes those present and briefly explains how the hearing will proceed.
2. The Chair asks Hearing Board members whether they can serve impartially in the matter.
3. The Chair asks parties if there are any challenges to the impartiality of any Hearing Board members and, if so, presides over the resolution of the challenge and, if need be, picks the alternate to take the place of a disqualified Hearing Board member.
4. Each party may then make an opening statement of facts, Claimant going first, and Respondent going next.
5. The Chair then asks those present that may testify to stand and, upon oath, swear that the testimony they will give in the matter is true.
6. The Claimant then presents Claimant's case. This Claimant does by presenting the live testimony of witnesses, and by introducing into evidence relevant documents and such.

7. Following the conclusion of Claimant's case, Respondent presents Respondent's defense in the same manner, by presenting the live testimony of witnesses, and by introducing into evidence relevant documents and such.
8. If a party then asks to present evidence to rebut evidence given by the other party, the Chair will rule on the request(s).
9. Once all evidence is admitted, closing arguments follow, with Respondent going first, Claimant going next, and Respondent concluding with a final statement.
10. The Chair then closes the record, which concludes the hearing part of the case.

1.2.11 Step Eleven – Decide The Case.

1.2.11.1 Deliberation

Once the Chair closes the record, the Hearing Board should promptly deliberate and reach its decision. The Hearing Board has authority to deliberate and decide the case in executive session, outside the parties' presence.

1.2.11.2 Establish Violation or exoneration

The Hearing Board shall consider the evidence. It shall decide whether the facts proven establish the violation claimed. If a violation is established, it should consider what consequences to impose. For example, it may consider:

1. Ordering the Respondent to do certain things to cure the violation;
2. Imposing a reasonable fine within the maximum limits the Association Board periodically sets by resolution. (The fine may include a daily fine to accrue each day of noncompliance with the Hearing Board's Order); and
3. Ordering the losing party to reimburse the Association for its costs, including reasonable attorney's fees, incurred in connection with the case.

1.2.11.3 Fine Determination

A fine or charge imposed by the Hearing Board shall be the personal obligation of the person against whom it is imposed. It shall also constitute an Assessment secured by a lien upon the Unit owned or occupied by that person. And it may be collected as an Assessment in the manner provided in the Declaration.

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1.2.11.4 Written Decision

The Hearing Board's decision shall be reduced to writing. The written decision should:

1. State the facts that were found to exist;
2. Summarize the evidence which led the Hearing Board to find those facts exist
3. State the Hearing Board's conclusions about whether the Claim was proven; and
4. If the Claim was proven, state the relief, if any, that the Hearing Board is ordering.

1.2.11.5 Timing of Decision

The decision should be reduced to writing within ten days of closing the hearing. The decision should state a date on which it takes effect. If no date is stated, then the decision takes effect ten days after the written decision is served on the parties.

1.2.12 Step Twelve – Notify The Parties Of The Decision.

The decision shall then be promptly served on the parties. The decision should be served by one of the methods of service described in Step Seven above. A copy of the decision should also be sent to the Association's Secretary at the same time. The person who "serves" the decision should then promptly do a memo to the Association's Secretary describing who was served, how the decision was served and when it was served. A copy of the decision and of the memo describing service should be kept in the Association's permanent records.

1.2.13 Step Thirteen – Let The Board Choose What Happens From There.

The Association's Board retains whatever authority it otherwise has to employ any available means or remedy to enforce the Covenants, the Bylaws, the rules and regulations and the written decisions of the Hearing Board. The As-

sociation's Board also has authority to decide what to do about a person's failure to comply with the Hearing Board's written decision.

For example, the Association Board may decide to enforce the Hearing Board's written decision through curing the noncompliance itself and charging the costs of the cure to the Owner, or through foreclosing its lien or through seeking a court order requiring compliance or through any combination of available means or remedies.

The Association Board may decide, instead, to leave further enforcement of the Hearing Board's written decision up to the Claimant to pursue through means or remedies available to the Claimant.

1.2.14 Step Fourteen – Appeal or Reconsideration.

Any party materially affected by a Hearing Board decision may appeal, by asking the Association Board to change the Hearing Board's decision. Any appeal must be made in writing to the Association's President or Secretary within 15 days from the date of the written decision, and must be signed by the person appealing the decision. The person appealing must also serve copies of the appeal on all other significantly affected people within three days from the date it is delivered to the Association, according to the rules in Step Seven.

The appeal should explain the basis for the appeal and what mistakes the person appealing believes were made. The Association's Board is not required to make a ruling on the appeal, nor it is required to consider new evidence. If the Association's Board decides to make a decision on the appeal, that decision should be decided based on the record, if any, and on the written decision of the Hearing Board. If the Association's Board was the Hearing Board, then the appeal is a request for reconsideration.