



How to Conduct a Hearing

I. Be Prepared

A. Carefully review the charging document sent to the homeowner by the staff. The charging document determines what the issues are at the hearing. If a particular violation wasn't included in the NOV, it's not an issue for you to decide.

B. Carefully review the hearing procedures, applicable rules, and relevant past decisions.

Determine the following:

- Did staff follow the procedures?
- Did staff cite the right provisions in the notice to the homeowner?
- Did staff properly apply the rule's provisions?
- What documents has staff provided to substantiate the charges?
- Has any relevant prior board decisions or legal advice been provided by staff on the issues?

If you need information to understand the staff's charges, anticipate what you will need clarified and write a list of questions you will want answered by the staff at the hearing.

C. Carefully review the request for hearing provided by the homeowner and any other written information they have provided to understand the homeowner's position.

- Did the homeowner file a timely hearing request?
- Did the homeowner provide any written information the owner wants the committee to consider as required by the hearing procedures?
- Are there issues raised by the homeowner that the board will need to have answered by the HOA's attorney?

If you anticipate needing information to understand the homeowner's position, write a list of questions you will want answered at the hearing.

II. At the beginning of the hearing, make sure the homeowner and the other members of the committee know how the hearing will proceed.

You are in control! A written script is a good idea to keep you focused. You should:

- Introduce the members of the committee.
- Explain the order of presentations: Staff goes first to explain the NOV and answer questions about the charges and proposed sanction; then the homeowner may present the owner's case and answer questions. Clarify when other members of the committee may ask questions.
- Ask if other witnesses will be provided by staff or the homeowner. Witnesses for the HOA speak during the staff's presentation and witnesses for the homeowner speak during the owner's presentation. After witnesses provide their statements, all questions for witnesses should be handled via you, the presiding committee member.

- Explain what materials are already available to the committee for review in the hearing to avoid redundancy and assure the homeowner that the committee is aware of the material previously submitted, if any.
- Explain what the homeowner needs to provide at the hearing to focus the homeowner's presentation on relevant information. Explain any limitations on the owner's presentation.

Asking the homeowners if they have any questions about what you have said is a good way of ensuring that they understand what they must do and any limitations on their presentations.

- Tell the homeowner what will happen after the committee decides the matter.

III. Conduct the hearing in accordance with the committee's adopted procedures¹ and in the order you have announced.

Assert control when necessary to maintain the orderly presentation of the information. Avoid having the homeowner repeat information--interrupt them and recap their point so they know you heard it.

- To move the hearing forward, consider these techniques: If they are rambling and being redundant, interrupt with, "Your position is _____, is that right?" If it appears the homeowner is attempting to resolve the case, grab the opportunity to clarify this with, "You're saying you would be satisfied if the decision was _____."
- Avoid escalating hostilities and present an attentive and personable manner during the proceeding.
- If necessary, remind participants that the committee is tasked with protecting the larger HOA community as required by the CC&Rs.
- Don't engage in legal wrangling. We have attorneys for that, if it is appealed to the board.

III. Making the Decision

A. After you have obtained all the information the committee needs, the committee may have a private discussion without the homeowner or other observers, according to the HOA's attorney. Simply ask everyone to leave while the committee deliberates in private. Once the committee is ready to vote, the committee may invite the homeowner back to hear the motions made by committee members and the committee's vote.

During committee deliberations, try to build consensus among the committee members, but unanimity is not required.

Remind committee members that the decision must be consistent with other board/committee decisions and that the committee must follow its rules and any legal advice provided by the HOA's lawyers.

B. The committee's decision must determine 1) whether the charges were proven and 2) the proper penalty/remedy--based on applicable rules and past decisions. Refer to the typical motions provided for the committee² to ensure the motion is sufficient. Unproven charges are dismissed by committee vote.

C. The matter may be appealed to the board. If no timely appeal is made to the board, the committee's decision must be presented, usually by the board liaison, at a board meeting for ratification by the board as the final decision-makers.

¹ HMC Procedures, L.2. provides:

HEARING REQUESTS

To contest the allegations in an NOV, the affected Member must request a hearing in writing within 15 calendar days following the date of the NOV. Any written information the Member wants considered by the Committee must be provided to the Association within 15 calendar days following the date of the NOV. The Association will provide an opportunity for a hearing that is within 45 calendar days from the date the NOV was provided or mailed to the Member.

TIMELY RECEIPT OF DOCUMENTS

Documents must be received from Members within the timeframes specified in these procedures or as specified by the Committee. Documents are considered received according to the date of mailing (postmark) or upon receipt of an electronic submission. The Committee will determine if the hearing request or any other submission was received within the specified timeframes if disputes arise regarding the timely receipt of documents.

CONTESTED NOV'S CONDUCT OF THE HEARING

If a hearing is requested to contest the allegations in the NOV, the Committee will conduct the hearing. At the hearing, the Member may explain the Member's position concerning the NOV. The Association's staff and the Member may present information from witnesses and provide documents and pictures. The Committee may ask questions and request further information from the Member or the Association's staff in order to make its decision. The Committee may set reasonable time limits for oral presentations and the submission of any requested information. The Committee will consider the information presented at the hearing by the Association's staff and the Member, or requested by the Committee, when making its decision. The Committee's decisions must be reasonable, based on applicable Association rules and policies, and consistent with prior decisions having the same or substantially similar issues. Within seven (7) days of the hearing, the decision of the Committee will be provided to the Member in writing and it will include notice of the Member's right to appeal the decision to the Board.

² Typical Motions for Decisions on NOV's: I move that the committee conclude that there was a violation of (insert rule that was in the NOV) and choose one per violation from below.

- The standard penalty of _____ should be imposed because the violation was not corrected.
- The standard penalty of _____ should be reduced to \$0 because the violation was corrected and it was the first offense.
- The standard penalty of _____ should be reduced to (\$?) because it was corrected, but not the first offense.
- The standard penalty of _____ should be reduced to (\$?) because the violation occurred due to unavoidable or excusable circumstances that were reasonably beyond the member's control.

If there was no violation, move to dismiss the NOV because there was no violation.