

# Indiana Amendments, Covenant Enforcement, Contracts

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## Amendments

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## Amendments: Governing Documents

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### 1. Recorded Plat, Plan or Map

- Plat covenants or restrictions
- Zoning Commitments

### 1. Declaration of Covenants

- Provides rules to protect property values and to maintain a pleasant community living experience for members
- Must be recorded at the county recorder's office
- Generally provides requirements and procedures for the operation of the association, including procedures for amending the document itself
- May provide for additional sub-associations

### 3. Articles of Incorporation

- Establishes the association as a distinct legal entity and provides a framework for the corporation
- Filed with the Indiana Secretary of State

### 4. Bylaws

- Procedures for operating the corporation
- Must be recorded if condo association; otherwise not required
- Look to amendment provision to determine if board or member vote required to make changes

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## Amendments

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- Authority: Governed by the Indiana HOA Act and Indiana Non-profit Corporations Act, ordinance
- Amendment provisions usually found within each document
- Statutes and governing documents provide requirements for proxies, ballots and voting
- Not a “do-it-yourself” job! Seek qualified legal counsel.

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## Amendment Process

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- Establish what the Board/Association would like to amend
- Meet with legal counsel to confirm requirements
- Attorney will prepare a draft amendment(s)
- Board review/revision phase
- Distribute draft amendment to ownership
- Townhall or Board meetings – Gain support for amendment
- Approval: Owner Meeting or Ballot with no meeting

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Covenant  
Enforcement

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## Covenant Enforcement: Authority for Enforcement

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- Declaration/Covenants/Bylaws
- Rules and Regulations
- Architectural Control Rules
- Municipal Ordinances/Regulations

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## Types of Enforcement: Association Authority to Enforce

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- Association Demand Letters (*ie. Warning or Courtesy Notices*)
- Self Help
- Penalties: Fines & Suspension of Privileges
- Attorney Letters (*Cease & Desist, Formal Notices*)
- Litigation & Court Order
- Injunction

*\*All of the above are dependent on the language of the Association's governing documents.*

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## Covenant Violation Process Step 1: Notice of Claim

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- Nature of the Claim: Advise the owner in detail of the violation
- Date, time, location, persons involved, etc.
- Basis of Claim: Cite to applicable section of governing documents
- Remedy: What claimant wants respondent to do/not do
- Right to Meeting: Notification that Respondent shall have **10 business days** to request settlement meeting
- Contact Info: Name & address of person to contact in order to request meeting

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## Covenant Enforcement Settlement Meeting

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If owner requests a meeting:

- Parties to meet in person
- Good faith negotiation
- During meeting- parties must have access to property that is subject of claim, if applicable or necessary
- Document settlement in writing, signed by the parties



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## Covenant Enforcement Step 2: Mediation/Arbitration

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If no settlement meeting is requested or owner is nonresponsive/fails to comply:

- Issue final notice letter advising owner of violation
- Advise that the owner may choose to proceed to mediation or binding arbitration
  - \*Owner to pay costs of mediation/arbitration
- Advise that the owner has **10 calendar days** to comply/resolve violation

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## Covenant Enforcement Step 3: Initiate Litigation

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Association may proceed with litigation if settlement agreement is breached, or Owner fails to respond or resolve violation.

- Complaint filed in Court
- Owner shall have time to file responsive pleading
- Default Judgment (if owner fails to respond)
- Summary Judgment or Trial (if contested)
- Judgment includes:
  - Injunctive Order
  - Attorney's Fees and Costs



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## Indiana Grievance Resolution Process Applicability of Grievance Resolution Statutes

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Statute applies to the following:

1. Any claim or dispute regarding the **interpretation, application, or enforcement** of the governing documents;
2. Any claim regarding the **rights or duties** of the Association or the Board of Directors under the governing documents;
3. Any claim relating to the **maintenance of the subdivision**; or
4. Any other type of claim or dispute among the parties which **involves the subdivision or the Association**.

*Note: Statute applies to Associations formed before and after 2009*

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## Grievance Resolution Process: Exempt Claims

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Statutes do NOT apply to the following "exempt claims":

1. Any claim or action by Association for unpaid **dues/assessments**;
2. **Injunctive Actions** (temporary restraining order or other agency relief: a) to maintain the status quo and protect the party's ability to enforce the governing documents; and b) when an emergency condition exists that jeopardizes the health or safety of any residents within the subdivision);
3. A lawsuit regarding a claim/action that **cannot be completed** under the notice terms of this statute before the statute of limitations would expire, unless parties agreed;
4. A **dispute required** by law, contract, warranty agreements, etc. to go through mediation, arbitration, or other ADR before lawsuit is filed;
5. A claim that is substantively identical to: a) a **previously addressed claim** between the parties; or b) a claim that has **already been resolved in court** in favor of one of the parties

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## Best Practices for Board Members

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- Document, document, document!
  - Take Photographs
  - Record dates of site visits
  - Keep a list of witnesses to violations
- Be clear and specific about the violation and the remedy
- Consult with attorney prior to engaging in self help
- Budget for enforcement (ie. Legal fees)
- Communication is the best deterrent to covenant violations
  - Provides copies of documents & rules to the ownership and seasonal reminders
  - Reminders at Annual Meeting, association website, etc.
- Consistent enforcement: Avoid Selective Enforcement or Non Enforcement
- Work with association counsel to determine the association's rights to enforce covenants, assess fines or other penalties, and to recover attorney fees

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## Contracts

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## Contracts

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Know your governing documents and the law:

- Be aware of any contractual restrictions of Board authority
- State law restrictions may apply if formed after June 2009
- Do your due diligence – Obtain bids
- Be cautious of using friends and family (even if price is better!)
- Attorney Review
- Be aware of termination clauses and automatic renewals clauses
- Owner Access to Contracts: Owners may request copies of contracts for prior 2 years under HOA Act

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## Q & A Session

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