

Question: Mrs. Jones, an elderly neighbor, on the corner hasn't mowed her lawn nor done any spring yard clean up yet this season and her yard is looking really shabby. It is clearly violation of the maintenance covenants for the HOA. Should the Association send her a violation letter and start the enforcement process compelling her to do her yard work, including fines?

Answer: Every year, April 1 kicks off the start to the landscaping season. In years past, like clockwork, irrigation was starting up, backflows were being tested and spring landscape cleaning was kicking off. Because day-to-day life is so unpredictable these days, it is no surprise that landscaping services are too.

The question posed is one received from a Board volunteer. Landscaping is a huge part of almost every association's budget, is often the most visible common area activity a Board oversees and an issue for which most managers send multiple violation letters each year. Like you, managers and clients are faced with an inconsistent application of what is considered an essential service. Some landscaping partners have made the difficult decision to furlough their crews until the work restrictions are lifted, while others have services or programs that do deem them essential. Each landscape maintenance company knows their own capabilities best and should adjust their availability accordingly.

Let's get back to Mrs. Jones' yard. The question above does not have a simple answer. The Board or manager needs to gather additional information before providing advice.

Question One: What's Mrs. Jones' story?

If Mrs. Jones' is disabled or elderly and usually has a lawn service help her with her landscaping, perhaps they were a small service provider who made the decision to close during the shelter at home order. If this owner doesn't have the physical ability to handle the upkeep herself, then pursuing an enforcement action against her is not okay.

Is this the first time this owner's yard has looked poorly, or does Mrs. Jones always need a gentle reminder that winter is over?

Is Mrs. Jones' an essential worker who maybe is working more hours than ever these days? As a community manager, one would be hard pressed to send a violation letter to an owner in the medical field or other essential service who may be faced with mandatory overtime or another exhausting scenario due to COVID-19.

Gather the facts, even call Mrs. Jones first, and find out what the mitigating circumstances behind the situation are. In the current situation, Mrs. Jones is an 81-year-old who was recently widowed, lives alone and usually has John with "Pretty and Green" take care of her yard. We know that John has decided to close until the Governor lifts the work restrictions.

Question Two: What do We do?

Can't you just send her a violation letter. She is just another owner. If we make concessions for her, don't we have to for everyone?

Attorney Terry Leahy is fond of asking three questions in tough scenarios like this:

- Must We?
- May We?
- Should We?

The Board is granted enforcement authority under its declaration, but it is afforded the right of interpretation. Must We; the answer is no. May We? You may, but Should We? In this scenario, the answer is NO. During this pandemic, especially: Board members – Govern with your heart. Managers – Advise compassion. There are consumer protection reporters like Jesse Jones and Hayley Guenther who will happily share on the 6:00 news stories of the big-bad-HOA treating Grandma Jones unfairly. But more than the negative Tweet it may garner, it's my opinion that it's just the wrong thing to do.

On a case by case basis, the Board can choose to grant a hardship variance to the landscape maintenance requirement in its covenants. To guard against any concern about setting negative precedent, the Board of Directors could issue a letter to the owner or distribute a community-wide policy stating that it will make limited exceptions to certain rules as a result of and during the COVID-19 pandemic.

The Board wondered if they could just have the Association's landscaper take care of her yard.

This is not an advisable approach unless Mrs. Jones' would be willing to pay for the cost of her service. Consider that the whole membership pays into the common area maintenance contract. While this gesture is kindhearted and comes from a good place, it could be considered inequitable. Call your Association landscaper and get a bid for the price to do a one-time service of the home in question.

The Board President indicated he could just go mow her lawn for her.

Unless he has a neighbor-to-neighbor relationship with Mrs. Jones, then he should, in his capacity as her friend and neighbor, reach out to offer help. He should not demand entry as the Board president nor imply that he is "entering to cure" a violation.

The Board Vice President asked what would happen if they just let it go.

Unfortunately, in this situation, this is the corner home, right when you enter the Association. It is the first yard you see. After a string of warm, sunny days the yard really does look shabby. As the governor's orders are unlikely to lift for another two weeks, doing nothing was not an option. While the Board does have authority to grant variances and hardship, simply ignoring blatant violations, without cause, creates a new slew of issues.

Answer: What Was Done

Before phoning an owner, ensure that your calendar is clear and you aren't going to be in a rush. Like you, many of the owners in client communities are going stir crazy. Make sure you have the time to talk with this owner and listen to their concerns. Attempt to communicate the call is to ask how to help, not to ask when she was going to get her yard in shape. Prior to calling, obtain a bid from the Association's landscaper on what it would cost to add her yard to their current weekly visit. In our scenario, the board president also said Mrs. Jones could call him if she ever needed help. We learned that she knew she needed help, but she didn't even know where to start. She agreed to have the established common area company handle her yard mowing and was so grateful to have officially met a new neighbor.

In closing, Terry Leahy offered some sage follow up advice, "New rule. For the duration, the 'complaint form' is now a 'volunteer to help' form. Whatever violation you are complaining about is the violation you are volunteering to remedy." Yes, it's very Pollyanna, but how about calling to state, "Mrs. Jones' yard is looking very shabby. How can we help her?"