

Encroachment Policy, Homeowners' Association Common Areas OCHL- Sector 12

The One Club House Lane Sector-12 (OCHL-12) Homeowners' Association (HOA) has the duty and responsibility to preserve and maintain the various areas, Common Areas, owned by all OCHL-12 homeowners (covering approximately 33 acres), and dedicated to the Association for open space, native growth protection and recreation. Some of these Common Areas have also been further reserved and dedicated for landscaping, wetland protection and community identification. All Common Areas are regulated and restricted under the HOA Covenants, Conditions and Restrictions (CC&Rs) and subject to a policy developed and managed by the Open Space Committee (OSC). Further restrictions or requirements by the City of Mukilteo also affect some of these areas.

Common Areas Encroachment Policy

Homeowners are prohibited from encroaching on any part of the HOA Common Areas. Encroachment is defined as assuming illegal occupancy, control, possession or use of any part of the Common Areas through unauthorized use, extension of property line, planting, dumping (grass or vegetation trimmings and other materials), erecting structures or making changes or improvements of any nature.

If a homeowner is, by a preliminary HOA assessment, determined to have encroached on any of the Common Areas, the following procedures shall take place:

- A. The HOA formally notifies the homeowner that a preliminary assessment determined that an encroachment may exist specifying the area of the encroachment. This notice will also request the homeowner to restore the area noted within a 120 day period (from mailing date of notice) and also offer an opportunity to meet with representatives of the HOA to discuss the issues.
- B. Should a homeowner, upon receiving a notice of encroachment, dispute that an encroachment has occurred or other facts contained in the notice, the homeowner must respond to the HOA in writing within 30 days from the mailing date of the notice. Failure to respond will be considered acceptance of the HOA's preliminary determination.
- C. If a homeowner disputes the HOA's preliminary determination due to an unclear property line boundary or marker, the HOA will commission a professional survey of the pertinent property line by a licensed surveyor.
- D. Costs for the survey will be borne as follows:
 - (a) If the survey confirms the HOA's determination of encroachment, the homeowner will pay 100% of the survey cost.
 - (b) If an encroachment is confirmed but it is determined that the encroachment is 12 inches or less from the surveyed property line at all points, the HOA and the homeowner will each bear 50% of the survey cost.

- (c) If the survey confirms that no encroachment has occurred the HOA will bear 100% of the cost.
- E. Following confirmation through a survey that an encroachment has occurred, the HOA will notify the homeowner and provide an outline of the encroachment area. The homeowner will have 90 days from the mailing date of this notice to complete restoration to the HOA's satisfaction.
- F. Upon receipt of notification from the homeowner of the completion of restoration requirements for the encroachment area, the HOA, if it is satisfied following a site visit, will confirm its satisfaction and provide formal notice of satisfaction to the homeowner.
- G. Restoration of an encroachment area requires, as far as is reasonably feasible and to the HOA's satisfaction, returning the area to its original natural condition.
- H. Any plantings necessary to restore the area to its original natural condition shall be consistent with the City of Mukilteo listing of approved native trees, shrubs and grasses.
- I. Should a homeowner fail to perform the required restoration before the deadline specified, a penalty shall be imposed on the homeowner's property at \$5.00 per square foot of the actual encroachment area, per year or any part thereof. Penalties shall continue to accumulate until the area is restored to the satisfaction of the HOA.
- J. All HOA remedies available for collection of past due annual assessments set out in the OCHL-12 CC&Rs will apply to unpaid penalties under this policy.
- K. The HOA also reserves the right to remove the encroachment and restore the area at the homeowner's expense should the homeowner fail to do so within 180 days from the date of the mailing of the formal notice. The homeowner will be notified in writing in advance of such action by the HOA.
- L. All notices from the HOA will be in writing, sent via Certified US Mail, Return Receipt Requested, to the homeowner's last known mailing address on file with the HOA.
- M. Any disputes which arise pertaining to enforcement of this policy will be resolved by both parties submitting to binding arbitration pursuant to the rules of the American Arbitration Association. All parties involved, including the HOA, will share equally in the arbitration fees, but each party shall be solely responsible for its own attorney fees and costs.
- N. This Policy will become effective March 31, 2010.