



**TIPS FROM WEST VIRGINIA ORGANIZATION OF HOMEOWNERS ASSOCIATIONS, INC.**

“Quite Enjoyment” is the right of each property owner or tenant to enjoy his or her property in peace without interference. This right is specifically included in most Declarations of Covenants, Conditions and Restrictions (DCCR) we should have all received and read that govern each planned community, be it an HOA or Condo. Actions that interfere with our individual quiet enjoyment of our property are prohibited by an association’s DCCR and the conduct in question may be deemed a “nuisance.” To quote “nuisance” from some of our member’s DCCR:

*No noxious or offensive activity shall be permitted on any lot, nor any anything done thereon which may become a nuisance to the neighborhood.*

*No Unit Owner shall permit or suffer anything to be done or kept in or about his Unit or upon the Common Elements which will obstruct or interfere with the rights of other Unit Owners, their guests or assigns or annoy them by creating any unreasonable noises or otherwise, nor shall any Unit Owner permit or commit any nuisance or illegal act in or about the Property.*

*No noxious or offensive or illegal trade or activity shall be carried on upon any Lot or within any dwelling or any other part of the property, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or other Members.*

We have a right to enjoy our home without interference from others does not necessarily mean that we have a right to live in a noise-free environment. It is reasonable to expect that we will encounter an occasional nuisance to our peace of mind with fireworks, typically on the 4<sup>th</sup> of July and New Years. It is only when the day, intensity & duration of fireworks is substantial and rises to an unreasonable noise level that would be offensive to a normal person, and that’s when it becomes a nuisance.

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JULY 2022

WEST VIRGINIA ORGANIZATION OF HOMEOWNERS ASSOCIATIONS, INC.  
P.O. BOX 911 - CHARLES TOWN - WEST VIRGINIA 25414-0911

INFO@WVOHOA.ORG

WVOHOA.ORG

Conditions that are frequently the subject of fireworks nuisance and interference with our expected quiet enjoyment include severe interruptions to our children, Veterans, the disabled and our pets.

When fireworks interrupt our quiet enjoyment and becomes a nuisance, our Board of Directors will be required to take some form of action to abate the nuisance. For example, when fireworks are shot off in the afternoon on any given day or late into the wee hours of the night, it's always a surprise. The Board of Directors should take corrective action. They can develop a fireworks policy that outlines an appropriate date and time which might include exceptions. Of course, the policy must be circulated to each owner and tenant so they are "in-the-know". Do not wait until there is a nuisance to act. Foresight is expected by everyone!

When the Board of Directors receive complaints of because of fireworks they must investigate the issue to make a good faith determination as to whether the complaint has merit. The directors' duty to investigate is one of the fiduciary duties of association directors and it requires them to use "due diligence" to make a reasonable inquiry into the issue in question and make an informed decision.

**The problem is *when* to investigate and step up to make that decision.**

Fireworks happen now, investigation happens over a course of days, even months. How to handle this conundrum? It would be prudent to circulate and post a fireworks policy every year. In planned communities never expect everyone to respect and know every policy, especially a fireworks policy that cannot be investigated and corrected immediately.

Directors cannot cast a blind eye to what is going on in the community because they want to be nice. It is only when the Board of Directors interact with owners and tenants will fireworks then be expected. The neighborhood will be a better community when everyone has the same opportunity to celebrate.

Lastly, always look into your own county fireworks ordinances. The text the county may have published and circulated will be a helpful guide in developing a planned community fireworks policy. Some WV counties do not permit fireworks where some permit times, dates and in some cases types of fireworks.



June 1, 2016 [WV CODE §29-3E](#) Fireworks Safety ([House Bill 2646](#))

With the 2016 WV state law, individual municipalities, counties and private communities may still prohibit or regulate the use of consumer fireworks within their boundaries.

**OFFICE OF THE STATE FIRE MARSHAL**, Phone: (304) 558-2191 Fax: (304) 558-2537  
1207 Quarrier St, 2nd Floor - Charleston, WV 25301 - <https://firemarshal.wv.gov/Pages/default.aspx>  
Consumer products that are legal to purchase and use in West Virginia beginning June 1, 2016, include:

Sky Rockets - Bottle Rockets - Missile-Type Rockets - Helicopter and Aerial Spinners - Roman Candles  
Multi-Aerial Mine and Shell Devices - Aerial Shell Kits – Reloadables - Firecrackers

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Fireworks-related injuries in West Virginia shot up 40 percent following passage of a 2016 law that allows purchase and possession of Class C fireworks. [WVU Research](#) WBOY Channel 12

§61-3E-1. Definitions.

"Destructive device" does not include a firearm as such is defined in section two, article seven of this chapter, or sparkling devices, novelties, toy caps, model rockets and their components or fireworks as these terms are defined in section two, article three-e, chapter twenty-nine of this code, or high power rockets and their components, as defined in this section.

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