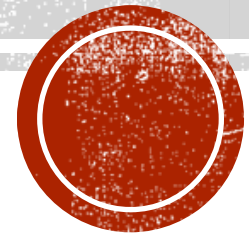


CODE ENFORCEMENT BOARDS

HB 422 AND HB 318 REFORM



Chris Johnson

Member Legal Services Attorney

Kentucky League of Cities for Lincoln Trail ADD

THE HISTORY OF CITY CODE ENFORCEMENT IN KENTUCKY

PRE-1976

- City police courts

1976

- Police courts abolished
- District court enforcement

1984

- Local Gov Parking Citation Enforcement Act (KRS 82.600 – 82.640)

1992

- Ordinance Enforcement Procedures (KRS 83A.065)
- Local Gov Nuisance Code Enforcement Act (KRS 82.700 – 82.725)

1996

- Local Gov Code Enforcement Act (KRS 65.8801 – 65.8839)

2016

- **HB 422**
- Code Enforcement Reform
- Nuisance Statute Reform



WHAT IS HB 422?

- Comprehensive code enforcement reform
- Incorporates recommendations of KLC code enforcement task force
- Consolidates Local Nuisance Code Enforcement Act provisions into KRS 65.8801 et seq
- Streamlines and creates efficiency
- Addresses threat of constitutional challenge to previous requirements regarding lienholder notification



KEY FEATURES OF HB 422

- Option: Single fine or minimum for uncontested/ maximum for contested
- Option: Hearing officer can enter final order
- Option: Hearing officer final order can be appealed to CEB or District Court
- Hearing officers required to have experience or training in code enforcement process and basic due process procedures rather than requirements for state administrative hearing boards
- Potential for lien priority over previously filed liens for any ordinance enforced by a CEB: not just nuisance
- Elimination of Local Government Nuisance Code Enforcement Act (incorporated into KRS 65.881 et seq)
- New codification of KRS 381.770 into KRS Ch 65
- Extension of lien statute of limitations to 10 years
- New lienholder electronic notification system for final orders
- Potential for previous lienholders to obtain priority over code enforcement lien IF properly register and take required remedial action/ pay costs



EFFECTIVE DATE OF HB 422

- HB 422 was effective July 15, 2016.
- **HOWEVER:** The Local Government Nuisance Enforcement Board Act (KRS 82.700 et seq) and KRS 381.770 was not repealed until January 1, 2017.
- **WHAT DOES THIS MEAN?**
 - Those cities that use these statutes to enforce their nuisance codes could continue to do so until January 1.
 - Those cities that want to put HB 422 into place immediately could do that as well.
 - The status, priority, or enforcement of any lien that was created and existed prior to January 1, 2017 under these statutes **is not affected by HB 422**.



WHAT IS A CODE ENFORCEMENT BOARD (CEB)?

KRS 65.8801 – 65.8839/ HB 422

WHAT IS IT?

- Hearing board
- Enforce city ordinances
- Civil offenses only
- Court only involved if appeal

WHY SHOULD WE?

- Latest & most expansive alternative to court process
- Greater ordinance compliance
- Saves time
- Saves money
- Consistent enforcement
- Promotes quality of life
- City control

HOW DO WE?

- **Optional** – Use alone or combine with other enforcement methods
- Create by ordinance in accordance with statutory requirements
- Available to any city, county, or merged local government
- May create joint board through interlocal agreement



WHICH ORDINANCES CAN A CEB ENFORCE?

YES

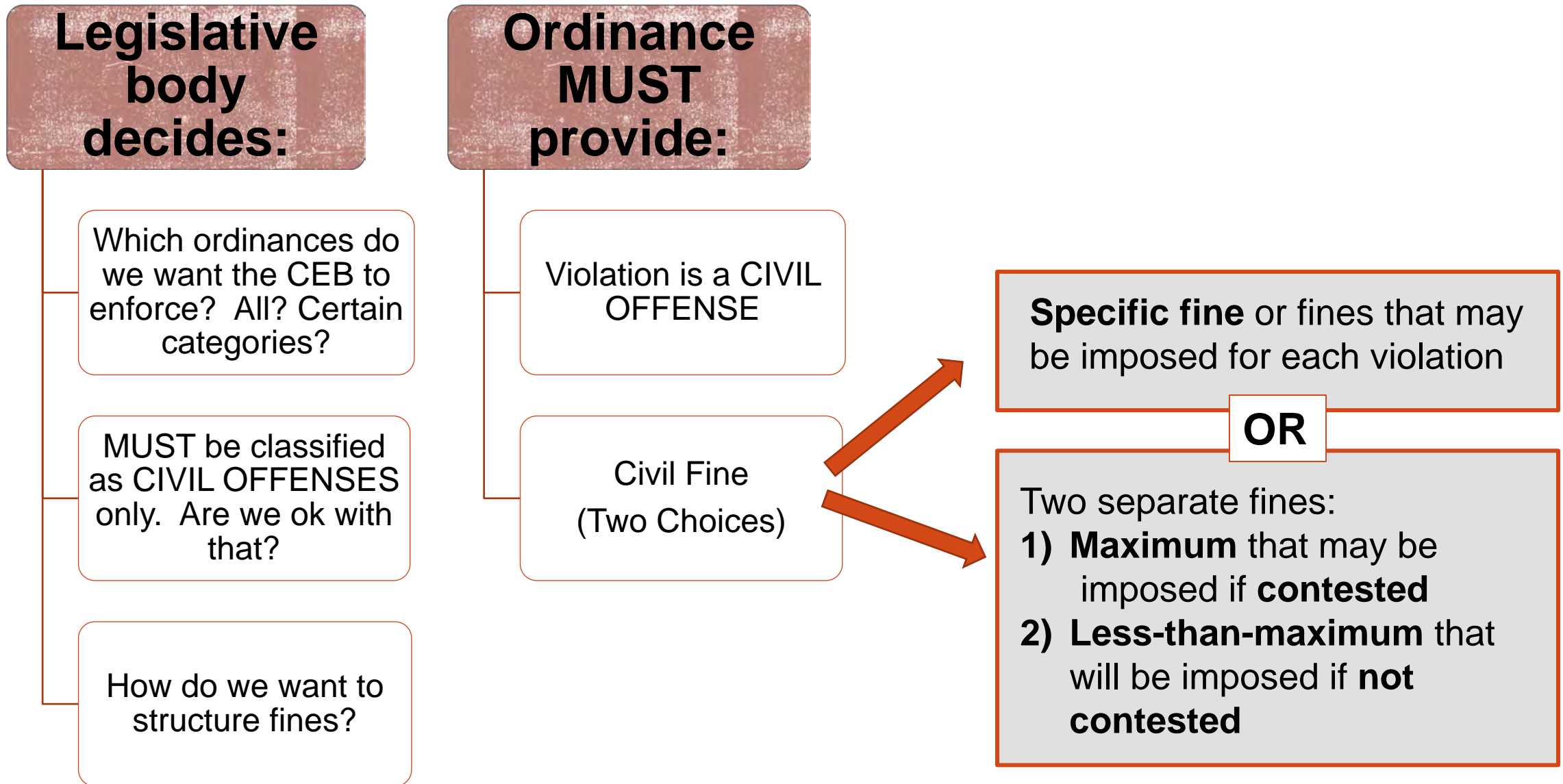
- **Any ordinance** the city is willing to enforce **civilly**.
- Includes zoning and nuisance ordinances.

NO

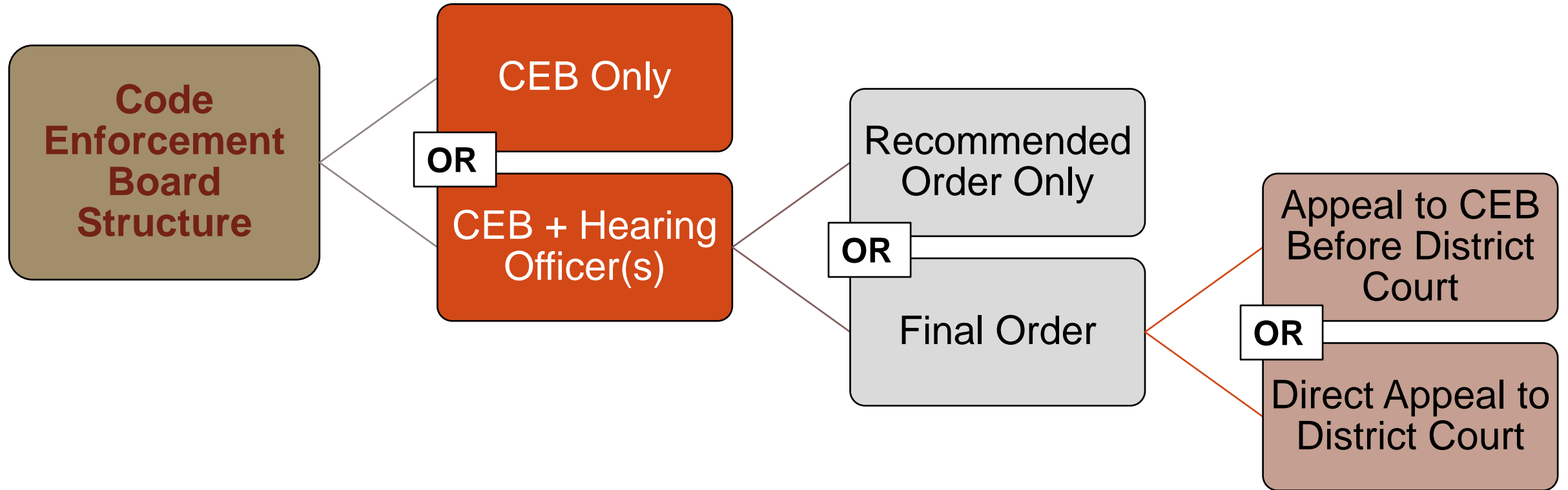
- Any violation that is **NOT** classified as a **civil offense**.
- Any violation that includes conduct which would be a **criminal offense** or **moving motor vehicle offense** under state law.
- Any action that takes place in the **county** or **another city**.



INITIAL DECISIONS: ORDINANCES AND FINES



INITIAL DECISIONS: CEB STRUCTURE



CEB: MEMBERSHIP REQUIREMENTS

APPOINTMENTS

**At least 3
members**

Appointed by
**executive
authority**
(mayor) with
approval of
**legislative
body**

Initial
appointments
are for
**staggered
terms**

Subsequent
appointments
are for **3-year
terms**



CEB: MEMBERSHIP REQUIREMENTS

ELIGIBILITY

Oath

Cannot hold any elected or appointed **office** or be city **employee**

- Paid or unpaid

Must **reside** within city limits for at least 1 year prior to appointment & throughout term

No term limits

No statutory qualification requirements



CEB: MEMBERSHIP REQUIREMENTS

JOINT BOARDS

Members
appointed as
established in
**interlocal
agreement**

- Follow Interlocal Cooperation Act
- KRS 65.210 – 65.300

Agreement must
provide
representation for
all participating
local governments

Must **reside** within
government they
represent for one
year prior and
throughout term



CEB: MEMBERSHIP REQUIREMENTS

REMOVAL

Mayor may remove for **misconduct, inefficiency, or willful neglect of duty**

Legislative body or CEB may set removal **standards**

Mayor must submit **written statement** to member and legislative body giving reasons for removal

Right to **appeal** to Circuit Court



CEB: MEMBERSHIP REQUIREMENTS

VACANCIES

Filled within **60 days** by **mayor** with **approval** of **legislative body**

If not filled within 60 days, **CEB** itself fills

Filled for **remainder of unexpired term**



CEB: MEMBERSHIP REQUIREMENTS

ALTERNATES

- **Mayor** may appoint **2**, with **approval** of **legislative body**
- Serve in **absence** of regular members

COMPENSATION & EXPENSES

- May be **reimbursed**, **compensated**, or **both** as specified by **ordinance**

CONTINUING EDUCATION

- Encouraged! But **not required**.



CEB: BASIC OPERATION REQUIREMENTS

CHAIRPERSON

- Select each year to preside over meetings
- Full participating and voting member

REGULAR MEETINGS

- As established in ordinance creating board

QUORUM

- Affirmative vote of majority of quorum needed to take action



FINANCIAL INTEREST DISCLOSURE

- If have, disqualified from vote and not counted in quorum

OPEN MEETINGS/ OPEN RECORDS LAWS

- Minutes required and votes recorded
- Failure to follow laws could result in actions voided

ADMINISTRATIVE PERSONNEL

- Legislative body must provide as required



CEB: POWERS

**Adopt rules &
procedures to
govern operation
& hearings**

**Conduct
hearings (can
assign hearing
officer)**

**Subpoena
alleged violators,
witnesses &
evidence**

**Take testimony
under oath
(administered by
chair)**

**Make findings
and issue orders**

**Impose civil
fines**

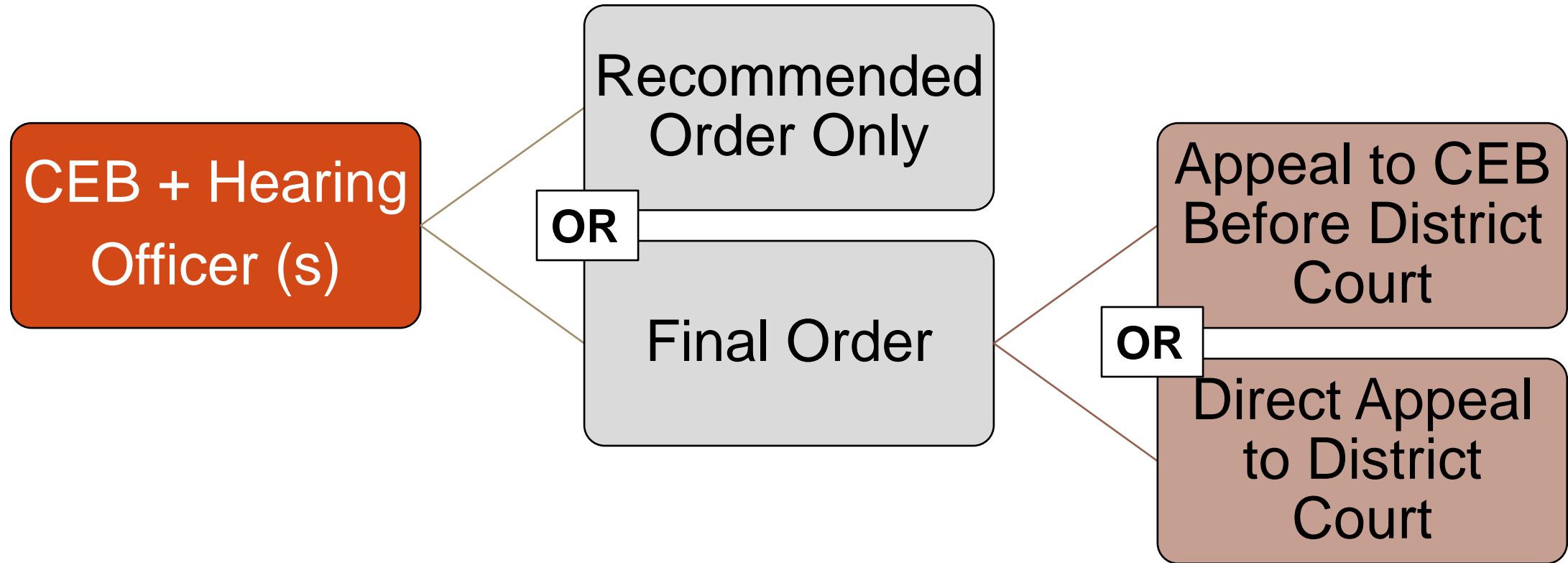


HEARING OFFICERS: OPTIONS FOR USE

- CEB MAY assign a hearing officer, as provided by ordinance, to conduct hearings.
- Ordinance MAY allow hearing officers to issue recommended orders, and allow CEB to issue final orders.
- Ordinance MAY allow hearing officers to issue final orders.
- If ordinance allows hearing officers to issue final orders, ordinance may require initial appeal of these orders to CEB, OR may allow direct appeal to District Court.
- Hearing officers have the same duties and powers for conducting hearings as the CEB: administer oaths, take testimony, issue subpoenas, weigh evidence to make recommended or final orders.



HEARING OFFICERS: OPTIONS FOR USE



HEARING OFFICERS: ELIGIBILITY

Who Can Serve

Assigned by
CEB, as
provided by
ordinance

Can be a
member of the
CEB, including
the chair

If not a member of
the CEB:

- Cannot hold elected or appointed office
- Cannot be employee of creating local gov



HEARING OFFICERS: EXPERIENCE & TRAINING

Experience OR Training

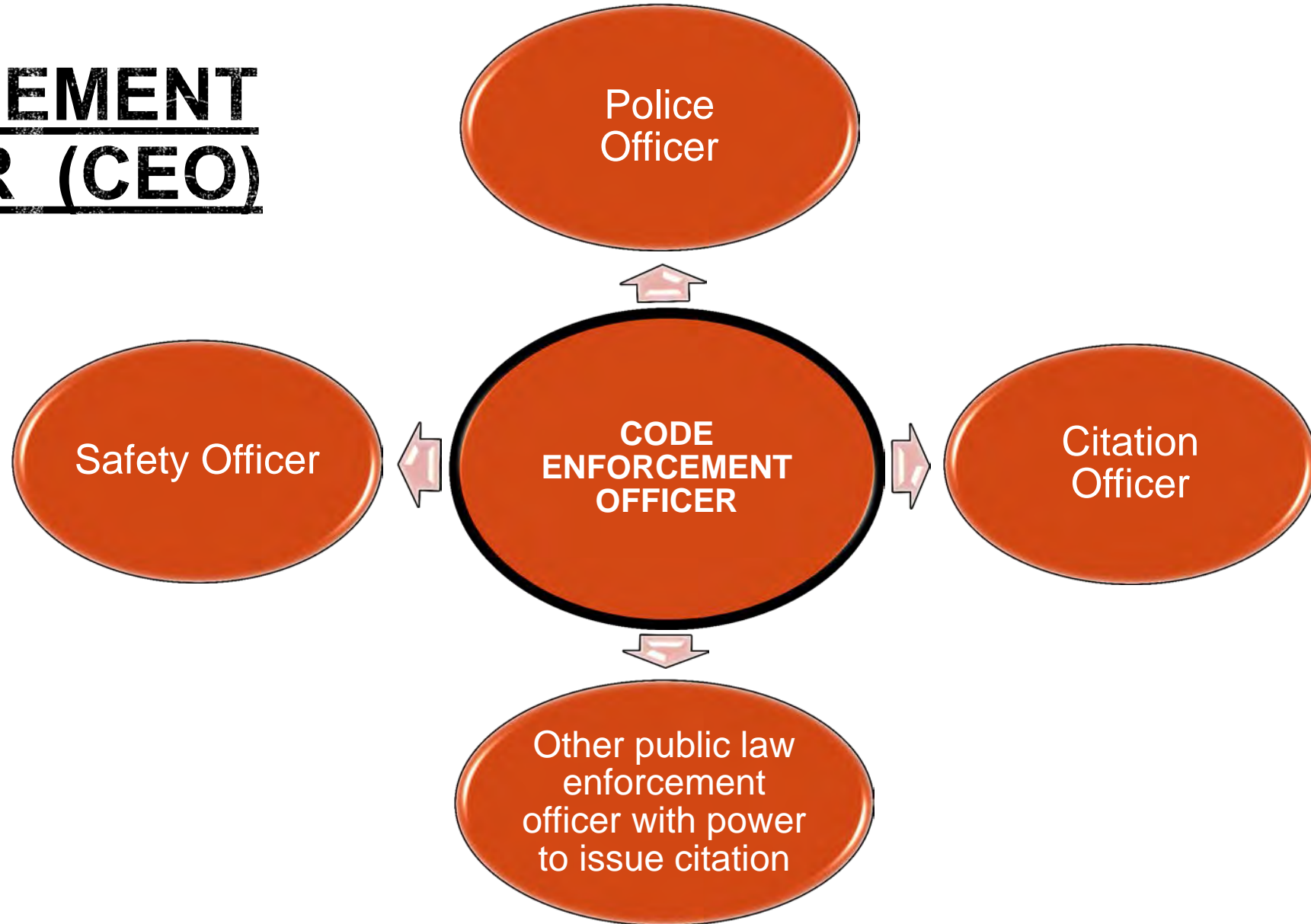
- Code enforcement process and basic procedural due process
- As specified in ordinance creating CEB
- Consider: Hours, topics, verification, how much to leave up to CEB itself

At a minimum, knowledge of party's fundamental due process rights to:

- Be accompanied & advised by counsel at the hearing
- Present evidence & witnesses at the hearing
- Examine the evidence opposing the party
- Confront and cross-examine opposing witnesses



CODE ENFORCEMENT OFFICER (CEO)



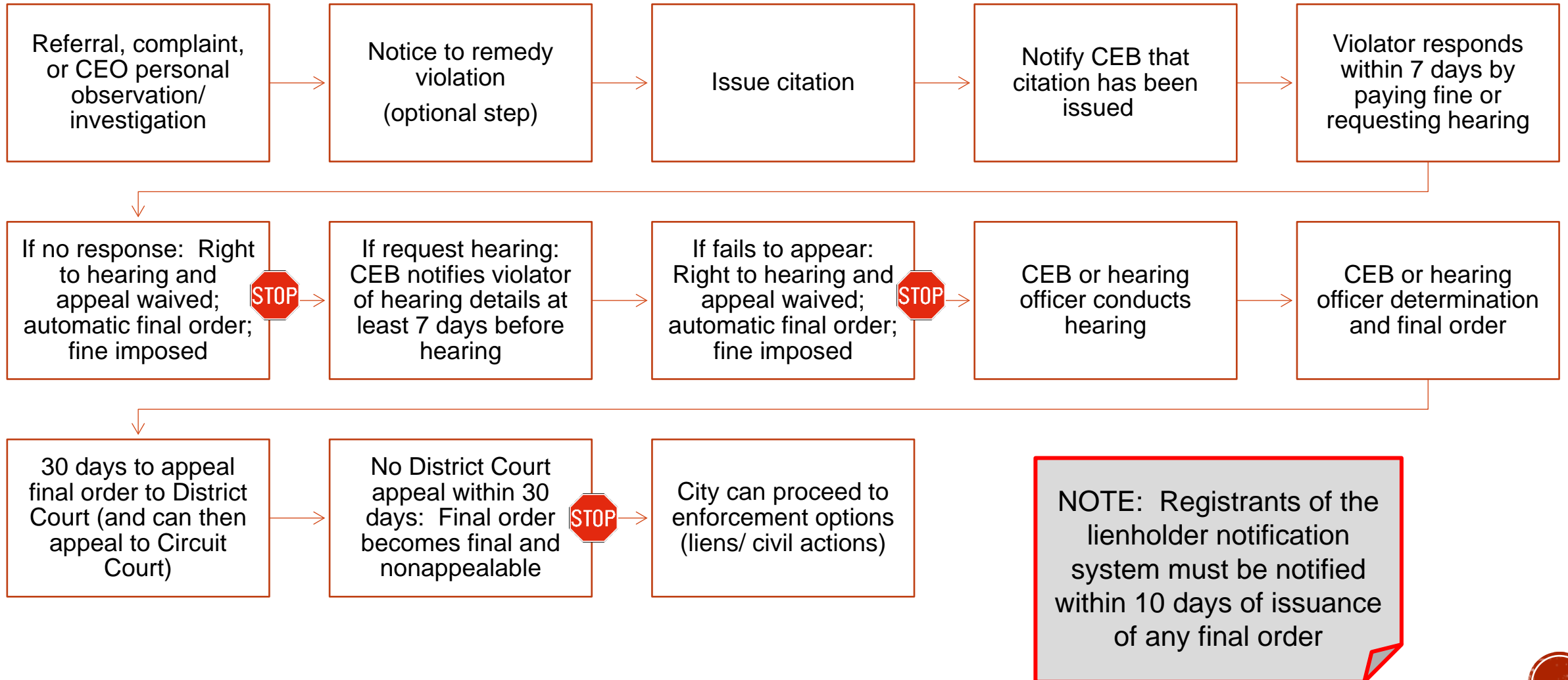
CODE ENFORCEMENT OFFICER (CEO)

BASIC POWERS AND DUTIES

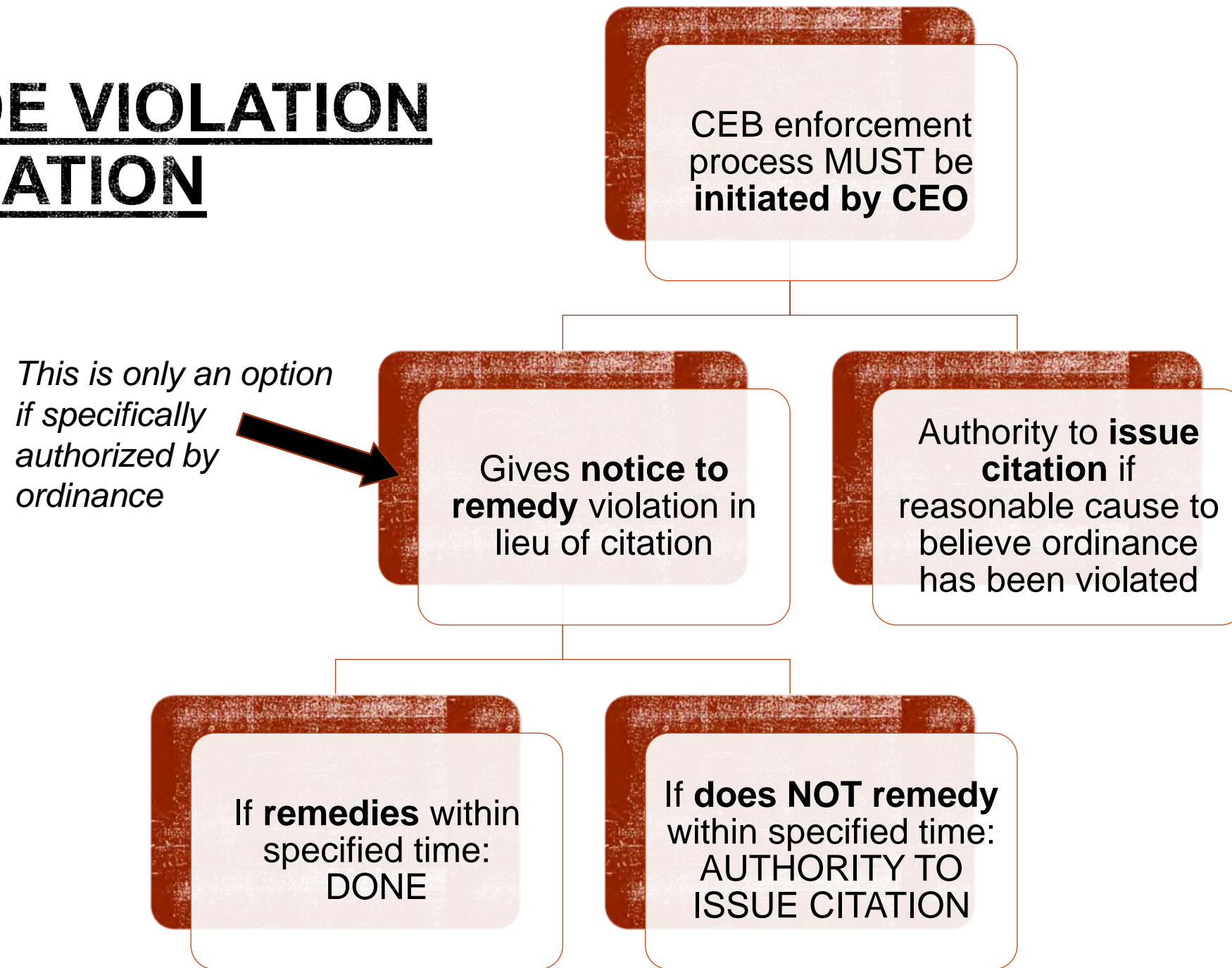
- Identifies potential code violations (complaints, reports, regular inspections, personal observation, etc)
- Issues notices of violation (if authorized)
- Issues citations
- Testifies at hearings as needed



CODE ENFORCEMENT PROCESS



CODE VIOLATION INITIATION



CITATION CONTENTS

- Date and time issued
- Name and address of violator
- Physical address of premises where violation occurred***
- Date and time offense was committed
- Facts constituting offense
- Section of code or ordinance number violated
- Name of officer issuing citation
- The civil fine that may be imposed for the violation, including, if applicable:
 - Civil fine that will be imposed if the person does not contest the citation; and
 - Maximum civil fine that may be imposed if the person elects to contest the citation
- Procedure to pay fine
- Procedure to contest citation
- A statement that if the person fails to pay the civil fine set forth in the citation or contest the citation within the time allowed: the person shall be deemed to have waived the right to a hearing before the code enforcement board (or hearing officer) to contest the citation; the determination that the violation was committed shall be final; the citation as issued shall be deemed a final order determining that the violation was committed and imposing the civil fine as set forth in the citation; and the person shall be deemed to have waived the right to appeal the final order to District Court.



METHODS TO DELIVER CITATION

Personal service to the alleged violator

Leave with anyone on premises who is at least 18 years old if alleged violator not on premises

Mailing a copy of the citation by regular first-class mail to the last known recorded mailing address of the alleged violator

If, in exercise of reasonable diligence, the issuance of a citation using the upper three methods is not possible – the citation is properly served by posting a copy of the citation in a conspicuous place on the premises



RESPONSE TO CITATION

Notification of CEB

CEO notifies CEB that citation has been issued

Administrative official designated by legislative body or CEB

Response of Violator

Pays fine within 7 days

OR

Makes written request for hearing within 7 days

No Response of Violator

Right to hearing and right to appeal are waived

Citation deemed final order and fine imposed; notice provided to violator (see next slide)



RESPONSE TO CITATION

When a citation is deemed a final order due to no response, notice of the final order must be provided by one of the following methods:

- 1) Regular first-class mail
- 2) Certified mail, return receipt requested
- 3) Personal delivery
- 4) Leaving a copy of the order at the person's usual place of residence with any individual residing there who is:
 - 18 years or older; and
 - Informed of the contents of the order



HEARING: NOTIFICATION

WHO

- Duty of CEB to notify violator

WHAT

- Date
- Time
- Place

WHEN

- At least 7 days before hearing

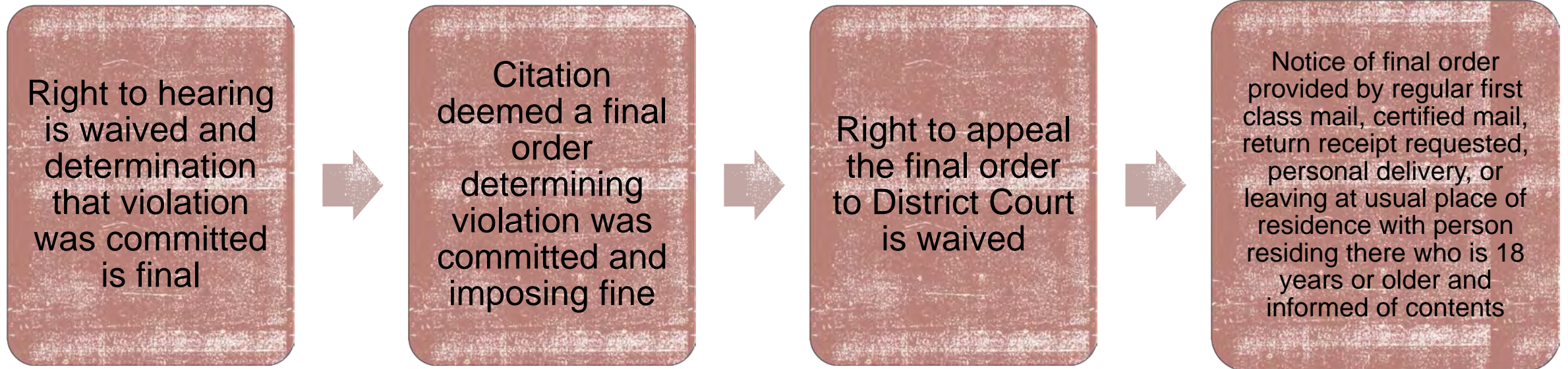
HOW

- Regular first-class mail
- Certified mail, return receipt requested
- Personal delivery
- Leaving at residence with resident at least 18 who is informed of contents



HEARING: FAILURE TO APPEAR

Failure to Appear at the Hearing:



HEARING: BASIC PROCEDURES

THIS IS HOW YOU DO IT

RULES:

- No formal rules of evidence
- Fundamental due process applies

CONDUCTED BY:

- CEB itself
- Assigned hearing officer (CEB can assign any member, including presiding officer, to conduct hearing)

TESTIMONY:

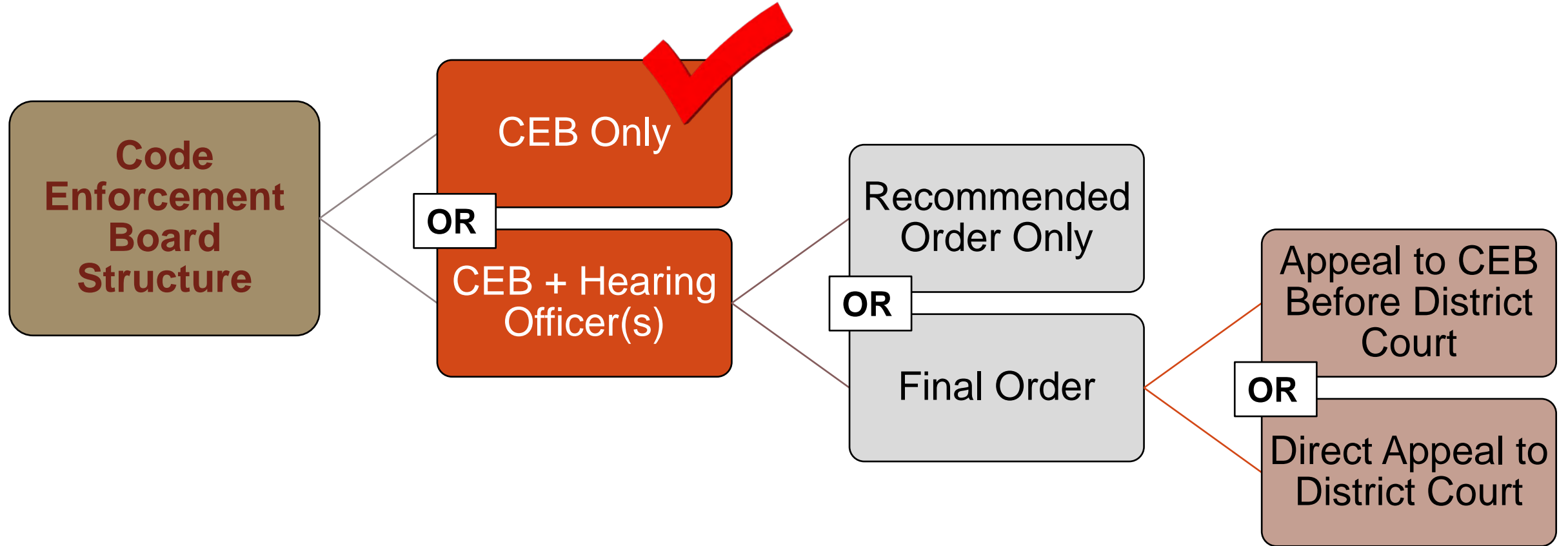
- Under oath (presiding officer or assigned hearing officer administers)
- Recorded
- Presiding officer or assigned hearing officer can subpoena alleged violators, evidence & witnesses

CASE PRESENTATION:

- Alleged violator has right to attorney
- City can use attorney, administrative staff or CEO
- City attorney can serve as CEB counsel OR present city's case before CEB but NOT BOTH



CEB STRUCTURE DETERMINES HEARING AND APPEALS PROCEDURES



AFTER THE HEARING: CEB DETERMINATION & FINAL ORDER

CEB Only

BASED ON THE
EVIDENCE, DID
THE VIOLATION
OCCUR?

NO

Enter order dismissing
citation

YES

May enter order upholding citation:

- 1) **Fine**, up to maximum authorized
- 2) **Remedy** within specified time
- 3) **Both**



FINAL CEB ORDER

CEB Only

➤ **MUST:**

- ✓ **Be in writing**
- ✓ **Include findings of facts and conclusions of law**
- ✓ **Include date issued**

➤ **Copy given to person named in citation**

➤ **If person is not present, deliver by:**

- 1) **Regular first-class mail**
- 2) **Certified mail, return receipt requested**
- 3) **Personal delivery**
- 4) **Leaving notice at residence with resident at least 18 who is informed of contents**



APPEALS

CEB Only

30 days to
appeal final CEB
order to District
Court

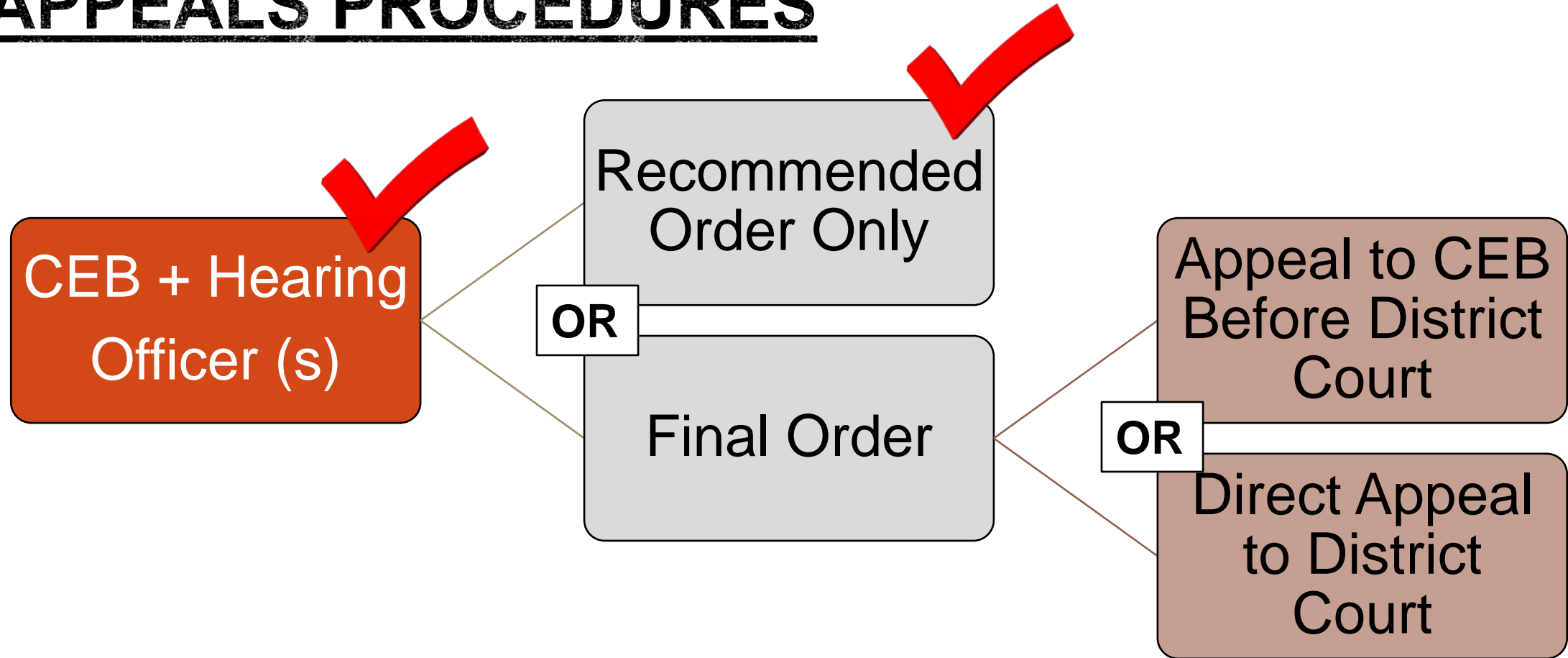
District Court
reviews ***de novo***
– retries case
and hears
supplementary
arguments

District Court
judgment may
be **appealed** to
Circuit Court

If no appeal to
District Court
within 30 days,
CEB order
becomes **final**
for all purposes



CEB STRUCTURE DETERMINES HEARING AND APPEALS PROCEDURES



AFTER THE HEARING: HEARING OFFICER RECOMMENDED ORDER

CEB + Hearing
Officer(s)

Recommended
Order Only

Hearing officer makes written findings of fact, conclusions of law, and a **recommended order** for consideration by the CEB

Within **24 hours** of entry, **forwards** findings, conclusions, and recommended order to **CEB and alleged violator**

Delivery by regular first-class mail; certified mail, return receipt requested; personal delivery; leaving at usual residence with person residing there who is 18 or older and informed of contents

CEB meets to make **final** determination and issues final order



AFTER THE HEARING: CEB DETERMINATION & FINAL ORDER

CEB + Hearing
Officer(s)

Recommended
Order Only

BASED ON THE
EVIDENCE, DID
THE VIOLATION
OCCUR?

NO

Enter order dismissing
citation

YES

May enter order upholding citation:

- 1) **Fine**, up to maximum authorized
- 2) **Remedy** within specified time
- 3) **Both**



CEB FINAL ORDER

CEB + Hearing
Officer(s)

Recommended
Order Only

➤ **MUST:**

- ✓ **Be in writing**
- ✓ **Include findings of facts and conclusions of law**
- ✓ **Include date issued**

➤ **Copy given to person named in citation**

➤ **If person is not present, deliver by:**

- 1) **Regular first-class mail**
- 2) **Certified mail, return receipt requested**
- 3) **Personal delivery**
- 4) **Leaving notice at residence with resident at least 18 who is informed of contents**



APPEAL OF CEB FINAL ORDER

CEB + Hearing
Officer(s)

Recommended
Order Only

30 days to
appeal final CEB
order to District
Court

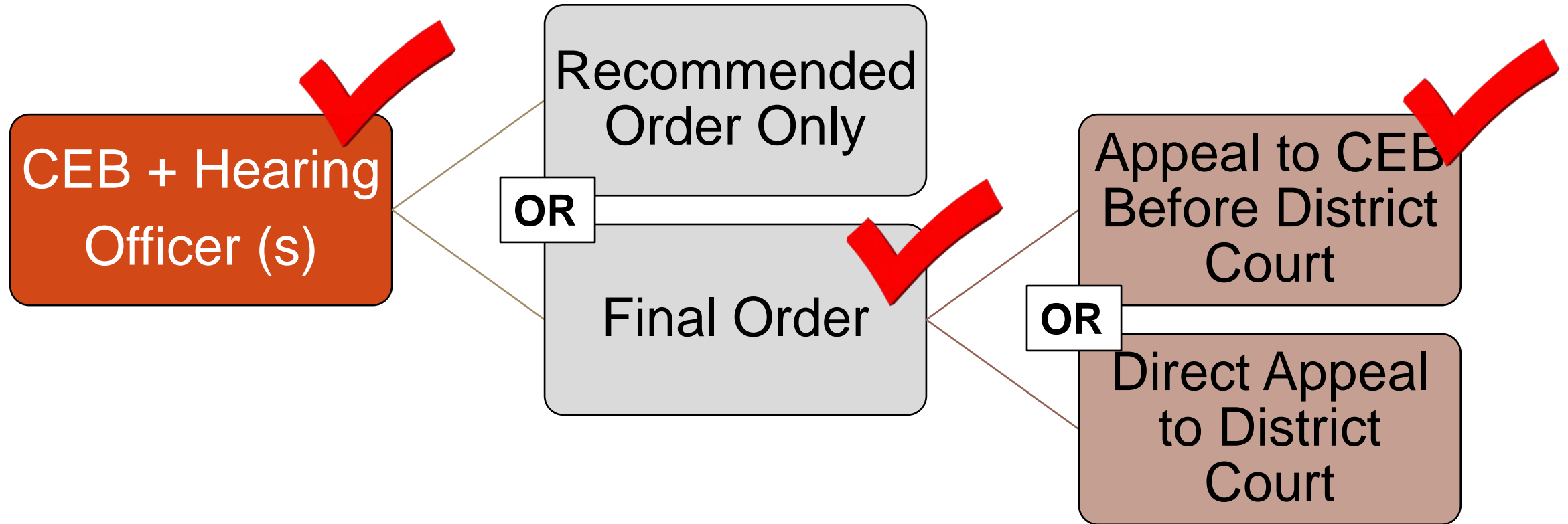
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CEB STRUCTURE DETERMINES HEARING AND APPEALS PROCEDURES



AFTER THE HEARING: HEARING OFFICER DETERMINATION & FINAL ORDER

CEB + Hearing
Officer(s)

Final Order

Appeal to CEB
Before District
Court

BASED ON THE
EVIDENCE, DID
THE VIOLATION
OCCUR?

NO

Enter order dismissing
citation

YES

May enter order upholding citation:

- 1) **Fine**, up to maximum authorized
- 2) **Remedy** within specified time
- 3) **Both**



HEARING OFFICER FINAL ORDER

CEB + Hearing
Officer(s)

Final Order

Appeal to CEB
Before District
Court

- **MUST:**
 - ✓ Be in writing
 - ✓ Include findings of facts and conclusions of law
 - ✓ Include date issued

- **Within 24 hours, forward to alleged violator and CEB**
- **Delivery by:**
 - 1) Regular first-class mail
 - 2) Certified mail, return receipt requested
 - 3) Personal delivery
 - 4) Leaving notice at residence with resident at least 18 who is informed of contents



APPEAL OF HEARING OFFICER FINAL ORDER TO CEB

CEB + Hearing
Officer(s)

Final Order

Appeal to CEB
Before District
Court

Alleged violator has **7 days** from receipt of order to appeal (in writing) to CEB

If appeal is filed, CEB reviews record created by hearing officer to determine whether substantial evidence supports the order

If no appeal to CEB within 7 days, hearing officer's order becomes **final for all purposes**



AFTER THE APPEAL HEARING: CEB DETERMINATION & FINAL ORDER

CEB + Hearing
Officer(s)

Final Order

Appeal to CEB
Before District
Court

BASED ON THE
EVIDENCE ON THE
RECORD, DID THE
VIOLATION OCCUR?

NO

Enter order
dismissing citation

YES

Enter order upholding
hearing officer's final order

CEB FINAL ORDER

CEB + Hearing
Officer(s)

Final Order

Appeal to CEB
Before District
Court

➤ **MUST:**

- ✓ **Be in writing**
- ✓ **Include findings of facts and conclusions of law**
- ✓ **Include date issued**

➤ **Copy given to person named in citation**

➤ **If person is not present, deliver by:**

- 1) **Regular first-class mail**
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APPEAL OF CEB FINAL ORDER

CEB + Hearing
Officer(s)

Final Order

Appeal to CEB
Before District
Court

30 days to
appeal final CEB
order to District
Court

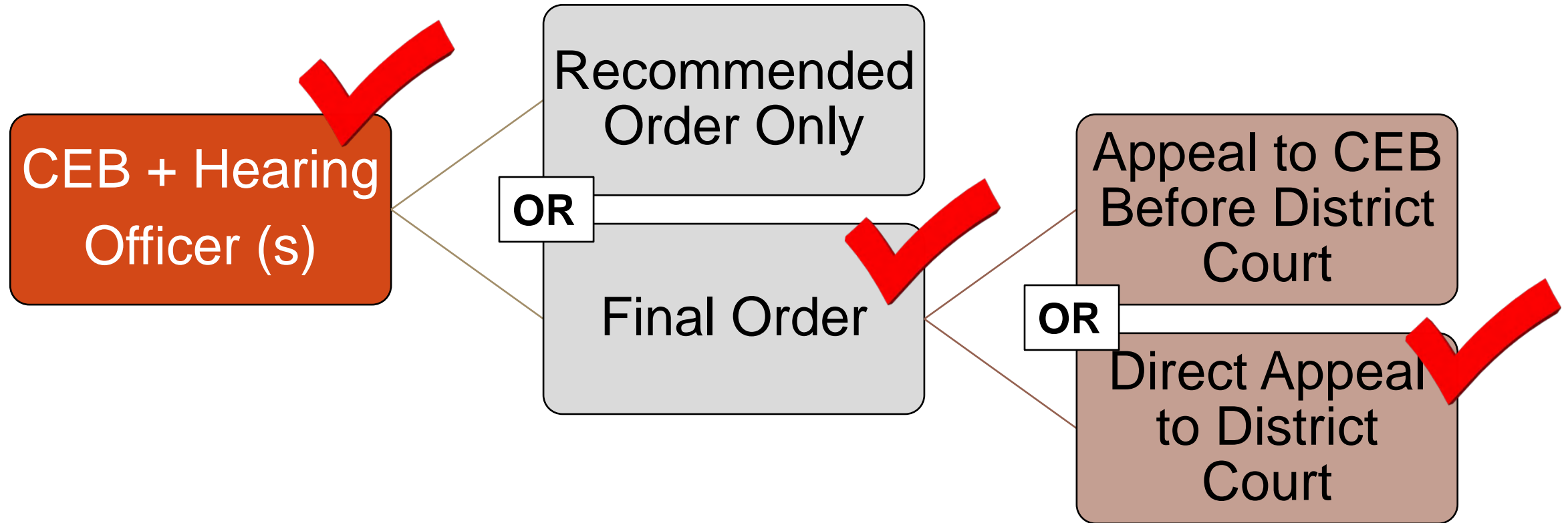
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CEB STRUCTURE DETERMINES HEARING AND APPEALS PROCEDURES



AFTER THE HEARING: HEARING OFFICER DETERMINATION & FINAL ORDER

CEB + Hearing
Officer(s)

Final Order

Direct Appeal to
District Court

BASED ON THE
EVIDENCE, DID
THE VIOLATION
OCCUR?

NO

Enter order dismissing
citation

YES

May enter order upholding citation:

- 1) **Fine**, up to maximum authorized
- 2) **Remedy** within specified time
- 3) **Both**



HEARING OFFICER FINAL ORDER

CEB + Hearing
Officer(s)

Final Order

Direct Appeal to
District Court

- **MUST:**
 - ✓ Be in writing
 - ✓ Include findings of facts and conclusions of law
 - ✓ Include date issued

➤ **Within 24 hours, forward to alleged violator and CEB**

➤ **Delivery by:**

- 1) Regular first-class mail
- 2) Certified mail, return receipt requested
- 3) Personal delivery
- 4) Leaving notice at residence with resident at least 18 who is informed of contents



APPEAL OF HEARING OFFICER FINAL ORDER

CEB + Hearing
Officer(s)

Final Order

Direct Appeal to
District Court

30 days to
appeal final
hearing officer
order to District
Court

District Court
reviews ***de novo***
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District Court
judgment may
be **appealed** to
Circuit Court

If no appeal to
District Court
within 30 days,
hearing officer
order becomes
**final for all
purposes**



ENFORCEMENT OPTIONS

1 Personal Civil Actions

2 Injunctions

3 Liens

PERSONAL CIVIL ACTIONS

- Violator is personally responsible for fines, charges, and fees (including abatement costs) associated with enforcement of ordinance

INJUNCTIONS

- Court orders violator to act or refrain from acting



ENFORCEMENT OPTIONS

1 Personal Civil Actions

2 Injunctions

3 Liens

LIENS ON PROPERTY

- **All fines, charges and fees**, including **abatement costs**
- **Enforced** by judicial proceedings, including foreclosure action
- **Filed after final, non-appealable order** of CEB/ court judgment
- Lasts **10 years** from filing date
- **Recorded** in county clerk's office
- Bears **interest** until paid
- Takes **precedence** over **subsequent** liens (excluding tax liens)
- Takes **precedence** over **previous** liens **IF**:
 - 1) City complies with notification requirements
 - 2) Lienholder does not pay costs or correct violation [KRS 65.8836]



LIENHOLDER NOTIFICATION SYSTEM

KRS 65.8836

NOTE: Responsibility for the system can be delegated to the CEB or its staff by ordinance

WHAT IS IT?

An electronic notification for lienholders who request to be notified of final orders.

WHAT DOES IT DO?

Gives previously-filed lienholders the opportunity to maintain lien priority IF they take the required remedial action.



LIENHOLDER NOTIFICATION SYSTEM

STEP 1: REGISTRATION

Individual or entity registers with the local government to receive information on each final order issued under KRS 65.8801 to 65.8839

- Available to any person or entity – not just lienholders
- Responsibility of REGISTRANT to register – city does not have to actively locate lienholders

Must provide name, mailing address, phone number, and email

- City must accept information in any form submitted (but city should still have a form)
- Registrant's responsibility to keep info up-to-date
- City's responsibility to notify if have evidence of invalid email address



LIENHOLDER NOTIFICATION SYSTEM

STEP 2: REGULAR EMAIL NOTIFICATION OF FINAL ORDERS

WHEN:

- At least once a month BUT no more than once a week

WHO:

- All registrants that have submitted required contact information for notification

WHAT:

- All final orders issued since the last date of notification
 - All final orders as defined in your ordinance
 - Includes automatic final orders created due to failure to respond to citation or appear at hearing
 - Includes final orders issued following any hearing



LIENHOLDER NOTIFICATION SYSTEM

STEP 2: REGULAR EMAIL NOTIFICATION OF FINAL ORDERS

Email shall INCLUDE the information below OR
provide LINK to database or document containing the information:

- Name of person charged with violation
- Physical address of premises where violation occurred
- Last known mailing address for owner of premises where violation occurred if, in the exercise of reasonable diligence, it is ascertainable
- Specific description of citation (all details) OR copy of full citation
- Findings of final order including penalties imposed OR copy of full final order
- Status of final order regarding ability to be appealed to District or Circuit Court per KRS 65.8831
 - City provides update to registrants if appeal is filed




LIENHOLDER NOTIFICATION SYSTEM

STEP 3: “FINAL ORDER UPDATE” NOTIFICATION

KRS 65.8836(2)(c) “Final Order Update” Notification

- At the same time electronic notification of all final orders are sent, the city must post one of the following in a conspicuous place on the city Web site:
 - 1) The regular email notification required on the previous slide; OR
 - 2) A summary of the information required in the regular notification.
- If using a summary:
 - 1) Must allow identification of specific properties impacted by the lien; and
 - 2) City must provide complete record of the final order without charge.

 **Easiest way to handle: Send your regular email notification at least every 10 days and simultaneously post it on your Web site.**



REMEDIAL ACTION BY LIENHOLDER

Prior
Lienholder



Properly
Registered



Within **45 days** of
notification:
1) Corrects violation if not
already abated; **OR**
2) Pays all fines, charges,
fees (+ abatement costs)



Prior
Lienholder
Obtains
Lien Priority
Over City
Lien

Prior
Lienholder



Properly
Registered



Does **NOT** correct
violations/ pay costs
BUT
City failed to comply with
the final order notification
requirements



Prior
Lienholder
Obtains
Lien Priority
Over City
Lien



ADDITIONAL LIEN DETAILS



Even if the city's lien does not take precedence over previously recorded liens due to the lienholder's remedial action or the city's failure to comply with the notice requirements, **if the final order remains partially unsatisfied**, the city's lien will **still take precedence over all subsequent liens** (excluding tax liens).



A city may still **record a lien before the 45-day period** available to the lienholder **expires**. If the lien is fully satisfied prior to the expiration of the 45 days, the city must **release** the lien in the county clerk's office where it is recorded **within 15 days** of satisfaction.



No other remedies the city has against the property owner or violator **are affected** by failure of the city's lien to take precedence, or the city's failure to comply with the notice requirements.



IMMEDIATE ACTION

Nothing in HB 422 prohibits a city from taking **immediate action to remedy** a violation if there is reason to believe the violation presents **imminent danger**, a **serious threat to public health, safety and welfare**, or the effects would be **irreparable or irreversible** without immediate action.

