



*Rules*

## **Board Training Series**

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### **Chapter 5: Covenant Enforcement**

## **Covenant enforcement is one of the most difficult aspects of running a homeowners association!**

- Have a written policy (Resolution) for covenant enforcement.
- Communicate association Rules and Regulations to homeowners and residents
- Conduct regularly scheduled community inspections
- Enforce covenant / rule violations fairly and reasonably

### **Examples of Architectural Restrictive Covenants**

- Fences
- Sheds and Outbuildings
- Boat and RV Parking
- Satellite Dishes
- Mailboxes
- Exterior Colors
- Building Materials
- Pool
- Playground Equipment
- Landscaping

### **Examples of Non-Architectural Restrictive Covenants**

- Pet Restrictions
- Yard Sales
- Noise
- Leasing Restrictions
- Age Restrictions
- Single Family Use
- Residential/Business Use

## **Practical Approaches to Voluntary Compliance**

- Educate and Notify
- Review rules periodically
- Act promptly
- Be Reasonable
- Provide Opportunity to Comply
- Provide Information and Guidelines on the Rule
- Be Consistent and Uniform
- Exceptions can be justified in some cases

## **Enforcement Considerations**

- Magnitude of the violation
- Legal costs of enforcement
- Time and emotional demands on board, staff and residents
- Time required for recovery through legal proceedings
- Probability of success of Enforcement (Risk vs. Reward)

## **Legal Issues**

- Does the association and/or Board have the authority to enforce?
- Is it a violation of the restrictive covenants?

Is the enforcement fair?

- Notice
- Hearing
- Notice of Decision
- Compliance with Law

What will be the member's defenses to enforcement?

- Due Process
- Laches (association waited too long to enforce)
- Waiver (previous failure to enforce)
- Selective Enforcement
- Lack of Notice

### **Three Major Remedies**

- Monetary Relief (for reimbursement of legal costs)
- Temporary Restraining Order, Preliminary and/or Permanent Injunction
- Declaration Judgement (court interprets whether the covenants have actually been violated)

### **Court Litigation vs. Alternative Dispute Resolutions**

Court Litigation may be more cost affective and expedient in clear cut violations.

- Filing of Complaint
- Service of Complaint
- Discovery & Depositions
- Trial
- Judgement
- Right to Appeal

Mediation or Alternative Dispute Resolution may not set the "precedent" for future violations.

- Less time to resolve
- Less expensive
- Less adversarial
- Parties must agree to arbitration - arbitration unlike mediation is binding
- Generally no pre-trial discovery
- Limited right of appeal. No right to appeal from arbitration

## **Step 1 - (Optional)**

- Notify the Homeowner/resident with a phone call, note or email "friendly reminder" (courtesy letter) of the association's rules.
- Send a Warning Letter of Violation that includes the following:
  - Clearly state the nature of the violation
  - Specifically reference the provision in the Association documents that makes the offense a violation
  - Provide a specific date that is the deadline for remedy. The deadline should take into consideration the time required for remedy. Two weeks or allowing weekends is typical

## **Step 2 - Send an Official Notice of Violation Letter**

- Authority of the association to enforce
- Clearly state the nature of the violation
- Specifically reference the provision in the Association documents that makes the offense a violation
- Provide a specific date that is the deadline for remedy
- State the potential consequence of non-compliance
- Provide a specific date, time and location when the homeowner may attend a "show cause" hearing and that the homeowner has the right to be represented by an attorney. Allowing 10 business days between the date of the letter and the hearing date is reasonable.

## **Step 3 - Send a "Final" Official Notice of Violation Letter**

- Authority of the association to enforce
- Clearly state the nature of the violation
- Specifically reference the provision in the Association documents that makes the offense a violation
- Provide a specific date that is the deadline for remedy
- State the potential consequence of non-compliance
- Provide a specific date, time and location when the homeowner may attend a "show cause" hearing and that the homeowner has the right to be represented by an attorney. Allowing 10 business days between the date of the letter and the hearing date is reasonable.

#### **Step 4 - Conduct a hearing before the Board**

- The location of the hearing should be in a suitable location other than a home
- The homeowner should be given an opportunity to present their case and may then be excused
- The hearing panel should confirm whether or not a violation has occurred and set a reasonable amount of the time

#### **Final Step - Notify the Homeowner**

- Decision of the board hearing
- Solution for Repeat Violations