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Community Associations Newsletter

Enforcement of Architectural Standards: The Devil is in The Detailed Processes and Procedures

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With the arrival of warmer weather, boards of directors and managers' attention are drawn to the exterior conditions of properties within a community. Boards and management will focus attention on whether homes are in violation and taking proper enforcement action. Whether using regularly scheduled inspections, responding to complaints, or conducting resale certification inspections, associations must administer their covenants and rules in a reasonable, fair, and equitable manner. This requires following standardized enforcement procedures that comply with the association's governing documents and applicable state law.

Today, associations operate in a legal landscape where courts require associations to comply with all technical requirements of their governing documents and state law. Courts have ruled against associations that have failed to provide timely notice of an architectural problem, failed to apply standards uniformly and consistently throughout the community, targeted a

particular class of owners, or that have standards that are confusing, ambiguous, or that are in conflict with the recorded covenants.

Associations should follow a standardized method of enforcement. To initiate that process, the association should send a timely and detailed notice of the violation, which should include the following: 1) notice of the nature of the violation, including the section of the governing documents allegedly violated; 2) opportunity for the owner to cure the violation (if the violation is curable), with instructions on how to cure the violation, and a clear and reasonable deadline for doing so. If the owner fails to comply with the initial notice of violation, then the association should proceed by affording the owner due process in the form of a right to a hearing before the board or applicable committee. If the owner fails to comply and the hearing results in a finding that the owner is in violation, then the association must issue a final determination before utilizing the court system for

enforcement, imposing monetary penalties or taking self-help action.

Depending on which jurisdiction a community is in and the governing documents, enforcement can come in the form of monetary sanctions, suspension of privileges, self-help and/or seeking court orders directing owners to bring the property into compliance.

In Virginia, the Property Owners' Association and the Condominium Acts establish minimum procedures that must be used when enforcing alleged violations of the covenants. The non-compliant owner must be provided with: 1) notice of the nature of the violations and the action necessary to remedy the violation; 2) an opportunity to attend a hearing (and be represented by counsel) before the board or other tribunal to address the violation; and, 3) a description of the actions the board may take if during the hearing it finds that a violation has been committed. After determining if a violation exists, within seven (7) days of the hearing, the association must deliver to the owner a written notice of the decision and remedies to employed.

If violations are not corrected, remedies may include self-help, violation charges, suspension of privileges, and/or pursuing injunctive relief. You must review your recorded governing documents to determine your options. It is best to bring violation claims to light as soon as practicable, as failure to timely pursue correction of the violations could be a defense to enforcement.

In Maryland, the notice and hearing requirements for covenant violations are similar to those in Virginia, but there are distinctions. The Maryland Condominium Act precludes a board from imposing fines, suspending voting or other rights of a unit owner or occupant due to rules violations until a written cease and desist demand has been sent to the violating owner or resident. The notice must advise them of the alleged violation, the corrective action needed to remedy the violation, and at least 10 days to correct the violation without further sanction. If the violation is not of a continuing nature, the notice must inform the unit owner that any further violation of the same covenant may result in the imposition of a sanction after notice and a hearing.

If, within 12 months of the demand to cease and desist, the violation continues past the deadline that was given, or if the same covenant is subsequently violated, the board can issue a written notice of a hearing. The notice must specify the alleged violation, the time and place of the hearing, the proposed sanctions to be imposed, and the non-compliant owner's or resident's right to attend the hearing and right to produce any statement, evidence and witnesses on their behalf. The hearing must be held in executive session, but the meeting minutes must contain a written statement of the hearing results and any sanctions imposed.

Although the Maryland Condominium Act contains the aforementioned requirements, the Maryland Homeowners Association Act does not. Therefore, we typically advise

Maryland homeowner associations to exercise caution and follow the notice and hearing requirements outlined in the Maryland Condominium Act.

In Maryland there are no restrictions on the monetary or other sanctions that can be imposed, so long as the available sanctions are authorized by the association's declaration and bylaws. Additionally, the procedures described above for Maryland condominiums do not apply if the association's declaration or bylaws provide otherwise. Thus, if the declaration or bylaws address procedures and available sanctions that differ from those described in the statute, then the declaration and bylaws provisions must be followed.

For those associations located in Montgomery County, Maryland, the County has additional ordinances that specify how a community association can enforce its covenants and notices are required prior to imposing any final board-approved sanctions.

In the District of Columbia, the D.C. Condominium Act provides limited guidance on covenant enforcement. Therefore, covenant enforcement is governed by association's declaration, bylaws and adopted rules and regulations. Section 42-1903.08(a)(11) of the D.C. Code states that a condominium association is empowered to levy a reasonable fine for violation of the condominium instruments or rules and regulations, but only after notice and an opportunity to be heard has been provided. So, other than this minimal requirement, the condominium instruments and the rules and regulations are largely responsible for dictating the association's enforcement procedures.

If you have any questions about the covenant enforcement issues discussed above or if you have questions regarding covenant enforcement in your particular community, please do not hesitate to contact any of our Community Association attorneys.