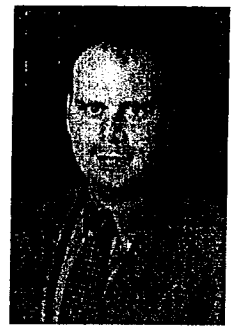


Choosing Your Battles: Practical Tips on Enforcing Association Rules



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by Jeffrey C. O'Brien, Esq., Mansfield Tanick & Cohen, P.A.

As a real estate attorney who drafts homeowners association declarations and rules, I have always taken great care to draft tough, enforceable governing documents. Then I managed to get elected to the board of directors of my homeowners' association, and I learned the practical difficulties that boards and management companies face in enforcing rules.

Based in large part on my experience as a board member, rather than as an attorney, I've listed some practical tips for rule enforcement.

1. Avoid Creating Unenforceable Rules.

This would seem to be an obvious point, but it is not as easy as you would think. For example, if the association has common amenities – a swimming pool, community room or workout room – it is common to provide in the declaration or rules that owners who are not current on their dues cannot use these amenities.

The problem, though, is one of enforcement. How do you physically prevent someone from using these amenities? If a key is required to access these

facilities, you can take the owner's key away. But how do you prevent others from allowing the delinquent owner in? Simply put, without costly security measures, (such as the hiring of staff to enforce the rule) a "no pay, no play" rule is extremely difficult to enforce.

2. **Enforce Rules Uniformly.** From time to time, I have defended homeowners against enforcement actions. The first steps I take are to look for situations in the community where other violations have been allowed to exist in the midst of the enforcement action against my client. This type of selective enforcement can provide the basis for a homeowner's defense to an otherwise valid enforcement action. Care should be taken to avoid such selective enforcement by making sure that one owner is not singled out for enforcement.

3. **The Board and Management Company Must Work Together.** Perhaps the biggest hurdle to enforcement lies in the association board members' reluctance to take action against neighbors and friends. No one likes to be unpopular or disliked by their neighbor(s). Given that the board is the body who must

make the decision to take action against an owner, the management company's role is to assist the board and its members to carry out the enforcement action in a manner which does not create unnecessary friction between owners.

As a personal example, our association board will vote on rules violations and we prepare notices which our management company sends out on its letterhead. In that way, our neighbors receive the violation notice from a non-resident third party rather than a neighbor.

4. **Put Some Teeth in the Rules.** Fine schedules can be an effective deterrent toward certain types of conduct. Our association enacted a fine schedule this past spring and provided a thirty day grace period for residents to bring themselves into compliance. The results were impressive. Residents who had completed landscaping without approval submitted plans. Toys parked in driveways ended up in the garage, the house or in the backyard. In short, residents chose to comply with our covenants and rules rather than take a hit in their wallets.

By taking note of these simple and practical tips, association boards and management companies can work together to enforce the association's covenants and rules and provide the community which residents bought into when they purchased their unit. ■

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