

GETTING BACK ON TRACK

ENFORCING RESTRICTIONS AFTER A PERIOD OF LAX ENFORCEMENT

by Mark Rabe, Esq.



Imagine that at the recent annual meeting for your homeowners association you and some of your neighbors were all elected to serve on the board. At your first regular board meeting you find that all of the board members agree that deed restrictions are either being poorly enforced or all together ignored. This could be a recent development or long-lasting problem. But you all know that following the deed restrictions will help the entire neighborhood look more appealing and polished.

And so the board votes unanimously to begin enforcing the deed restrictions. Now what? Change, such as suddenly having the deed restrictions enforced in your neighborhood, can sometimes cause strong reactions.

By understanding that and planning for it by addressing the issues raised in this article, you can address a great deal of the shock some people may feel from the board's actions.

Review/update governing documents, rules, regulations

The board needs to review and familiarize itself with all of the association's governing documents. This is especially important for the persons that will be doing the community drives and identifying violations.

If the association will be using a management company to review the community for violations, the board should have a meeting with the management company about the community drives so that everyone is on the same page about what will be taking place. Management companies generally handle numerous neighborhoods with differing deed restrictions so be sure that they are working from your association's current documents. When the philosophy of enforcement goes from lax to reasonable enforcement it is best to meet with your management representatives and discuss the paradigm shift. The management company is a valuable source of history and they may have some insight as to why the enforcement has become lax.

The board should also review all rules and regulations adopted by the association to insure they are current and address any changes in applicable statutes. Past Legislative sessions made substantial changes to statutes that affect enforcement of numerous items such as flag poles, religious items and xeriscaping in property owners associations. If you are not aware of these or are not sure of all the details of these changes, you should consult an attorney to make sure that the association's rules and regulations

as well as all dedicatory instruments address these changes **before the enforcement efforts begin**. Additionally, make sure that all necessary rules and regulations are filed in the relevant county's real property records. If the association's dedicatory instruments are not filed in the property records they are not enforceable.

Implement/update enforcement procedures

Some deed restrictions do not say much in the way of specifics for how enforcement should be handled while others are quite detailed. The board should consider a deed restriction enforcement procedure that complies with any requirements in the existing deed restrictions and any additional steps that the board wants to implement, including fines and fees to the extent that these are authorized by the dedicatory instruments or by law. For example, how many courtesy notices does the association want to send to an owner before they hand the matter over to an attorney and what steps will the attorney take once he takes over the matter.

This process should also include necessary statutory notices sent by the association before the matter is turned over to an attorney to insure that the association can recover the attorney's fees from the homeowner. An attorney can help the board come up with this process for a minimal cost if one is not already in place. Similarly, the board should review any existing procedure with an attorney to insure that it is up to date and complies with applicable laws. Finally, just like the rules and regulations, this procedure should be filed in the relevant county's real property records so they can be enforced and so there is official notice for the owners of this procedure.

Send notice to all owners about what is coming

If you noticed the lack of enforcement of the deed restrictions on your own then it is likely that others in your neighborhood noticed it as well. In fact, there are probably those that believe that not enforcing is the standard. As mentioned in the opening of this article, these people that are used to the lax standards may be very shocked when they begin receiving letters about the grass not being mowed or the eaves not being painted. In order to ease the shock for these individuals, as well as to let everyone in the neighborhood know what is happening, the board should send a notice to all owners advising them of the upcoming change or call for town meetings to discuss the issue in an open forum. The response to this notice may also give you an indication of whether your neighbors agree with or oppose this new process.

The board should discuss the benefits of complying with the deed restrictions and explain that the association is taking this action to benefit the neighborhood as a whole. It can also lay out the enforcement procedure that the association will be following. The board should not point out any specific violations that the board may be seeking to cure. These specific issues can all be addressed by the violation notices that will be sent out in the future going forward.

As an introduction to the new policy the board should be patient and should seek voluntary compliance from as many owners as possible. If there is one specific violation that is prevalent consider a push to get that violation minimized in the community before moving on to more general enforcement. Often notices in newsletters and contests help to gain voluntary compliance.

Be aware of existing violations and how long they have been in place

The board should also make note of any violations that they know or believe may have been in place more than four years. If the violation has existed continuously for four years or more, then the association most likely cannot file suit to force the owner to cure the violation. By identifying these existing situations at the outset, you can keep the association from getting itself into a position where it has incurred costs seeking enforcement which you cannot force and which you cannot recover fees from the owner.

These tips should make your road to enforcement smoother and alleviate many objections by your neighbors. While there is no guarantee that one of your neighbor's may voice strong opposition to this new approach and possibly sue the association after receiving a violation letter, addressing the above issues before the new approach is implemented will insure that most legal challenges to the new approach will be unsuccessful.



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