

Fines & Enforcement

BY HOWARD SILLDORF



The ability to impose fines for Governing Document violations is crucial to the efficient management of community associations. Plain and simple—people react to consequences. That said, associations' boards of directors must play by its own rules if it expects members to do the same. California statutory and case law establish the procedures boards must follow in their enforcement efforts.

Boards must set reasonable policies and procedures for disciplinary actions in the governing

documents. If associations stray from their policies and procedures, disciplinary efforts may be unenforceable. In addition, if the policies and procedures are deemed "unreasonable," they may be unenforceable. Careful planning and drafting of association's policies and procedures is essential to an effective disciplinary structure.

Procedures for Enforcement

In *Fountain Valley Chateau Blanc Homeowner's Ass'n v. Department of Veterans*

Affairs, (1998) 67 Cal.App.4th 743, the court held that associations do not have the broad-based, general authority to act as a "nanny." This case was based on an extreme set of facts, but is still controlling law. The association compelled a homeowner to "clear his bed of all papers and books, discard 'outdated' clothing, and remove the papers, cardboard boxes, and books from the floor" to

prevent a fire hazard. This intrusion into the private life of a member was found to exceed association authority and be unreasonable.

California Civil Code section 1357.110 states that associations' Rules and Regulations are valid and enforceable only if the right

to establish such Rules and Regulations is within the authority of the board, as conferred by the governing documents. Before the association can enforce its Rules and Regulations, it must provide that:

- The community association has followed its own standards and procedures;
- Those procedures were fair and reasonable; and
- The substantive enforcement decision was made in good faith, was reasonable, and was not arbitrary or capricious.

These qualifications were enumerated in *Ironwood Owners Ass'n IX v. Solomon*, (1986) 178 Cal.App.3d 766, 772, which examined whether the board of directors of an association complied with its own procedures when it demanded removal of eight date palm trees planted by a homeowner. It was not enough that the

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homeowner violated the policies on record, the court sought to ensure that the association was playing by its own rules.

Imposition of Fines

Associations must proceed with care if they plan to utilize monetary fines as an enforcement tool. Frequently, money (especially when it is taken or demanded from someone) creates problems. California Civil Code section 1363(g) lays out specific requirements for community associations which elect to exercise their fining authority. If an association plans to impose fines, further notice beyond what is stated in the governing documents must be issued to the homeowners. The

“schedule” of monetary penalties is intended to give fair warning to the homeowner in the event he/she is fined. To avoid disputes, this schedule should clearly set out the prohibited conduct and the dollar amount of the fine associated with such conduct. Another good idea is to include examples of prohibited conduct to ensure that the homeowners are well aware of what is expected of them and the consequences they face for noncompliance. Make sure examples are specifically identified as such. If (or when) a homeowner violates a stated policy, the homeowner is entitled to many of the same due process rights a party would

receive in a legal proceeding. This process is commonly referred to as a “1363” hearing (denoting the controlling California Civil Code section) and provides that members: must be given 10 days notice of proposed board action, have the right to have the hearing with the board in executive session, and be given notification of the board’s action within 15 days of the hearing. Cal. Civ. Code section 1363(h).

Amount of Fines

The amount of the fine that the association imposes on a homeowner should bear a reasonable relationship to the gravity of the infraction and the burden on the community association.

Conclusion

To be able to exercise all available enforcement rights, the governing documents of the association should set forth the rights and procedures for board action and should clearly define potential sanctions for member noncompliance. In addition, boards must act reasonably, carefully follow its own rules, and insure that members are afforded all rights required by statute and case law.

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