



COULTER & SIERRA
LLC



Enforcing Community Covenants - Options and Procedures

Just like a board of directors for any corporation, directors on community association boards owe certain responsibilities to the corporate entity they serve: the association. One of the most important board responsibilities, other than ensuring the association is properly funded, is to enforce the community's covenants. An association's covenants serve as the framework for the community's appearance and operation. Typically, an association's governing documents authorize the board to enforce violations of the covenants in one or more of the following ways: (1) imposition of fines; (2) suspension of rights; (3) self-help/abatement; and (4) legal action. Many governing documents require the association to follow certain procedures before utilizing these measures. Below is a summary of each remedy and some guidance on prerequisites to their imposition.

1. Imposition of Fines

One of the most common ways associations enforce their covenants against violating owners is by imposing fines as a specific assessment. Many governing documents require the association to follow a certain procedure before any fine can be imposed. For example, many documents only allow for the imposition of fines after the association sends notice of the violation to the owner stating the fine to be imposed and that the owner has the right to a hearing if requested within a certain number of days. If the owner fails to timely request a hearing, the owner waives the right to have the board reconsider the fine. If an owner exercises their hearing right, the board should schedule a hearing within the timeline set by the governing documents or within a reasonable time. At the hearing, the owner will have an opportunity to challenge the fine imposed by bringing forth any statements, evidence, and/or witnesses in furtherance of that goal. The Board is typically not required to make a decision regarding the fine at the hearing, but should do so by any deadline imposed by the governing documents, or within a reasonable amount of time.

2. Suspension of Rights

The association may also have the option to suspend an owner's right to vote and/or use the common area amenities for a violation. Amenities include pools, fitness centers, recreational rooms, tennis courts and even parking areas. To suspend these rights, the governing documents will likely require the association to send the same type of notice sent prior to imposition of a fine, as described above. As with the fining notice, an owner may have the right to request a hearing before the association can suspend the owner's rights under the governing documents. If the owner does not request a hearing within the prescribed time period, the owner waives the right to contest the suspension.

An owner's suspension will continue until the violation is addressed, or for the time period proscribed in the governing documents. Additionally, the suspension not only applies to an owner, but may also apply to the owner's tenants, guests and invitees. Since most community parking is located on common area, the suspension would prohibit an owner from parking on the common area as well, though the suspension cannot create a hazardous or unsanitary condition or deny access to a unit or lot. Some governing documents will allow the association to boot and/or tow an owner's vehicle that is parked on the common area after suspension. Prior to proceeding with either towing or booting, the association should follow, not only, the notice procedure in its declaration or bylaws, but also, as any applicable state and/or municipal law. For example, the City of Atlanta has considered an ordinance that would prohibit all use of vehicle immobilization devices, or "boots," on private property in the City of Atlanta, including property of condominiums and homeowners associations.

3. Self-Help/Abatement

Most community association documents allow the association, acting through the board of directors, to enter upon any property, fix or remove a violation of the documents, and assess the costs of doing so back against the property owner. This is called self-help or abatement. Typically, the governing documents will also require specific notice to be given to the property owner. The exercise of the right of abatement is not the perfect solution for every case. Generally, self-help is best used for situations where the work needed for compliance is minimal and can be performed quickly and for a relatively nominal cost. If the property is in need of a major repair, such as replacing siding or repainting, it may be better to consider other options.

When utilizing self-help, associations often wonder how long it may have to wait to recoup any costs charged to the property owner. In Georgia, there is a four-year statute of limitations on collection of association assessments. Hopefully, the owner will pay or the property will be sold well within this four-year mark and the association would recover these costs at or before closing. However, in the event the fees and assessments are piling up, a collection demand and/or a lawsuit, discussed further below, is an option.

4. Legal Action

In some situations, the association tries all of the above remedies and the violation still exists. The only option left is to sue the owner to force the owner to comply with the covenants. The lawsuit filed on behalf of the association may seek injunctive relief, foreclosure rights, collection of fines for the violation, reasonable attorney's fees actually incurred, and all other costs of collection, as authorized by the declaration and Georgia law.

Overall, an association should look carefully at its governing documents to determine the process for imposing any of the above sanctions. Also, regardless of the enforcement mechanism selected, the Association should ensure it keeps thorough documentation of the violation including dates and photographs. By keeping all of this information in mind, the Association should feel a level of comfort in taking action to enforce its community's covenants.

communities of all types and sizes throughout metro Atlanta and Georgia. We believe in providing expert, efficient and cost-effective services to our clients. Let us know how we can help you!

Looking for CE Credits? Coulter & Sierra, LLC provides three hour CE classes on a variety of topics, and we come to you! Please contact us if you are interested in setting up a CE class for your company at info@coultersierra.com.

Coulter & Sierra, LLC
2800 Century Parkway; Suite 275
Atlanta, Georgia 30345
P: 404.554.2071
F: 404. 477. 6360
www.coultersierra.com

Copyright © 2016 All Rights Reserved.