

ENFORCEMENT OF COMMUNITY ASSOCIATION RULES

Although the members of a community association (condominium, homeowners, or cooperative association) own their own homes, the common areas, common elements, and recreational facilities of the development are not controlled by them. The common property is controlled by the association and used by all of the members. Therefore, the rights of the individual members must yield to the rights of the membership as a whole. For this purpose, the governing board of the association is empowered to impose and enforce reasonable controls over the use and occupancy of the property. The members simply may not do as they please.

Enforcement of the association's governing documents and its rules and regulations is a duty of the board of directors.

Typically, the governing documents (the Declaration and the By-Laws) of the association will set forth various "covenants" as to use and occupancy. When individuals take title to their property, it is as if they signed a contract agreeing to abide by these covenants. Covenants usually provide: the property must be

used for residential purposes; the property must be maintained and kept clean and in good repair; conduct that may be a nuisance or a disturbance is prohibited; and the appearance of the common property is regulated. The covenants usually deal with issues as to who is responsible for maintenance and repair of various portions of the property and whether there are limitations on pets or the leasing or sale of the property. Most governing documents also authorize the association board to promulgate such further reasonable rules and regulations as the board deems necessary to govern the property.

RULES AND REGULATIONS

Rules and regulations can be adopted by a board to deal with the concepts and the details not specifically covered by the governing documents. The rules and regulations are complicated legal documents which should be prepared by an attorney and not written by a property manager or by one of the board members. The rules and regulations must be properly and legally adopted and proper notice must be given.

Even though the board may not want to sue the members of the association in court, the board

must be prepared to enforce the rules and regulations if necessary by bringing legal action against violators. For this reason, the rules and regulations must be enforceable in court or they will not be ultimately effective. Rules and regulations must be general enough to cover unforeseen situations and specific enough to be understandable and unambiguous. They must be clear and mandatory statements giving the owners adequate notice of precisely what conduct is prohibited.

Rules and regulations also must be reasonable. That is, they must have a relationship to the purposes of the association, must not impose excessive burdens, and must be rationally and reasonably intended to and capable of accomplishing the legitimate purposes of the association (such as protecting the health, safety and welfare of the members or protecting the value or attractiveness of the property). By passing rules and regulations and by enforcing the rules and regulations as well as the covenants of the governing documents, the association can exercise the reasonable controls necessary for collective condominium, townhome, or other community association living.

ENFORCEMENT

This firm has many years of experience in court actions to enforce the covenants and governing documents or to enforce the rules and regulations adopted by community association boards. Typically, community associations find that their members are using the units for business purposes, are creating noise, disturbances or property damage, or are violating rules restricting or regulating pets or the leasing of units. Another common problem is architectural control and the appearance of the property, since individual tastes do vary. Some members may have standards for the maintenance and repair of the property that do not harmonize with the standards of the community. Some members may not care to maintain their units.

Enforcement of the association's governing documents and its rules and regulations is a duty of the board of directors. It is absolutely essential that the covenants and the rules and regulations that are adopted be uniformly enforced and applied against all of the members of the association. Failure to uniformly and properly enforce the governing documents and the rules and regulations could result in the association losing its right to enforce them in a case. Generally, the courts will not assist selective enforcement. The associations must properly use or lose their restrictions.

Strong and effective covenants and rules and regulations will probably result in few or no problems with members,

because members will usually comply with them voluntarily. However, should the association face a violator of the association's governing documents or rules and regulations, legal action may be necessary.

FINES

There are basically two approaches that the board can take, with the advice and assistance of counsel. One approach is for the board to levy fines or administrative expenses against the violators after notice and an opportunity for a hearing is given to them. The fines or expenses must be reasonable and related to the offense. This is generally an inexpensive and relatively informal approach towards enforcement of the governing documents, but ultimately the association may have to take court action in order to enforce the fine obligation. In addition, very flagrant violators often will continue their conduct even though the association is levying fines against them.

COURT ORDERS

Therefore, the association should be prepared to take further legal action. Most association declarations provide for enforcement of the governing documents through various procedures set forth in the declaration. One typical provision provides for a thirty-day notice of violation letter to be sent to the defaulting unit owner. The association should have an attorney prepare this letter, since there are important legal consequences to the drafting and preparation of the letter. If the defaulting owner fails to comply, typically the association can then have its

attorney send out a ten-day notice of termination giving the unit owner another ten days to comply prior to terminating that owner's rights as a unit owner.

Following the ten-day period, the association would then file a lawsuit against the defaulting unit owner and ask the court to order the unit owner to comply with the relevant provision of the association's governing documents or rules and regulations. In addition, the association often-times has the right to ask the court to have the violator's unit sold at a court-ordered judicial sale in order to force the termination of that owner's membership in the association. This is often a drastic step, but a useful remedy for the association in extreme cases.

ATTORNEYS' FEES & COSTS

The association should try to recover all of its attorneys' fees and court costs in the



enforcement action. Typically, the association's governing documents allow recovery of attorneys' fees. There are Illinois court case decisions stating that the association is entitled to enforce its covenants, including the covenant to pay attorneys' fees when it successfully enforces such covenants. Of course, the award of attorneys' fees is in the discretion of the trial court and is never a certainty.

PROFESSIONAL ASSISTANCE AVAILABLE

Each specific violation of the association's governing documents is a distinct and separate case. There are various different facts and circumstances. During our many years of dealing with these kinds of cases, we have attempted to streamline our procedures as much as possible in order to lower the cost and increase efficiency for the client. We have many ideas on how the associations can exercise control in enforcement of their governing documents, and we would be happy to discuss with you the specific needs you have and try to give you an understanding of what you can do and what we can do for you. We will be happy to draft covenants and rules and regulations and assist the board with enforcement action.

GANG RULES

One area of concern to many association boards is the increase in gangs and gang activity in various neighborhoods and villages. Although gangs and gang activity have not become a problem in many associations, those of us who read the newspapers are becoming increasingly concerned about the prospect of having gang activity within an association's borders.

Associations should take charge of their property and work to avoid permitting gangs

to take root in their communities. We have created a set of "Gang Rules" which were written to prevent or control gang activity. They attempt to give to the association board the power to levy a fine or remove offenders from the property. Our Gang Rules prohibit, among other things, the following: gang activity; the display or use of gang signs and signals; criminal conduct; drugs; weapons; vandalism and fighting; loitering and reckless or disorderly conduct; curfew violations; alcohol in the common areas; graffiti; and loud noise, music and shouting. These Gang

ASSOCIATIONS SHOULD TAKE
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WORK TO AVOID PERMITTING GANGS

Rules can be made available to condominium or homeowner associations. Even though your association is not yet experiencing a problem with gangs or gang activities, we would encourage the association board to carefully consider whether preventive measures might be advisable.

FAIR HOUSING ACT

The federal Fair Housing Act (42 USC Sec. 3601 *et seq.*) and the Illinois Human Rights Act (Ill.Rev.Stat. Ch. 68, Para. 1-101 *et seq.*) make it unlawful to discriminate against any person in relation to housing (including services and facilities related to

housing) on the basis of race, color, religion, sex, familial status (children under 18), handicap, or national origin. The federal Fair Housing Act not only prohibits discrimination against disabled persons, but it also makes it unlawful for a person to deny the right of a dwelling resident to make reasonable modifications of existing dwellings if the modification is necessary to afford the disabled person full enjoyment of the premises. Condominium, homeowners, and cooperative associations may have to make reasonable accommodations in rules, policies, practices, or services to afford a disabled person equal opportunity to use and enjoy a dwelling.

When associations do not comply with these Acts, enforcement by both administrative and judicial procedures is available. Violators face the possibility of substantial civil penalties plus payment of actual damages suffered by injured persons, plus punitive damages. The damage awards and settlements under the housing discrimination laws can be high. We encourage association boards to take these laws very seriously.

Whenever an association adopts or attempts to enforce covenants or rules and regulations which might arguably discriminate on the basis of a protected class, the advice of an attorney should be sought. Many associations are

surprised to learn they are unknowingly discriminating against children or the disabled by passing or enforcing improper covenants or rules and regulations.

AMERICANS WITH DISABILITIES ACT

You may have read about this new federal law which protects disabled persons from discrimination and requires accessibility to the disabled in employment, public services, public accommodations, telecommunications, and state and local governmental services. There are many questions about how the Americans with Disabilities Act will impact upon condominium, cooperative and homeowners associations. We are working to stay abreast of the new law and the regulations being promulgated by the five federal agencies that are administering the law. Please feel free to contact us with any questions you might have.



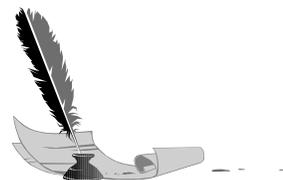
MAINTENANCE/CONTRACT OR AGREEMENTS

Every spring and summer, condominium and homeowners associations find themselves entering into numerous contracts with landscapers, suppliers, service companies, and construction contractors.

BEFORE YOU SIGN, have the contract or proposal form reviewed by an attorney.

If all does not go well, the contract may cost the association a significant sum of money. For a \$200 fee, we will review any construction or maintenance service agreement and provide you with a brief written commentary.

We will also be happy to quote our fee in advance to prepare a proper contract with appropriate protections for the association.



DICKLER, KAHN, SLOWIKOWSKI & ZAVELL, LTD.

A GENERAL PRACTICE LAW FIRM CONCENTRATING IN CONDOMINIUM & HOMEOWNERS ASSOCIATION LAW INCLUDING:

- Covenant and By-law Amendments
- Rules Preparation
- Covenant and Rules Enforcement
- Assessment Collection
- Covenants - explanation/application
- Contract Preparation and Enforcement
- Condominium Property Act - Explanation/Application
- Common Interest Community Association Act Explanation/Application
- Owner or Contractor Suits
- Labor and Union Issues in Associations
- Lien Preparation and Foreclosure
- Developer Turnover, Disputes and Suits
- Unit Owner Bankruptcy and Mortgage Foreclosure
- Real Estate Sales and Closings
- Real Estate Tax Reduction for all units/properties