



## Enforcement

A recurring problem in community associations is owner compliance with the governing documents. An important component in the enforcement process is communication between the association and its membership. The Association should have copies of all governing documents, which include the architectural guidelines, rules and regulations, articles of incorporation, bylaws and the CC&Rs readily available on the association's website.

## Steps in the Enforcement Process

*\*Under Arizona law, when sending a violation notice, an association is always required to give notice to owners of the owner's right to petition for an administrative hearing with the Arizona Department of Real Estate pursuant to A.R.S. Section 32-2199.01.*

**Courtesy Letter:** When a violation occurs, the board of directors or management company should send a courtesy letter or post a notice on the property requesting that the owner cure the violation. This notice should contain the owner's name, lot number, the provision of the governing documents that was allegedly violated, the date the violation was noticed and the person (first and last name) who observed the violation, the nature of the violation, the date by which the owner must comply, and any information regarding the process the owner must follow to contest the notice, including any right to appear before the board to discuss the violation. Contact information for the management company or association representative contact should also be included. This letter, in most cases, results in the owner addressing the problem immediately.

**Formal Violation Letter:** If the violation is not corrected by the date compliance is required, the next step is for the board, management company, or association's attorney to send a formal violation letter stating that fines that could be assessed against the owner if the violation is not corrected and/or that the association can file an action with the court to have a judge compel compliance. This letter should also contain the date the violation was first noticed and if the violation is continuing, then it should include the date the property was last inspected. The formal violation letter must also set out the process the member must follow to contest the notice. It should give the owner an opportunity to request a meeting with the board and provide the owner with the name, phone number and email address of the person to be contacted by the owner in violation.

## Fines

**Fines:** Under A.R.S. Section 33-1803 / A.R.S. Section 33-1242, after notice of the violation, as set forth in the formal violation letter, and an opportunity to be heard, the association through its board of directors, may impose reasonable monetary penalties on the owner in violation of the governing documents. Our firm also strongly recommends that the Board adopt a formal fine policy (as further discussed below), with specific fine amounts, which will strengthen the Association's position in regard to collecting validly assessed fines.



# Enforcement of Governing Documents

If the Association validly assesses fines, obtains a judgment for the fines, and the judgment is recorded, the association has a lien that is effective upon conveyance (or paid at the time of the sale of the lot/unit). In addition, associations may proceed with collection of a judgment for validly assessed fines through traditional collection means, such as bank, wage or rent garnishment. Pursuant to Arizona law, A.R.S. Section 33-1803(B) / A.R.S. Section 33-1242 (A) (11), associations no longer have the right to record a notice of lien for unpaid fines and penalties, interest, late charges on fines and other fees and charges related to fines/violations.

## Certified Letter Response By Owner

If a member receives a written notice that the condition of the property owned by the member is in violation of the governing documents, they may provide the association with a written response by sending the response by certified mail within 21 calendar days after the date of the notice. The response must be sent to the address set forth in the notice or in the records of the Arizona Corporation Commission. If an owner sends such a written response, the association is required to provide certain information to the owner. However, to ensure that the owner is fully aware of the nature of the violation, this firm recommends providing that information in the courtesy notice and formal violation letter because the association is barred from proceeding with any action against the owner until this information has been given to the owner. That information is: (1) the provision of the community documents that has allegedly been violated; (2) the date of the violation or the date the violation was observed; (3) the first and last name of the person or persons who observed the violation; (4) the process the member must follow to contest the notice; and (5) the following statement: “You have the option to petition for an administrative hearing on this matter in the Arizona Department of Real Estate pursuant to A.R.S. Section 32-2199.01 (this was formerly handled by the Department of Fire, Building and Life Safety).”

## “Self-Help”

If an owner fails to correct a violation in a timely manner, some association CC&Rs allow the association to correct the violation on a lot/unit, at the owner’s cost. This is known as “self-help”. If association the CC&Rs allow for the use of “self-help”, it is important that the association specifically follow the procedures outlined in the association’s CC&Rs prior to entering the lot/unit to rectify the violation. It is recommended that the association provide the owner with the date on which the work will be done, the person who is doing the work and the expected time that the person will enter the lot. While an association can use self-help if authorized in the governing CC&Rs, it cannot cause a breach of the peace. Therefore, if the owner confronts the worker who enters his/her property, either verbally or physically, then that worker must withdraw and the association is required to pursue its other legal remedies to effectuate a cure of the violation.

## Covenant Enforcement



An association should adopt a covenant enforcement policy and notify residents of this policy. This policy should set out the steps the association will take to address a violation (such as reminder notices, demand letters, fines and penalties, self-help, filing a lawsuit, etc.), as well as any fines which may/shall result as a result of the continuation of the violation. The policy should make it clear that if the association incurs attorney fees and costs, the association will seek reimbursement from the owner and could be included in any judgment against the owner which may be entered by the court (please note that any language in the policy regarding attorney fees cannot be inconsistent with any provisions in the CC&Rs regarding attorney fees). An association should also consider reminders in the association's newsletters or other mailings to the owners regarding certain types of common violations (such as parking violations) and request that all owners comply by a certain date.

## Litigation

If litigation is the only method by which an association can compel compliance with the governing documents, an association has the right to file a claim in superior court, asking the court to order that the owner bring the property into compliance by correcting the violation. This type of lawsuit is commonly known as injunctive relief. If an owner fails to voluntarily comply during or after the lawsuit and the Association obtains an injunctive relief judgment, enforcement of the judgment requires an evidentiary hearing before the judge where the association has to provide witnesses and exhibits showing the violation and the association's attempts to have the violation corrected without having to resort to court action. In most cases, once the judge enters an order requiring compliance, it will also enter judgment in favor of the association for its attorneys' fees and costs incurred, although the amount awarded for attorney fees is discretionary on the judge's part.

An association also has the option to file a complaint against an owner in the Arizona Department of Real Estate. The Arizona Department of Real Estate will set a hearing with an administrative Law Judge. The Association can request that the Administrative Law Judge order the owner to comply with the governing documents. However, the remedies in this department are limited and the association will not be able to recover attorneys' fees.

### **SUBMITTING A PETITION:**

All Petitions must be in writing on the form approved by ADRE.

Only an owner or association may Petition the Department for a hearing.

The Department cannot accept Petitions (complaints) filed by or against renters, non-owners, directors, representatives, other homeowners or community management companies.

### **FEES:**

A single issue complaint is \$500. (The new reduced fee is effective July 1, 2016); and, each additional issue complaint is \$500.

Filing fees are NON-REFUNDABLE, except when the petition is dismissed at the request of the Petitioner before a hearing is scheduled, or by stipulation of the parties before a hearing is scheduled. A.R.S § 32-2199.01 (B).

The prevailing party is reimbursed their filing fee if applicable.