



## RULE ENFORCEMENT GUIDE

One of the functions of a homeowner association (HOA) is to enforce certain rules, regulations, and covenants. It's good to periodically review old practices and check against established norms to confirm that your HOA runs a sound enforcement program.

Generally, it is the board's fiduciary duty to enforce the rules, but the board has some latitude when and what to enforce based on its best business judgment. The key is for the board not to be selective, arbitrary, or capricious in how it handles enforcement. It is impractical to expect that a board can maintain absolute vigilance and catch every rule violation. Instead, the board should react when informed by a reliable source. Here is a list of the typical remedies available to an HOA that seeks to enforce its rules:

**1. Impose a Fine.** This power is typically derived from the governing documents. A fine could be monetary or a suspension of privileges like pool or clubhouse. Of course, suspension of privileges is only effective if the member actually uses the amenities. Monetary fines can be escalating (like \$5/day until cured).

**2. Impose a Lien.** If a fine is not paid, the HOA usually has the right to file a lien against a member's HOA property. This may not immediately get the fine paid but in most cases, the threat of filing a lien alone will. The HOA is usually entitled to reasonable attorney, collection and related fees as well which will increase the amount owed. This is also a great incentive to getting the fine paid early.

**3. County Court or District Court.** The HOA is always represented by an attorney since these courts have rules and procedures which only lawyers understand. Court litigation is expensive and should not be undertaken lightly. Make sure the expense and effort fit the crime. We've all read about the time, emotion and money squandered on "matters of principle." The board has the power to compromise when it's in the best and financial interest of the HOA.

**4. Self-Help.** In certain circumstances, the HOA can self-help by correcting the violation. Examples include hauling a junk vehicle, cleaning up an overgrown lot and removing a violating fence. Rather than ratcheting up legal and collection fees, it makes sense to take action and bill the offending member which, granted, may require legal action to collect. Even so, at least the offending issue is dealt with. If self-help is contemplated, make sure to keep copies of all correspondence that outlines that option if the member does not respond. Take photos of the offense for the record as well.

**5. Mediation.** Mediation can be very cost-effective and less confrontational way to cure a violation when a member has dug in their heels. Mediators are trained in the art of compromise. Many jurisdictions provide mediation services free or cheaply. **6. Using the Police.** All municipalities have ordinances against nuisances, inoperable vehicles, disorderly conduct, disturbing the peace, etc. The HOA should always consider contacting the local authorities when handling certain violations as these agencies are better equipped and authorized to deal with some matters. At the very least, the HOA

should maintain a good rapport with local law enforcement and government offices and cooperate with them when these entities are brought in to investigate a resident's misconduct.

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