

When You Can't Rely on Owners to Comply: What to Include in Enforcement Policies and Fine Schedules

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Sometimes, owners believe the rules established by the property's declaration or CC&Rs, bylaws and rules and regulations reduce, rather than enhance, their enjoyment and use of the property. Effective leadership and communications are undoubtedly the best tools to overcome owners' skepticism about the benefits of following the rules. But if the Board's soft tactics don't persuade owners, then imposing and enforcing fines for violations is the next best tool to change behavior. Fines are relatively quick and inexpensive to impose (compared to a lawsuit). In my experience, they are very effective because most owners REALLY want to avoid paying more money to the association.

Associations for all condominiums and non-condominium developments have the legal authority to levy reasonable fines for violations of the property's governing documents, unless those documents prohibit them. In order to levy a fine, the law requires that: (a) the association must have procedures for "notice and an opportunity to be heard" and a schedule of fines, (b) the fine schedule must have been previously furnished to the owners, and (c) the association must give the alleged rule breaker notice of the violation and provide an opportunity to be heard according to the procedures. Policies and procedures to comply with these requirements should be adopted by the board as part of the association's rules and regulations. Here's a look at each of those requirements in more detail:

Notice

Consistent with American principles of fairness to the accused, alleged violators are legally entitled to written notice of the violation that they are supposed to have committed. The notice should identify and recite the rule that was violated, the actions or omissions that constitute the violation, including the locations, dates and times they occurred, the names of any witnesses (if appropriate), and the amount of the fine. The notice should be delivered to the alleged violator in the manner required by the governing documents for official notices. Often, that means hand delivery or certified mail. In many associations, notice by email is not adequate. Be sure to keep a copy of the notice and a record of when and where it was sent.

Fine Schedule

At the least, the schedule of fines should list default fines for violations, such as a warning for a first violation, \$25 for a second violation and \$100 for third and subsequent violations. It may also create specific fines for violations of certain rules. Each day or other period that a violation continues (such as failing to remove a wrongfully-parked vehicle) should constitute a separate violation and automatic additional fines. The total amount of fines that can accrue should be capped—30 days is appropriate—to avoid a court invalidating the fines as disproportionate to the violation. Once the fine schedule is adopted by the board, it must be distributed to all owners before it is effective. Posting it on a website may not be good enough.

Opportunity to Be Heard

An opportunity to be heard means a chance for a meaningful hearing before the board or a representative designated by the board. If the alleged violator chooses not to request a hearing, then the fine stands. The board of directors can serve as the hearing board, but the rules may appoint an independent hearing officer or panel other than the board of directors. The hearing should be held only after an adequate period for the alleged violator to prepare, such as 15 or 20 days, at a place that is convenient for everyone. Preferably, the parties will provide a written summary of their positions prior to the hearing. The hearing procedures should ensure that the alleged violator has time to give his or her side of the story. As long as the alleged violator informs the hearing board in advance, he or she should be allowed to have an attorney present. The hearing board's decision should be made in writing and given to the alleged violator within a short time after the hearing. Typically, a violator who isn't satisfied with the decision has the right to appeal to either the board or another group. Once the appeal is decided, the determinations should be final and non-appealable.

The description of the enforcement policy in this article is intended as general guidance only. Since this area is governed by law, you should have your attorney review any proposed policy before it is adopted. 