

THE COMMUNITY BUILDER

Neighborhoodly Resolution or Covenant Enforcement... Is There a Middle Ground?

While driving through my community, I was greeted by the sight of my neighbor's unkempt, sagging, unpainted fence. I live in a great neighborhood, but I wish the Association board had a different attitude about the enforcement of the restrictive covenants that require us to maintain our property. For many years, one of the board members wrote a monthly column that brought up issues in a manner that couldn't be interpreted by any of the owners to be a finger pointed at them. She would remind us that in the Spring, the sidewalks might look better if they were pressure washed. In the Fall, she would remind us to rake our leaves. She is a soft-spoken person who feels that bringing items to the general membership's attention should inspire them to take action if it pertains to them. Well, it hasn't worked for a good number of our members.

Along the same lines, one of the blogs that I read consistently has had a very long run on the same kind of topic. Many of the comments have been along the lines of "going and talking to your neighbor" about the problem instead of "reporting a violation" (like a criminal charge) to the Board or Management Company. As you can imagine, everyone has an opinion. I'm sure, as a board member, you will agree this is probably the hardest part of your job. How far do you go to make sure you're doing your job and still maintain a good relationship with your neighbors AND maintain the appeal and value of your community?

There is a way to accomplish covenants enforcement in a fair and consistent way. It will take some work and some educating, but in our experience, it does work.

First, if the association hasn't ever adopted a policy for Covenants Enforcement, it is probably time to do it. A policy is an outline of the process by which the association will handle violations. It will be compliant with the authority given to the Board in the Declaration (CC&R's) and will spell out specifically what steps will be taken to ask for compliance that may include notification by letters up to fining authority. If fining is permitted, it should not be seen as an added income source, but a solution of last resort to gain compliance. A policy will be applicable across the board. It will not matter who is violating. It will help provide a safe haven from that ugly accusation of selective enforcement or harassment and



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maybe create a less adversarial approach. The drafting of the policy may take some time and once it is done to the board's satisfaction, the association legal counsel should probably review it just to make sure you're not "trespassing" on any legal issues.

Now that the policy is written, the next step would be to introduce it to the community. If the association has been somewhat lax about consistent enforcement, there may be some push back. But you know it has to be done. Mail it or post it on your website and make everyone aware that this is the policy the board intends to follow. Once this has been done, the next step would be for the Board to formally adopt the policy by adopting it as a resolution at a Board meeting. It should be listed on the agenda as an action to be taken by the Board. One of the most important issues will be the effective date. There should be a period of time provided to allow any of those members not in compliance to voluntarily come into compliance during the grace period.

A policy of this nature accomplishes a number of things. It educates the members about the process the Association will use if they are non-compliant with their documents. Members will also be aware there is a means by which a violation can be reported and the amount of time it may take to cure it.

Additionally, the letters or notices to the owners should be as informative as possible about the problem noted. Sentry Management, has over the years, developed some very responsible and well worded letters that can be adapted to most situations and through CommunityPro enable the Manager and the Board to follow the progress of notification and compliance or non-compliance.

Something to keep in mind is that no policy is going to prevent an angry response from someone with an adversarial mindset and no respect for others. You can only come to an agreement with someone who has, on some level, a desire to be agreeable about changing their behavior.

As one of the bloggers said, "It is how the information is received, managed and administered. You either go in with tact and diplomacy when the situation deserves it, or you follow in with the SWAT team. There is no one answer to every situation".



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A policy is a great start to diplomacy.

