



Board Responsibility to Enforce Governing Documents

What is the responsibility of the board?

The powers and duties of the board are spelled out in the CC&Rs and the Davis-Stirling Common Interest Development Act (Civil Code 1350 et seq.). One of the association's powers under both the CC&Rs and California statutory law is the power to enforce the governing documents. See CC&R and Civil Code 1354. Both the CC&Rs and Civil Code 1354 provide that either the association or an owner may enforce the governing documents and one has just as much right to do so as the other. It is not incumbent upon the association to enforce every violation. CC&Rs generally provide that the Association exercise prudent business judgment in determining whether, when and how to enforce the Governing Documents. See also *Beehan v. Lido Isle Community Assn* (1977) 70 Cal. App.3d 858 (board has discretionary authority to enforce CC&Rs). If an owner disagrees with the association's position on enforcement, he or she may bring their own enforcement action against whomever is responsible for the violation. The claim by the offended owner should not be made against the association; it should be made against the violating owner. Many owners do not understand this principal and believe that it is the board's duty to handle all "people problems." The association may or may not choose to do so, and it is particularly sensitive with the offending conduct occurs inside a private residence rather than in the common area.

That said, CC&Rs generally provide that no person shall use any part of the property in a way that unreasonably interferes with the quiet enjoyment of an occupant, or which is noxious, illegal, seriously annoying or offensive to a person of reasonable and normal sensitivity. The Association shall have wide discretion to determine what constitutes a nuisance, and the duty to order those responsible to cease or abate such nuisance immediately. These provisions allow the association or an owner, or both, to take action to abate the nuisance, but they do not require either one to do so. The bottom line is that a decision to pursue an enforcement action lies within the sound discretion of the board. If the board feels compelled to take action, it has the authority to do so. If the board is not so inclined, then it may leave the enforcement action to an individual owner.

Regardless of who brings an enforcement action, it may not be filed in court until certain statutory prerequisites are met. In all enforcement actions involving declarative and/or injunctive relief and less than \$5,000 in monetary damages, Civil Code 1369.520 requires the parties to participate in alternative dispute resolution (i.e., mediation or arbitration) before a civil action is filed. The process is initiated by one party serving the other party or parties with a "Request For Resolution." The RFR must contain a brief description of the dispute, a request for ADR and a notice that the party or parties receiving the RFR are required to respond within 30 days. If there is no response within 30 days, the RFR is deemed denied. If the response is affirmative, the parties must complete ADR within 90 days of the date of the notice. This procedure normally involves mediation in which neither party is bound to a particular result absent their consent. Only after this process is complete can a party file a civil action for declaratory and/or injunctive relief. THIS PROCEDURE IS MANDATORY.

What action is the board prohibited from pursuing?

The board should scrupulously avoid any action that could be construed as discriminatory against any owner. It should not even consider imposing fines. Enforcement action should be taken on the advice of counsel. The board should do everything it can to work out a reasonable accommodation between the owners and explore whether mitigation measures are feasible and, if so, encourage the owners to implement them. An enforcement action should be considered only after all other avenues have been exhausted.