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## THERE IS A METHOD TO THE MADNESS HOW TO CHOOSE THE BEST METHOD OF ENFORCEMENT

By Augustus H. Shaw IV, Esq., CCAL

One of the primary duties of a homeowner's association (HOA) is to enforce the HOA's rules, regulations and restrictions. An often-asked question, however, is how should a HOA properly effectuate its ability to enforce?

Generally, HOA rules, regulations and restrictions may be enforced through imposing monetary penalties or fines, seeking injunctive relief through the courts or, if allowed by the HOA's CC&Rs, exercising self-help, which provides the HOA with the power to enter upon an owner's property to remedy the violation.

The issue for many HOAs, however, is the determination of which method of enforcement to implement; i.e. when is it appropriate to seek injunctive relief versus simply imposing a fine. Is self-help appropriate in a particular circumstance?

Determining the proper enforcement method not only aids in gaining compliance, but also could save the HOA from the cost and expense of litigation. When selecting a method of enforcement, HOAs would be wise to consider three fundamental principles of enforcement, said principles being:

1. What enforcement method is allowed by the HOA's governing documents;
2. Which contemplated method of enforcement is likely to gain compliance; and
3. Which method of enforcement is reasonable under the circumstances?

## **What enforcement action is allowed by the HOA's governing documents?**

The first step in determining which method of enforcement to implement is to determine which method is allowed under the HOA's governing documents. For example, while the exercising of self-help is sometimes a viable enforcement option, some HOA governing documents may not authorize the HOA to exercise the self-help option or may require certain tasks be accomplished before self-help may be implemented.

Moreover, if the HOA desires to seek injunctive relief, the HOA should review its governing documents to determine whether attorney's fees and court costs may be recouped from the owner in non-compliance.

Determining what enforcement method may be used is an important first step in the enforcement process.

## **Which contemplated method of enforcement is likely to gain compliance?**

It is important to ensure that the method of enforcement will achieve the goal of compliance. For example, let's say that an owner is operating a pig farm on their property, which is a violation of several of the HOAs restrictions. Let's further say that the fine for this violation is \$50 per month. Finally, let's say that the owner makes \$500 per month from the sale of pigs.

In this example, it would be more profitable for the owner to pay the \$50 fine than to lose \$500 per month in pig-selling income. Thus, the owner may simply pay the fine and keep on operating the pig farm. While the fine is being paid, the violation is not being remedied. Instead of a \$50 fine, maybe seeking injunctive relief would be a more appropriate means of gaining compliance.

Therefore, prior to implementing an enforcement method, it is important to consider whether the enforcement method to be implemented will ultimately lead to compliance.

## **Which method of enforcement is reasonable under the circumstances?**

Finally, it is important that the "penalty fit the crime" when it comes to enforcement. Determining which method of enforcement is reasonable will not only aid in gaining compliance, but could also save the HOA from potential liability.

For example, is it reasonable to impose a \$500 per day fine for a trashcan violation? Likely not. Is it reasonable to file an injunction lawsuit over a minor weed violation? Probably not. Would the implementation of self-help be reasonable to cure a "green pool" violation located at a house that has been abandoned for six months? If the HOA's governing documents allow it, sure.

Ensuring that the method of enforcement is reasonable is a key component to effectively enforcing HOA rules, regulations and restrictions.

Keeping in mind the above three main principles of enforcement will help your HOA safely navigate the complexity involved with enforcement of rules, regulations and restrictions.

Augustus H. Shaw IV, Esq., CCAL is the Founding Partner of Shaw & Lines, LLC. A lecturer for many municipal HOA Academies and continuing legal education seminars, Augustus is a member of the prestigious CAI College of Community Association Lawyers and sits on the CAI Central Arizona Chapter Board of Directors and Legislative Action Committee.