

- RULES ENFORCEMENT AND COLLECTION POLICIES:** Both of these require the board to have consistent action to enforce. It is recommended that the board approve policies to enforce action that is constant and in harmony with the documents, the statutes, and the association.

46. Sometime back I recall reading in your column how one should and should not approach rules violations. We have a group in our park that is pushing to have the property manager knock on doors. Would you please provide your thoughts on how our property manager should handle violation notices? ST- Orlando

*First let us review an enforcement policy for rule violations that I recommended. The first is sending written notices of violation from the board and manger, the second is turning to matter over to an attorney to send notice of the violation, and the third and final step is the enforcement by the courts. If the board and manager are unable to enforce the rule then the matter should be turned over to the association's attorney. If the violation is not corrected by the attorney, then the matter would be needed to be resolved by a Judge and the courts. If you are required to take the matter to court, certain evidence would be needed to present to the Judge as to what actions the board and manger took to correct the violation. If you say we knocked on the door and talked to the owner, the owner could deny that the conversation took place. For that reason, I believe that the best action is to write letters as proof of an attempt to correct the violation. The manager should be required to enforce the policy approved by the board. If the board says knock on the door, the manager is obligated to do so but there are problems beyond proof as to what was said and the counter arguments by the owner. It is not an easy job to tell someone that they are in violation of a rule. Owners are aggressive and can take abusive action against the manager. It can be counter productive to correcting the violation. Words are too easily misunderstood and too often, a resident resorts to bad language. If this happens often, you may find that you will be searching for a new manager. The management job is too hard to have to put up with that much abuse. If you do decide to have the direct door contact, have a member of the board accompany the manager. At least this way you will have a witness.*

47. What happens when the Association pursues foreclosure in the following situation? The owner has a mortgage on this unit and owes fees that exceed more than the unit would be worth. If we foreclose and the unit goes up for auction, it would not sell for enough to satisfy the mortgage and other debts. I suspect you will say contact the attorney. Probably the board will; however, I would like to get all the information possible prior to doing so that I know enough to ask questions. JL- Miami

*Immediately start lien and foreclosure action. The longer you wait the more the owner will owe. Cut your losses and foreclose on the property with as little delay as possible. The idea is to get a new owner in the unit who will start paying fees. Look at the situation as a cost of doing business. Sometimes it requires taking a loss in order to prevent taking a larger loss. By waiting and hoping that the owner will pay the fees and the mortgage you will not necessarily improve your collections.*

48. I read your column about fines for violations. We have difficulty getting people to serve on the board, let alone organizing a committee for fines. Can the board pass a regulation that states the fine for certain violations or is it absolutely necessary to go to a lawyer for enforcement? GR- St. Petersburg

*It is not a problem as long as the guilty party pays. Keep in mind that you must establish an independent review committee to impose the fine. It is a statutory requirement to have the committee. Then the owner must agree to pay the fine after meeting with the committee. The problems begin if the owner says that he will not pay the fine. Then what are you going to do? To enforce the fine against an owner who refuses to pay, you must take the matter to court. Yes, the board could pass a rule to automatically charge the account for a rule infraction. You could charge the account for a rule violation but if the owner says he will not pay, how will you enforce the fine? You will go to court and the judge will more than likely throw out the case because you did not follow the statutory requirements to have a committee. There are a lot of key steps that must be taken to collect fines. That is the reason that I say talk to the association attorney to establish proper fining procedures.*

49. I am the resident of a large active adult homeowner community. The association collects monthly fees and provides lawn care, basic cable, home painting, and care of the streets and commons areas. A situation has developed where a number of residents are in default of their monthly fees, and in at least one case the home is in foreclosure. It is the feeling of a number of residents that services, for which fees are collected, should be denied until such time as the association is paid. We should not be providing services for which we are not being paid. Our documents provide for the authority of the association to deny services, although specific reasons are not listed. Is it legal and reasonable to deny services to a resident when we are not being reimbursed? This specifically applies to cable TV and home painting. It will cost considerable money to paint a home when the owner owes us a considerable amount of money, and we may never recover what is owed us. BO- Lake County

*Keep in mind that the Covenants and Restriction (Documents) were established to maintain your property values. In your community, the appearance of one home affects the values of the other homes. You cannot stop lawn service or fail to paint one home because they are not paying even though you may have the right. While your homeowner documents allow the denial of common area usage and services, it would not be a good thing because it would directly affect other home values. Would you like to live next to a home where the association is not cutting the grass and letting the home turn gray? Your association has a powerful tool to collect delinquent fees. That tool is the lien and foreclosure right against delinquent owners. The board must take legal action to begin collection of the fees. I suggest that an attorney be selected to represent the association and start filing liens. As for the foreclosure and I believe you mean a bank foreclosure, you must have an attorney monitor the matter and make sure that the association has certain claims against the legal actions. Yes, you are right that you may never collect back fees. By having the attorney monitor the foreclosure, you may be able to reduce the time of the foreclosure and there by start collections from a new owner sooner. In other words, limit you losses. Your most powerful tool is to have a strong active collection policy.*

50. My wife and I have been living in my community for about 4 years now, and the community is under a homeowners association. One of the Associations Restrictions and Convents is that no homeowner is to have pets that are over 30-pounds. I have sent letters and emails to the Board of Directors about this violation. I have also sent letters and emails to our manager about a few homeowners that have pets that are over the weight limit. In addition, the homeowners that have the large dogs also walk their dogs with out the leash. A few dogs have come after me. The Board of Directors has refused to enforce the pet weight limit. Management has told me not to contact the Board of Directors about this matter, and that the Board of Directors does not enforce the dog poundage rule. The manager said to me that if do not like the community with pets then I should move. The manager says that I am harassing the Board of Directors by sending letters, emails, and calls about the weight limit of pets. I have also asked that ALL rules and regulations be enforced. Management sent me a letter saying that rules and regulations are just rules and regulations and they are not enforceable. Management is now sending my wife and me violation letters and threatening us with fines. As I mentioned before my wife and I have been living in this community for 4 years, and we have never received a violation letter. What are my options in resolving this matter? MC- Miami.

*It appears that your board has neglected to enforce the rules involving dogs. As a result, the rule may be non-enforceable without reinstating the rule. If reinstating takes place, the dogs now in the community would be allowed to remain. The association's attorney should review the entire procedure. You seem to have a board that is not fulfilling their duties to enforce the rules. In addition, they are instructing the manager to defend their actions or lack of actions. When boards take improper action or fail to take action to enforce the covenants, they are in effect failing their documented duties. In many situations, to neglect the rules enforcement will cause property values to be reduced. You as an owner have the right and duty to expect that the board will comply and enforce the documents and rules. Since they have failed once, there may be a strong chance that they are failing in other areas. If you feel strong about the actions of the board, then it may be time to start campaigning for the next election.*

51. I was a condominium board member in the recent past. Could you help me understand how, who, reports violations of our rules and regulations and who is responsible to enforce them? I work and observe violations occasionally, but feel funny reporting the violations I observe. Do you try to get a committee willing to walk the property on a regular basis? RA- St. Petersburg

*Rule enforcement is a responsibility of the board of directors. To accomplish this task, the board should adopt policies for enforcement. The manager should be given instructions as to collecting violations and how to attempt to enforce the rules. Sometimes a committee of owners is appointed to make inspections and turn the reports over to the board and manager for enforcement. The board should establish a written form or format for owners to report problems. Rule enforcement is a hard task because it involves neighbors against neighbors. It is important that procedures be created and uniform. The policy should be communicated to the owners and allow them to provide feed-back. To maintain the community, the rules enforcement policy must be strictly enforced.*

52. We have a large community with plenty of area to walk dogs. Our docs state that dogs cannot weigh over 25 pounds. However, this has not been enforced until recently. An owner was forced to give their dog away after living here for over four years. There are several other dogs here that weigh over 25 pounds and the rule has never been enforced. Can a rule in the documents be enforced suddenly after years of not being enforced? WH-Orlando

*Keep in mind that it is one thing for an owner to volunteer to correct a violation. If an owner refuses to comply and correct the violation voluntarily, you must attempt to enforce a rule by use of the courts. And since final enforcement is accomplished in the courts, a Judge will hand down the enforcement order. The problem is that there are defenses when rules have not been enforced. There are four primary defenses to rules. They are Laches, Selective Enforcement, Waiver, and Estoppel. There are ways for the board to reinstate rules that have not been enforced in the past. They must notify to the members of the reinstatement of a rule, but it may require some grandfathering of some units that are in violation. The correct enforcement procedures and reinstatement should be coordinated by an attorney. Keep in mind that the final violation enforcement procedure must have a Judge's decision. Therefore, you need the advice of an attorney as to whether they can defend the enforcement.*

53. Our documents state that in order to amend the documents, 100 percent of the owners must vote to approve the change. About 6 years ago a prospective buyer obtained a letter from the President of our Board permitting this prospective buyer to tile a second floor condo. This is restricted by our documents. Relying on this permission the prospective buyer purchased the second floor condo and tiled the floor in the unit. We are now advised that since the Board had knowledge of this act for several years the board cannot now force the removal of the tile. Is this correct? KL- Naples

*This question really needs to be answered by an attorney. I believe there are two reasons that the rule cannot be enforced. The first is that the buyers believed that they had proper authority to tile the floors. The second is that too much time has passed to now enforce the rule and force the owner to remove the tile. This is a text book case of poor enforcement of the rules. A good attorney defending any enforcement lawsuit would probably find many other reasons to defend the court case for the owner. Learn from your mistakes and move on. It takes concerted effort to properly enforce the rules. I suggest that all the directors read the association's documents before any more decisions are made.*

54. I questioned our manager why we do not fine owners in violation of rule infractions. He advised that it is a cumbersome procedure that requires a committee of three non-board members and lengthy notices. In short, he was non-supportive. It would appear that a much simpler procedure could be followed for simple breaches. Can the membership or board vote to change these procedures? RI- St. Petersburg

*In most situations, your association does not have the right to over ride State Statutes. I have never expressed a good feeling for associations that fine the owners. It sounds like your manager is on the same page. The reason is that if you have an owner that refused to pay a fine, you must take the matter to court to enforce the payment. In order to force the matter in court, you must properly establish a fining committee. The committee must take the proper actions and present the information to the board. Then the board must follow proper fining actions to collect the fine. If the owner pays, the matter is finished. If the owner refuses to pay, then the matter must be sent to a Judge to decide if the owner must pay or not. If the Judge tells the owner to pay and the owner still refuses to pay, you must take the matter back to court for collection. All of this just to enforce a rule. And guess what? You never addressed the problem of the violation. I like to go straight to the problem. That is the enforcement of the rule*

violation. Go directly to court on the violation and have the Judge issue an opinion on the correction of the violation. This way you can solve the problem much faster.

55. We are a very small association. Our board passed a special assessment but several owners have not paid the fee. What procedures are commonly followed in obtaining money from the delinquent owners? They fail to answer or pay after several notices go unsolicited. KE- Homosassa

*Review your documents to determine if you have lien and foreclosure rights. The board must select an attorney to file liens and foreclosure against the delinquent owners. In most cases, the legal fees will be added to the delinquent amounts. Notify the owners one last time that the collection matters will be turned over to an attorney for lien and foreclosure action and that the legal costs will be added to the amount outstanding. Turn the matter over to an attorney with instructions to collect the delinquent fees by placing a lien on the property and then proceed with foreclosure. The legal costs may need to first be paid out of the association's funds, but they can be recovered. Once the members know that you will force the sale of the unit or collect all costs and fees, your delinquent amounts will almost all be collected. Lien and foreclosure rights are powerful persuasions.*

56. Does a board member have to personally see a violation before a correct is made? DA- Clearwater

*Not necessarily but the board members needs to approve a policy for handling rule violations. The policy may instruct the manager to make an inspection and send out letters concerning the violations. The policy may provide a rule enforcement committee to inspect and send out violation letters. If another owner sends a written signed rule violation complaint, the board may have the secretary or manager send a correction letter. In most of these cases, the board does not need to visually see the violation but is relying on the manager's, committee members', or an owner's report that a violation has been ascertained. If a rule violation policy has been approved by the board, then a report should be given at the next board meeting of any violation and the action taken. Sometimes, copies of the letters sent become part of the board meeting package or a list of the violations and the action taken are part of this report. Before any unresolved violation is sent to the attorney for action, the matter should be discussed at a board meeting. The directors should at that time have copies of any letters send, the violation report, and any return correspondence. For this reason, it is important to have attempted corrections in writing rather than telephone calls or personal contacts.*

57. My unit had a lien for non payment of condominium dues on my investment unit. I recently bought this unit and paid my dues on time the first of each month. Now a letter of collection from the lawyer of the Association came stating the lien for non-payment. I have all the documents that support my payments. Now here is the problem. I was unaware that the dues had gone up and my payment was short \$40 per month. With no notice received about the shortage, they sent my account to collection and a lien was placed on my unit. They sent the coupons to the wrong address. Now management insists that I should pay late fees plus the attorney's fees which all come to more than \$1,000. I do not think it is fair. What should I do? I sent copies of cancelled checks, they still insist it is my fault. Please help. I think it should be management's responsibility to fix this mess. CA- Miami Beach.

*Sorry but the final responsibly falls on you. You can blame others for the errors, but the final responsibility lies with you as the owner. The board of directors and management do not have the responsibility to confirm your personal information. While they may have a duty to check out returned mail, there is just so far they can go without incurring legal expense to do a skip-trace and locate your correct address. All owners have the duty to pay the correct fees even if for some reason the information is not mailed or sent to the wrong address. You are responsible to provide you correct mailing address and other contact information. The final responsibility is yours.*

58. A couple of weeks ago we received a special assessment. The letter that came along with the bill explained that the Board has had a problem collecting bad debts from other people that will not be recovered, so they have taken it upon themselves to liquidate these debts by charging us. I do not think this is right. I feel very strongly against this. We should not have to pay because of the bad debts caused by others. Can Action Line help? AG- Miami

*No, I do not think Action Line will be able to help. Your association must establish a budget each year and collect fees equal to the expenses expected on the budget. From time to time certain owners are unable to meet their expenses and the unpaid fees cause a shortage in the accounts. Unfortunately, the board has no other choice except to charge the amount to the other owners. You must understand that the income to pay the bills and operate your association comes primarily from the owners. I am sure that the board is doing everything within reason to collect from the dead beats. The problem is that if an owner loses their property for non-payments, there is usually little that the board can do to make them pay. You could start a collection claim against them but quite frankly, if they do not have any money any effort will be worthless. Pay the fee.*

59. Where can I find the safety rules and regulations for our clubhouse swimming pool? We want to make sure that we do not have rules which do not coincide with the State of Florida or Miami-Dade County pool safety rules. DI- Miami

*You can start with the Florida Statutes, FS 514. Your best source is the County Health Department. Call your swimming pool inspector's office and ask specific questions. They will be able to provide you with the proper wording for your sign. You can also obtain operational information from the National Swimming Pool Foundation, 10803 Gulfdale, Suite 300, San Antonio, TX 78216.*

60. A group of homeowners in our condominium would like to change the rules to limit pets to 25 pounds. Our research shows that health and well being of older people improves with pets in the home. What is the best way to approach the Board with our request? Our documents do not contain any reference to this subject. LP- Largo

*In rule making, you must first determine if there is a problem and if a majority of the owners feel the need to change the rules. Then take the question to your attorney and have him draft the recommended change. Your attorney will provide the information on how to get the change approved and the vote necessary to approve the change. As to the point of limiting weight, I do not like such a rule. If you want to limit certain pets, then list a breed rather than weight. A list of small dogs can be determined from veterinary offices or the American Kennel Club. By listing the acceptable breeds, you will be able to more easily enforce the rules.*

61. Is there something somewhere that says: If Boards refuse to enforce one rule, then the others are not enforceable? FO- Orlando

*Since there is no specific information with this question, I would have to say probably not. But, if the board is not fulfilling their duties, it could make for a weak defense if other infractions were attempted to be enforced in court. I would strongly suggest that ignoring one rule is an infringement by the board on their duties and responsibilities. As such, they place themselves and the association in danger of being sued to enforce the rules. This is an example where the board needs legal advice.*

62. **In our community, there are several streets that are called Pet Streets, which allow pets. There are non-pet streets where pets are not allowed. The prospectus does not name the streets but only names the outer areas as allowed having any pets. My question is if you have a pet that never goes out on this property, can they make you get rid of this pet? When I bought my home, I was not aware of this rule and I did not have a pet. I was very lonesome and alone and it was**

less than a week later when I was given a very small dog that uses doggy pads and never goes outside. Can they force me to get rid of this little pet? There are other people on non-pet streets that have cats, dogs, birds, etc and yet nothing is done about that. Also there is a 25 pound limit on pets and there are people with dogs on the Pet Streets that are over the weight limit. What can I do? MA- New Port Richey

*I publish this question for one reason. That is to make future buyers aware that they must read the rules and regulations and ask questions before they buy into an association. There are eccentric rules and regulations that can be found in associations. Make sure that you fully understand the ins and outs before you buy. Yes, associations can have areas where certain rules apply and other areas where they do not apply. I have no answer to your questions. If the rule has been enforced, then the association can require you to remove the pet. If the rule has not been enforced it will be difficult for the association to enforce the rule. The matter should be discussed with the association's attorney.*

63. Does a board have the right and authority to begin to impose monetary fines for association rule infractions? How far can the board go to try to collect such fines? DA- Largo

*Fines may be imposed for rule violations as long as the documents allow fines. The board cannot create the power to impose fines without the document authorization. As with any rule enforcement, the final authority to force compliance is the court system. If the documents allow fines, the Statutes require that an independent committee be formed to review all fines. If the board does not comply with the Statutes and does not have a committee to review the fines, chances are that they will not have the legal powers to collect fines. I like to divide rule enforcement in two categories. The first is self-compliance. This is when the board asks or tells the member of the violation and the members correct the violation. The rule enforcement matter is ended. The second category is when the owner fails or resists compliance. If the board imposes a fine (a legal fine or not), the question is how does the board collect the fine if the owner refuses to pay? The answer is they must take the matter to court to collect the fine. If the board illegally imposed the fine, chances are that the judge will not allow the fine. Fines must be properly implemented. If you must force collections by taking the fine to court, it still may not force the issue of the violation. You still may need to take the matter back to court to correct the violation. The legal expenses would be in the thousands of dollars. For that reason, I suggest that fines may not be the best way to attempt correction of rules violations. I recommend that the board engage an attorney and implement legal action to force correction. The violation will be corrected faster. The board should send two or three letters and then turn the matter over to the attorney to begin action immediately. I suggest that in order to skip fines, it may save time and legal expenses if you begin legal action sooner.*

64. I have taken over the writing of violation letters for my condominium association. They are then reviewed by the President or Vice President prior to being sent out. I have attempted to make them non-threatening but firmly request compliance with the documents of the association. Each letter has a copy of the section of the documents in violation and the letter is signed. A friend suggested I could be sued for writing such a letter because I am not a Licensed Property Manager. Your comments would be appreciated. CI- Miami

*Recognizing that anyone can sue for any reason must be accepted. The key is can they win in court? Here are my recommendations to avoid losing a court lawsuit. First, have a published rules violation policy that is approved by the association's attorney. Keep good records such as inspection reports, operational journals, phone and message logs, and memos of conversations. When it comes to rule violations, have a confidential system for the members to write complaints. Never take a verbal report on a rule violation. After a complaint has been received, an inspection should be made to confirm the violation is a real problem. In addition, the entire association should be inspected to determine if others have the same violation. I recommend this to avoid a defense of selective enforcement. Send your letters in a timely manner and without delays. Start the letter with a statement similar to: a complaint has been received and confirmed by a board member or manager on this date. Say that they are*

*in violation of a specific rule and quote to document. Tell them what they need to do to correct the item and give a specific time to complete the correction. Then follow up with an inspection to confirm if they corrected the violation, keep inspection logs. If they did not, send a second letter that refers to the first letter and say that the matter will be turned over to the association's attorney for court action if the violation is not corrected in a selective time. Your policy should determine if two or three letters are to be sent before being turned over to the attorney. I would also recommend that each letter be signed with a remark: at the instructions of the board of directors or similar words.*

65. Our homeowners association has raised our yearly dues well over 200% over the last several years. Since I am on a fixed income, I told them I cannot afford to pay in a lump sum and was willing to pay by the month. They refused and said they would put a lien on my home if I didn't pay in a lump sum. Can they do this even though I am willing to pay? CY- Orlando

*Yes. You must pay the increased fee as required in your documents and the current budget. Association business is a cold responsibility and the board can not grant certain benefits because one of the members has personal problems. I would suggest that you seek to borrow the funds to pay the fee and then pay the loan on a monthly basis. Credit cards may be the simplest way to borrow the money to pay the fee, or take out an equity loan on your home.*