



By Ronald M. Bolt, ESQ.

Assessing Fines for Covenant Violations

One of the many benefits of a condominium or homeowners association is local governance. An association's covenants secure for owners and residents the reasonable use and enjoyment of property according to rules tailored for the community. Covenants impose architectural standards to preserve the character of the community and other rules related to maintenance, parking, pets, noise and even home-based businesses. In this regard, it is essential that community rules be diligently enforced. In fact, a board of directors generally has a fiduciary obligation to ensure compliance with covenants imposed by the governing documents. This article briefly summarizes the process in Maryland, Virginia and the District of Columbia.

The fine-levying process varies based on what the governing documents require for each association and what enforcement powers have been granted, but the procedure is generally as follows: (i) a complaint is reviewed and investigated; (ii) a notice of violation is issued to the owner; (iii) if the owner contests the violation or otherwise fails to abate the infraction, the owner is given an opportunity to be heard; and (iv) if the circumstances warrant, the board imposes a fine or other sanction. In drastic circumstances, where noncompliance continues after all of these steps and fines do not compel compliance, a judicial remedy can be sought, such as injunctive relief.

There are some notable variations imposed by the law. In Maryland, for example,

if no specific procedure is set forth in the governing documents of a condominium, the Maryland Condominium Act establishes a default procedure which must be followed (Md. Code Ann., Real Property § 11-113). Under this default procedure, a fine or other sanction, such as suspending voting rights or restricting access to facilities or services, may not be imposed until a written demand to cease and desist is served upon the alleged violator that specifies: (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period of at least 10 days during which an ongoing violation may be abated without further sanction, if the violation is a continuing one. If the violation is not a continuing one, the notice should state that any further violation of the same rule may result in the imposition of a sanction after notice and hearing.

If a violation continues beyond the abatement deadline set forth in the notice, or if the same rule is subsequently violated within a one-year period, the alleged violator must be served with written notice of a hearing. The notice must be sent to the violator at least 10 days in advance of the hearing and contain a description of the alleged violation and proposed sanction. Also, it must inform the owner of the opportunity to produce any statement, evidence and witnesses on the owner's behalf, and to cross-examine other witnesses at the hearing. Proof of the notice must be placed in the minutes of the meeting at which the hearing takes place. The notice requirement is deemed satisfied if the alleged violator appears at the hearing. Unlike other jurisdictions, the hearing must be held in "executive" or closed session. The community is apprised of the outcome of the hearing by the meeting minutes, which must contain the results of the hearing and the details of any sanction imposed.

At this time, no specific procedure for the imposition of fines is mandated by the Maryland Homeowners Association Act (Md. Code Ann., Real Property § 11B-101,

et seq.). Senate Bill 266 and House Bill 984, introduced in the 2011 session, would have made the default procedure discussed above mandatory to all Maryland condominium and homeowners associations, regardless of the procedures set forth in the association's governing documents. The bills did not pass, however, and the homeowners association's declaration and bylaws will continue to govern the process for now. Kathleen Elmore, ESQ., chair of CAI's Maryland Legislative Action Committee, explains, "as the law currently stands, both Maryland condominiums and homeowners associations dispute settlement procedures are controlled by their governing documents with a fall back procedure for condominiums in the state law. Most Maryland homeowners associations have no required procedure at all leaving a lot to the discretion of the directors. Word from Annapolis is that this will be addressed in the 2012 legislation session."

In Virginia, the Property Owners Association Act and the Condominium Act both require a board of directors to provide an owner with written notice of the alleged violation as the first step in assessing a fine (Va. Code § 55-79.80:2 and § 55-513). The written notice must be hand-delivered or

sent via certified mail, return receipt requested, to the owner's last known mailing address. Before any fine or other sanction is imposed, the owner must be provided an opportunity for a hearing. Notice of the hearing must be hand delivered or mailed by certified mail, return receipt requested, to the owner's last known address at least 14 days prior to the hearing. The notice must include a description of the possible fine or other sanction that may be imposed. Within seven days after the hearing, the board must issue a written decision that is to be delivered to the owner in the same manner as the notice of the hearing.

Virginia law provides that the amount of any fine for a single violation of a covenant may not exceed \$50 or \$10 per day for a violation of a continuing nature. Fines for a continuing violation may not be imposed in excess of 90 days. Also, fines may not be continually assessed if a lawsuit is filed challenging a fine.

Similarly, in the District of Columbia, before a fine can be levied for a violation of the condominium instruments or rules and regulations of the association, the alleged violator must be given notice and an opportunity to be heard. Other than the notice and op-

portunity for a hearing requirement, no further details about the process are set forth in the code. Thus, the association's declaration and bylaws govern the process. The fines that may be imposed are not limited to specific amounts, as in Virginia, but must be "reasonable" under the circumstances.

Before applying these formal steps to enforce a covenant, associations may consider starting with a less-formal contact. An initial "friendly reminder" advising the owner of the violation and outlining what is required to correct it may achieve the desired result without unnecessary administrative burden and expense. In addition, community associations should consider adopting, and periodically reviewing, an enforcement policy for the levying of fines. It should outline the process for submitting and reviewing complaints, providing notice of alleged violations, the conduct of hearings, and the possible fines and other sanctions that may be imposed for defined infractions. Such a policy will help ensure the efficient and fair application of the rules and will serve to educate residents about the covenants and potential penalties. After all, the best enforcement is preventing violations before they occur. 📺