



# CCOC Communicator

## ENFORCING COVENANTS AND RULES

By Ron Bolt, Esq.

### Inside this issue:

Recent CCOC Rulings	5
What is a "Meeting?"	6
Useful Phone Numbers	7
Commission Partici-	7
Thought for the Day	8

*One of the many benefits of a community association is local governance.* An association's covenants and "house rules" secure for owners and residents the reasonable use and enjoyment of property according to regulations tailored for the community. Covenants impose architectural standards to preserve the character of the community and other restrictions concerning maintenance, parking, pets, noise, and even home-based businesses. Enforcing the rules is not always easy and often fraught with obstacles. This article briefly summarizes the process and important considerations for enforcement, including conducting violation hearings.



Enforcement Procedure to Follow. The enforcement process that a community association must follow varies based on what the governing documents require and what enforcement powers have been granted to the association. The procedure is generally as follows: (i) a complaint is reviewed and investigated; (ii) a notice of violation is issued; (iii) if the owner/resident contests the violation or otherwise fails to abate the infraction, they are given an opportunity to be heard; and (iv) if the circumstances warrant, the board or committee imposes a

(continued on page 2)

### CCOC to Host Training Seminar June 21

## **“Essentials of Community Association Volunteer Leadership” Seminar Set for June 21 in Bethesda**

(continued from page 1)

## **Enforcing Covenants and Rules**

(continued from page 1)

fine or other sanction. In drastic circumstances, where non-compliance continues after all of these steps have not compelled compliance, it may be necessary to file a court action seeking payment of the fines or an injunction to make the necessary changes.

There are some notable variations imposed by the law. If no specific procedure is contained 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 (such as a fine) 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 1-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

(continued on page 3)

## Enforcing Covenants and Rules

(continued from page 2)

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 enforcement is mandated for homeowners associations by the Maryland Homeowners Association Act (Md. Code Ann., Real Property § 11B-101, *et seq.*). In past legislative sessions, bills have been introduced that 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, but such legislation has yet to pass (See, *e.g.*, Senate Bill 266 and House Bill 984, Regular Session 2011). Accordingly, a homeowners association must apply the procedure, if any, in its governing documents. If it has none, it should consider adoption of a dispute resolution policy. The CCOC has held that HOA violation hearings must be open meetings.

HOAs should also know that CCOC policy (described below), is to refuse to accept complaints by an association against a member unless the association has first given the member basic due process, meaning a notice of the alleged violation and the offer of a fair hearing to defend against the charges.

The 2014 General Assembly did, however, adopt a new law establishing a dispute resolution procedure for cooperative housing corporations. The law is similar to that in the Condominium Act and takes effect in October, 2014 (see Senate Bill 865/Chapter 567).

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 or resident 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.



"Receiving a notice of a violation can be a stressful event."

How a Resident Should Respond. Receiving notice of a violation can be a stressful event, but it is often easily remedied. Residents should act promptly to address the violation, while keeping in mind that the Board of Directors or Architectural Review Committee that issued the notice is comprised of their neighbors, who are volunteering their time to insure that uniform rules are enforced for the benefit of the community. Thus, neither the initial contact, nor the resident's response, need be unduly adversarial. If a resident contests that a violation exists, the resident should promptly seek to discuss the issue and seek clarification, if necessary. If informal communications are not successful, residents should request a hearing. In many instances, principles of due process require a hearing.

(continued on page 4)

## Enforcing Covenants and Rules

(continued from page 3)

How to Hold a Violation Hearing. As noted above, the governing documents of the association must be consulted to discern whether any specific requirements must be followed. If the documents are silent, a condominium must follow the default process set forth in the Maryland Condominium Act (Md. Code Ann., Real Property § 11-113). Generally, when conducting a hearing, the association should strive to satisfy the requirements of due process of law. In a nutshell, due process requires (1) notice, and (2) the opportunity to be heard and defend the alleged violation. “At the core of the procedural due process right is the guarantee of an opportunity to be heard and its instrumental corollary, a promise of prior notice.” Golden Sands Club Condominium, Inc. v. Waller, 313 Md. 484 (1987) (quoting L. Tribe, *American Constitutional Law* § 10-15 at 732 (2d ed. 1988)).



“Due process requires (1) notice, and (2) the opportunity to be heard.”

Unlike a court proceeding, there are generally no specific procedural rules or evidentiary standards to be applied. An association hearing is an informal proceeding, and the hearing body should generally err on the side of due process. Reasonable notice of the hearing must be provided. What is reasonable depends on the circumstances. Generally, some effort should be expended to schedule a mutually convenient time. Once the notice has been issued, the hearing authority should be provided a complete copy of the “record” of the alleged violation, which may include e-mails, memos of telephone calls, photographs, and written complaints. It should also include a copy of the hearing notice, so that the notice is properly documented.

The hearing should begin with a summary of the alleged violation and presentation of the evidence indicating that a violation exists. Next, the alleged violator should be given the opportunity to respond, and offer what rebutting evidence and witness testimony he or she would like considered. The opportunity to have other witnesses address the hearing authority should be provided. In this regard, the hearing authority may also need to hear from the complaining party, if any. This may be necessary if, for example, the complaint concerns an asserted nuisance, such as noise. Generally, due process requires providing an opportunity for the violator to confront and ask questions of (*i.e.*, “cross examine”) his or her accuser, and any witnesses. To avoid allowing the hearing to turn into a shouting match, it may be advisable to impose some procedure. For example, the hearing authority may dictate the order of the hearing, such as the following: (1) reading of the violation notice; (2) complaining party’s case; (3) questioning of complaining party by hearing authority; (4) questioning of complaining party by alleged violator; (5) alleged violator’s case; (6) questioning of alleged violator by hearing authority; (7) deliberation by hearing authority; (8) hearing authority’s vote.



During the hearing, it is important for the secretary or other designated individual to take notes and to ensure that the vote is recorded in the minutes. Once a decision has been made, it may be appropriate to issue a written decision, based on the nature of the violation and the required remediation, rather than relying upon verbal instructions and a brief summary in the minutes. What detail is required depends on the circumstances. The covenants and rules must be consistently and fairly enforced. Thus, it may also be helpful for the hearing authority to compile a list of precedent, if possible. Associations should also confer with legal counsel before undertaking enforcement. Legal counsel can confirm the authority to impose certain sanctions and offer guidance on whether rules and their application are reasonable and likely to be upheld by reviewing courts.

It is often best to take the initial viewpoint that a violation hearing is an opportunity to abate a violation, and not to punish a neighbor.