

Bristol Management Seminar

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**RULES ENFORCEMENT, FINES COLLECTING,
& GOOD BUSINESS JUDGMENT**

Presented by: Gary D. Fields, Esquire
LAW OFFICE OF GARY D. FIELDS
4400 PGA Boulevard, Suite 900
Palm Beach Gardens, FL 33410
Phone: (561) 625-1200
Fax: (561) 625-1259
e-mail: gflaw@adelphia.net

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Recommended Enforcement Measures:

Step One – The “Neighborly” Phone Call - Remember, we are a neighborhood, not a retail business. So, if it’s reasonably possible, make a phone call. Either from the board or the manager. Maybe the unit owner wasn’t aware of a specific rule or forgot. Maybe they’ll cooperate once they realize they screwed up.

Step Two - The “Nice” Letter - If the phone call isn’t available or doesn’t work, send one nice letter. Pointing out the problem and asking the person to please correct it within a reasonable time. Always put down a specific deadline by when you would like the matter corrected. Otherwise, if they ignore the letter, you have accomplished nothing by sending it. It is a good idea to send all enforcement letters by both regular mail and certified mail/return receipt. This generally assures that they get at least one or the other. It also provides you with proof of delivery or attempts at delivery. If both letters come back, you know you probably have a mailing address issue to deal with before you take any other actions.

Step Three - The “Not-So-Nice” Letter - If the first one is ignored, this is where you shift from “good neighbor” to “protector of the community”. You explain that they have ignored the prior letter, and that this is a final warning, prior to the matter being turned over to (cue the Darth Vader music) the Association attorney. This letter should set a final deadline, and explain that if the matter goes to the attorney, the violator may be responsible for the Association’s attorney’s fees and costs. (NOTE: This letter could, alternately be used to warn that fining is the next step, and could set forth the “proposed” fine, if your association has fining authority in its documents, and wishes to proceed with the fining process – I’ll explain what is involved in that process and the reasons you may or may not want to use it, a little later on in my presentation).

Individual assessments - Some associations have the right to maintain/repair/replace items that an owner has failed to maintain or repair or replace (e.g.- broken or unpainted mailboxes) - individual assessment, lien. This can be effective for a small item, such as broken mailbox post. But caution is advised if the owner attempts to

deny access to the property. You are then better off not using this method.

Step Four - The “Nasty-Gram”. If the “not-so-nice” letter is ignored, it is time for the Dark Side to get involved - turn the matter over to your counsel. At that point, your attorney should send the ultimate final warning letter. This letter reminds the violator that, despite prior warnings by the association, they remain in violation of the documents. This letter sets one final deadline for compliance, and provides specifics as to what will happen if the owner fails to comply by that date.

For HOA’s, the letter states that the Association will seek a mandatory mediation under the HOA Statute, and that the unit owner will be responsible, under that Statute, for one half the costs of the mediation, regardless of the outcome (the HOA Act now requires such a mediation before any party can go to court on a compliance issue). The letter should also state that, if the mediation is unsuccessful in resolving the matter, the Association intends to pursue a court action for an injunction against the unit owner, and that the Court has the authority to enter fines against the unit owner for further non-compliance, and to award the Association its attorney’s fees and costs against the unit owner.

For Condominiums, the letter states that the Association will seek a mandatory non-binding arbitration (which is required, prior to any litigation, per the Condo Act), and that the unit owner may be liable for the Association’s attorney’s fees and costs for the arbitration, and for any necessary court litigation.

Step Five - The “Last Resort” - Mediation/Arbitration and possible litigation.

Fines and Collecting Them

Whether you are an HOA or a Condominium, the rules for fines are now pretty much the same.

1. Your documents must specifically authorize your Association to levy fines;
2. You must by letter inform the alleged violator of your intention to fine them. You can list the amount of the proposed fine. Your letter must tell the unit owner what the alleged violation is, and generally must give them at least 14 days notice of a hearing on the matter. Some association’s documents also require that you give the unit owner an opportunity to cure the violation prior to any possible fine being levied;
3. Whether or not the unit owner appears, the matter must be heard by an independent committee. The committee can not have Board members,

Association employees, or their relatives on it.

4. The committee decides whether to impose a fine, and in what amount. Fines are limited to \$100 per occurrence. However, continuing violations can be fined at \$100 per day, up to a maximum of \$1000.

Collecting fines - Due to legislative changes, this has become a major problem, and now substantially weakens the effectiveness of fining.

Under both the current Condo and HOA statutes, a fine cannot become a lien. Therefore, you can not collect it like you do an assessment. Without the power to lien, and foreclose that lien, your ability to collect the fine has virtually vanished.

Although you have the right to collect attorney's fees and costs in collecting a fine, if a unit owner refuses to pay it, you have two choices:

1. Go to small claims court and seek a judgment. This is generally not collectible against most individuals, and if you use an attorney, will often result in spending more for attorney's fees than you are owed for the fine.
2. Leave the fine on the account. If you are lucky, when the unit is sold someday and you provide a payoff to the closing agent, it will be paid. However, a sharp closing agent could refuse to pay it since it is not a lien against the property.

Good Business Judgments

The business judgments you make as a Board will often have lasting effects on your community. Therefore, consider your actions carefully.

1. **Pick your battles.** Don't go to war over trivialities. You have a fiduciary duty to all of your members, that includes the duty not to waste their money on unworthy causes. If someone paints their home purple plaid, you probably need to go to the wall. If someone is late taking in their garbage cans a few times, just remember you are neighbors. Look at the big picture.
2. **However, Be Aware of the Waiver Issue.** Courts in Florida have ruled that if you fail to enforce provisions of your governing documents in a reasonably timely manner (and our local appellate court says this is generally one year), you could be considered to have permanently waived those provisions. So, if you fail to act on something that matters, you could be "waving goodbye" to that specific rule.

3. **Selective Enforcement.** You can not enforce something against one owner, while allowing others to do it. This issue is raised all the time in disputes. So make sure you are not picking on someone where similar abuses by others are not being pursued.
4. **Towing.** Cannot do this without specific authority in your documents, and also must follow statutes on posting notice, etc. Very sensitive area. People go nuts when their cars are towed. Often leads to physical confrontations or worse. Generally not worth it. Better off fining, seeking a mediation or arbitration, and even a court injunction if necessary on a steady parking abuser.
5. **Physical Confrontation Issues.** Avoid this at all costs. Can lead to much larger liability issues for your Association. Comes into play typically in towing matters, and situations where the Association has the right to go onto someone's property to remedy a violation.
6. **Pluses and Minuses of the Various Enforcement Procedures:**
 - A. **Phone Calls** - Time consuming and sometimes confrontational. But often worthwhile, inexpensive and generally appreciated.
 - B. **Letters** - Low cost. Only effective if specific, provide deadlines, and sent regular and certified/return receipt. But absolutely necessary to provide due process before other, more penal actions.
 - C. **Fining.** Often tough to get a committee willing to serve. Virtually impossible to collect fines. But, possibly still worthwhile as a last attempt to get compliance before involving the expense of legal actions.
 - D. **Mediation (HOA's)** - Doesn't require anyone to resolve the problem. However, inexpensive and has a high degree of success - people often just need to vent. This gets everyone together with a neutral mediator, and gives them a chance to talk things out. And a signed settlement agreement is fully enforceable in court.
 - E. **Arbitration (Condo's)** - Less expensive than court. But, if either side unhappy with result, can still take the matter to court. So also not necessarily final.
 - F. **Civil Suit** - By far the most expensive. Even if Association wins, Courts often don't award all attorney's fees and costs. Can be a financial disaster. Also, possible expensive appeals. AN ABSOLUTE LAST RESORT. COURT IS NOT THE PLACE YOU WANT TO BE.

7. **Members Speaking at Board Meetings.** Although not an “enforcement” issue, I bring this up because it is often a sensitive issue.

In Condo’s, the Act allows all unit owners to speak for up to 3 minutes on any agenda item, at the time the Board is discussing that item.

In HOA’s, the Act only requires that unit owners be allowed to speak as to items they put on the agenda by petition (again for up to 3 minutes).

Recommendation - Neighborhood. Try to encourage reasonable participation in the process. If there are abusers, try to keep them on point and to the 3 minute rule.

8. **Robert’s Rules.** *Only* if control of the meeting is slipping away.
 - A. 3 minute timer.
 - B. HOA’s - can shut off right to speak, or can limit to end of meeting.
 - C. Even in Condo’s, a Board member can make a motion to sanction someone if they will not refrain from inappropriate conduct; Upon Board approval of the motion, the individual can be instructed to be quiet, leave, or if they refuse, the meeting can be adjourned. In exceptional situations, a police officer can be called and asked to escort the person from the meeting.

You should generally consult with your management company before undertaking any enforcement action. Their experience will be of great value to you in deciding how to proceed. A good management company will also know their limits. They will know when they should be consulting with your Association counsel on enforcement matters and others.