

CC&Rs

📅 March 22, 2025 🔖 Governing Documents

People who are vested with the responsibility of managing a homeowners or property owners association, and the members of the association, must act in accordance with applicable state and federal laws, as well as the association's governing documents. The association's declaration of covenants, conditions and restrictions ("CC&Rs") is a recorded document that contains use restrictions that are presumed to be valid and are enforceable unless they are found to be unreasonable.

Whether an association's CC&Rs are "reasonable" is determined by reference to the common interest development as a whole and not by reference to a specific homeowner. Because the provisions contained in an association's CC&Rs are presumed to be valid, the party challenging the provision has the burden of proving otherwise. The restrictions contained in an association's CC&Rs will be enforced unless the restriction is found to be: (i) arbitrary; (ii) impose burdens on the property that substantially outweigh the restriction's benefits to the association's residents; or (iii) in violation of a fundamental public policy.

Duty to Investigate and Enforce Restrictions

Associations have a duty to enforce their **governing documents** and when they fail or refuse to do so, members can sue the association for damages and for injunctive relief to compel it to take action to enforce its CC&Rs. Since associations have a duty to enforce restrictions, it follows that they have a duty to investigate complaints of alleged violations. The duty to investigate alleged violations stems from the fiduciary duty of due diligence that is imposed on association directors. To fulfill that duty, an association's board must make reasonable inquiry of alleged violations before making decisions. This does not mean that the directors must investigate a violation—they can rely on managing agents, committees, or others to gather information for their review and discussion. The directors cannot disregard what is going on in the conduct of the association's business and have it said that they are exercising their sound business judgment.

Decision to Enforce CC&Rs

When an association decides to take action to enforce an owner's compliance with its CC&Rs, the association must show: (i) that it followed its standards and procedures in connection with the

An "arbitrary" decision is a decision that is based on random choice or person whim. Black's Law Dictionary defines arbitrary as "Willful and unreasoning action, without consideration and regard for facts and circumstances presented.....bad faith or failure to exercise honest judgment." A "capricious" decision is a decision that is impulsive and unpredictable and subject to whim. Black's Law Dictionary defines arbitrary and capricious action as "willful and reasonable action without consideration or in disregard of facts or law or without determining principle."

Due Process

When dealing with enforcement issues, an association must provide the alleged violator with "due process" by exercising its decision-making in a manner that is both substantially rational and procedurally fair. Substantive due process requires that the decisions of an association's board of directors be reasonable and not arbitrary or capricious. Procedural due process requires that the procedures that are used of determining whether there has been a violation and, if so, the procedures for imposing penalties for the violation, be fair. To ensure fairness, the alleged violator must be properly informed of the charges, the proposed disciplinary action, and be provided with an opportunity to in some manner present countervailing evidence.

State laws and an association's governing documents provide specific requirements for the conducting of hearings and related proceedings to protect an alleged violator's rights and ensure that he or she is afforded the due process that the law mandates before the association may find that there has been a violation of its governing documents.

Enforcement Options

When an association has made a decision to take action to enforce a restriction, the method of enforcement can be through the imposition of monetary penalties, the suspension of privileges, and legal action for injunctive relief (to compel compliance). The enforcement method that is employed should be in accordance with the association's established policy relative to the enforcement of its governing documents.

When it comes to taking legal action to enforce their governing documents, association boards are given some degree of discretion. The association's board of directors can evaluate the anticipated cost of the litigation, the seriousness of the violation, and the likely outcome of the litigation, and make a good faith determination on whether or not it is in the best interests of the association to institute litigation for a particular violation. Although the courts will generally grant deference to a decision by an association's board of directors (defer to the directors' decision) relative to an enforcement action under the business judgment rule, that deference is accorded only if the

Loss of Right to Enforce CC&Rs

Under certain circumstances, when an association's board fails or refuses to take action to enforce a restriction, the association can lose its right to enforce the restriction due to a statute of limitations, or an equitable remedy imposed by a court such as laches, waiver, or estoppel.

Every state has laws that impose a time limit, or "statute of limitations" for the filing of certain types of actions in court. Generally, the statute of limitations for the filing of an action based on a violation of an association's CC&Rs is either 4 or 5 years from the time the violation is discovered or, through the exercise of reasonable diligence, should have been discovered. If the action is not timely filed, the association can lose the right to file the action after the limitations period has expired. Thus, association board members should be familiar with the applicable limitations period in their state.

The equitable remedy of "laches" is based on the theory that parties must be vigilant in the enforcement of their rights and if a person is slow to assert their rights, and the delay harms the other party, the enforcement right may be lost. There must be an unreasonable delay that causes prejudice to the other party.

A "waiver" is the knowing and intentional relinquishment or abandonment of a known right. An association could lose the right to enforce a restrictive covenant when it has a history of acquiescing in similar violations, although a failure to enforce one, or a few, violations will generally not be sufficient for a court to deem that enforcement of the restriction has been waived.

An association may also be "estopped" from enforcing a restriction where its directors or management personnel have, through language or conduct, led a person to do that which he or she would not otherwise have done and as a result, the person has suffered injury.

Conclusion

Association directors, management personnel, and members should have an understanding of their respective rights and responsibilities relative to the enforcement of an association's governing documents. To that end, they should be familiar with the provisions contained in the association's governing documents and in their particular state's statutes relative to the enforcement of the governing documents and make certain that the actions taken by their association, and the alleged offending parties, are consistent with both the applicable statutes, and the association's governing documents. When in doubt, guidance should be sought from experienced legal counsel in the jurisdiction of the association.



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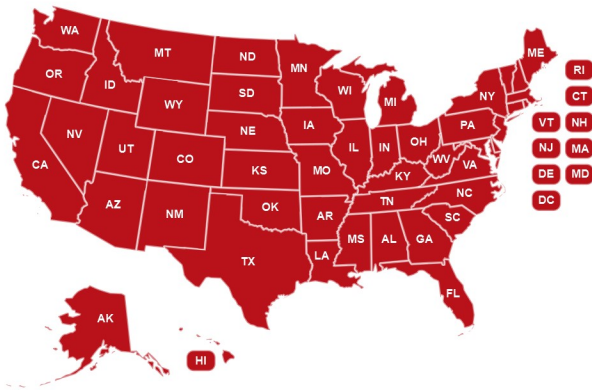
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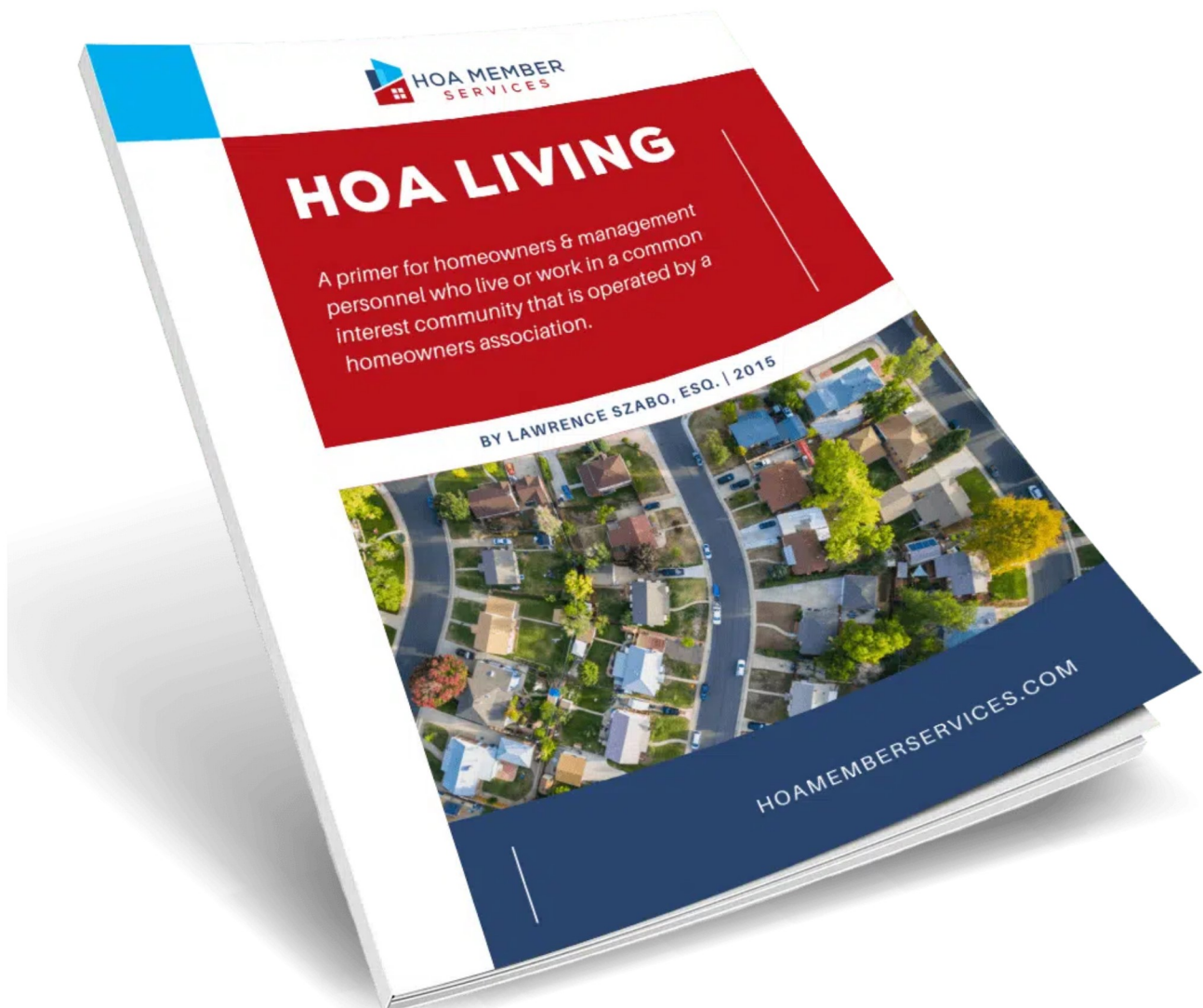
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