

The Almighty Injunction

MARCH 2021

In the world of enforcing covenants, deeds, and restrictions, injunctions are one of the most powerful tools association managers have in their arsenal. An injunction is an order from a Court either requiring a homeowner to comply with particular rules or restrictions or ordering the homeowner to cease violating the restrictions. Associations can request injunctive relief whether or not the association wishes to seek monetary damages against the homeowner.

Courts are often willing to award injunctions for several reasons. First, in most cases where injunctions are appropriate, the association has taken many steps prior to filing suit to enforce the covenants, including communications with the homeowner, calling the owner to a due process hearing of the board, assessing non-compliance charges, and oftentimes demands for compliance from the association's attorney. The association can then plead with the Court, arguing that there is little else the association can do to enforce the restrictions. Judges are frequently sympathetic to these arguments, especially considering the fact that the restrictions are legally deemed to be a contract with the homeowner, and if the homeowner refuses to abide by the contract, then the only avenue for redress is with the Courts. Additionally, most violations affect the neighboring properties and often decrease home values and/or make it difficult for neighbors to sell their property.

Additionally, in Virginia, if an association fails to enforce its covenants and restrictions, there is a possibility that it can be deemed to have waived the right to enforce those restrictions at a later date. Think of it like a city that declines to enforce zoning ordinances. When developers construct buildings in violation of the zoning restrictions, and the city refuses to enforce those ordinances, it would be unfair for the city years down the road to make an about-face and decide that those same buildings are now out of compliance. The city will be stuck with their prior actions because the developers relied on the non-enforcement to their detriment. Similarly, if an association fails to enforce restrictions, and a homeowner takes actions over a period of time in violation of the restrictions, the homeowner can argue that the association waived its right to enforce the covenants. Thus, when an association goes to Court to obtain an injunction, it should argue that, unless it utilizes every remedy available to it (including injunctive relief), it could have permanent implications in that the association may lose the ability to enforce that covenant in the future.

An injunction is so powerful because it can be immediately enforced when there is a violation of the injunction. There is no need for time-consuming notices, board meetings, or other procedural

mechanisms. The association simply files a Motion for Order to Show Cause with the Court and asks that the Court find the homeowner in contempt of the injunction order. The Court has several options to enforce the injunction, including assessing fines and attorney's fees and, if the homeowner continuously refuses to comply with the injunction and/or show up for hearings on the violation, issuing a capias for the homeowner's arrest. Once the capias is effected, the homeowner must appear for the hearing or face actual jail time. It is unlikely that a Court will actually issue jail time to the homeowner, but in extreme cases, a capias can jolt the homeowner into realizing just how serious the association is about enforcement. Additionally, the Court may very likely award a judgment in favor of the association for the attorney's fees charged in such an action, further encouraging the homeowner to comply.

In seeking an injunction, the association should try to be as broad as possible. While some judges will only award an injunction to address the specific violation at issue, depending upon the type of violation, others may be willing to sign injunction orders preventing the homeowner from violating the covenants and restrictions in any manner. This type of inclusive injunction gives the association great power to bring the homeowner to Court whenever there is a violation. Associations should take care not to abuse the authority of the Courts by bringing a Motion for Order to Show Cause for each violation, but for repeated violations, it can help associations get right into Court in order to enforce the injunction without the need to file additional preliminary pleadings.

Injunctions help associations cut through administrative red tape and efficiently enforce their covenants and restrictions. When filing suit for a breach of the covenants or rules and regulations, associations should strongly consider seeking broad injunctive relief against the homeowner.

This article was originally published in the Southeastern Virginia Chapter of Community Associations Institute's *Currents* publication, the regional chapter of the Community Associations Institute.

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