

CARPENTER HAZLEWOOD
 Corporate, Residential, Dockets & Sales, PLLC
 ATTORNEYS AT LAW

**Enforcement of CC&R's:
 Are There Any Simple Solutions?**

BAD NEWS

NO!!

Enforcement of CC&R's

WHY?

- 1. COURTS vs. LEGISLATURE**
 - **Courts** – Require an Association to Enforce its Documents
 - **Legislature** - Wants to Take Away an Association's Power to Enforce Its Documents
- 2. YOUR DOCUMENTS ARE TERRIBLE**
- 3. LIMITED OPTIONS**
- 4. STUBBORN OWNERS**

Enforcement of CC&R's

COURTS v. LEGISLATURE



Enforcement of CC&R's

What Do the Courts Say About Enforcement?

I. COURT OF APPEALS CASES

- A. **ARIZ. BILTMORE ESTATES ASSOCIATION v. TEZAK**, (177 Ariz. 447 (App. 1993))
- B. **GFELLER v. SCOTTSDALE VISTA TOWNHOMES ASSOCIATION**, (193 Ariz. 52 (App. 1998))
- C. **JOHNSON v. POINTE COMMUNITY ASSOCIATION, INC.**, (205 Ariz. 485 (App. 203))
- D. **TIERRA RANCHOS HOA v. KITCHUKOV**, (216 Ariz. 195 (App. 2007))
- E. **COLLEGE BOOK CENTERS v. CAREFREE FOOTHILLS HOA**, (225 Ariz. 533 (App. 2010))


Enforcement of CC&R's

Legislature Views On Enforcement

- A. Wants to Limit an Association's Power**
 - Example: Remove Fines from Automatic Assessment Lien
- B. Wants to Give the Homeowner More Power**
 - Example: Administrative Law Judge and Right To Appeal in an Open Meeting
- C. Wants to Change an Association's Documents**
 - Example: Flags, Political Signs, Children at Play Signs, Playing in the Street, Real Estate Signs, Open House Signs, Door-to-Door Political Solicitation, Commercial Vehicles, Solar Panels, and Satellite Dishes (Federal).
 - Not going to touch Fair Housing Issues!
- D. Wants to Make an Association Jump Through Hoops**
 - Example: A.R.S. § 33-1803 and A.R.S. § 33-1242
 - Notice and Opportunity to be Heard, 10 Days to Request Information, etc.

Enforcement of CC&R's

BAD DOCUMENTS



Enforcement of CC&R's

BAD DOCUMENTS

**IT IS NOT YOUR
FAULT!!!**

Enforcement of CC&R's

BAD DOCUMENTS

1. Confusing and/or Ambiguous Provisions:

"All vehicles of Owners and of their lessees, employees, guests and invitees shall be kept in garages or residential driveways of the Owners wherever and whenever such facilities are sufficient to accommodate the number of vehicles on a lot; provided, however, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking is otherwise prohibited by this Declaration or the parking of any inoperable vehicle. In the event the garage or driveway is insufficient for parking, temporary parking shall be allowed on the street; in no event shall overnight on-street parking be allowed. Parking in the front or side yard of any Lot is prohibited." or

"It is the intent of the Declarant to restrict On-Street parking as much as possible."

Enforcement of CC&R's

BAD DOCUMENTS

2. Limited Authority:

- Mandatory "ADR" Provisions
- No Rule Making Authority
- No Attorneys' Fees Language
 - Rely on A.R.S. §12-341.01

3. Bad Provisions:

- Documents are Outdated
- Documents Don't Match the Community
- Remember: *Johnson v. Pointe*
 - Enforce or Amend.

Enforcement of CC&R's

BAD DOCUMENTS

"The best way to get rid of a bad law is to enforce it vigorously."

-- Abraham Lincoln

Enforcement of CC&R's

LIMITED ENFORCEMENT TOOLS



Enforcement of CC&R's

LIMITED ENFORCEMENT TOOLS

FOUR OPTIONS:

1. Self Help
2. Fines
3. Injunctive Relief
4. Compromise

Enforcement of CC&R's

Enforcement Options

1. "Self-Help"

- Must follow governing documents EXACTLY. Notice, opportunity to cure, etc. Otherwise, self-help is a trespass.
- Recommended for vacant homes.
- No Responses to Violation Notices.
- Consider this option when fines equal or exceed the cost of the work that needs to be done.

Enforcement of CC&R's

Enforcement Options

2. Fines

- First Line of Defense
- ARS § 33-1242 [Condominiums] and ARS § 33-1803 [planned communities] permit imposition of fines.

After notice and an **opportunity to be heard**, the board of directors may impose reasonable monetary penalties on members for violations of the declaration, bylaws and rules of the association.

- Still Collectable: "Enforce Through the Wallet"
- Personal Obligation of Owner

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Enforcement Options

3. Injunctive Relief

- Need Court to Order Owner to Comply
- Good Attorneys' Fees Provision
- Not Paying Fines
- Property is Occupied
- Egregious Violations
- Expensive Violation
- Owner Told You to "Stick It Where The Sun Don't Shine."

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Enforcement Options

4. Compromise

- Bad Documents
- Solution Cost Outweighs Risk
- Waive Fines
- Meet with Owners
- Variance or Delayed Compliance
- Others??

Enforcement of CC&R's

OWNERS



Enforcement of CC&R's

Best Enforcement Practice #1

KNOW YOUR DOCUMENTS!

Enforcement of CC&R's

Best Enforcement Practice #2

ENFORCE YOUR DOCUMENTS AS WRITTEN!

Free Enforcement of CC&R's

Best Enforcement Practice #3

USE ALL OF YOUR TOOLS!

Enforcement of CC&R's

Best Enforcement Practice #4

ACT REASONABLY!

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Best Enforcement Practice #5

PUT EMOTION TO THE SIDE!

Enforcement of CC&R's

Best Enforcement Practice #6

**KNOW THE LAW OR CONSULT
YOUR ATTORNEY!**

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Best Enforcement Practice #7

BE CONSISTENT!

Enforcement of CC&R's

Best Enforcement Practice #8

DOCUMENT, DOCUMENT,
DOCUMENT!

Enforcement of CC&R's

Thank You!

QUESTIONS?
