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Program Speakers

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Introduction

1. Common enforcement categories
2. Reporting the violation
3. Rule enforcement framework: a toolkit
4. Applying the framework: dealing with specific scenarios
5. Best practices/final thoughts
6. Questions and answers

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Common enforcement categories

"When in Rome . . ."

Rule: garage parking is required



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Common enforcement categories

"I did it my way."

Rule: nuisance is prohibited



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Common enforcement categories

Napoleon joins the board

Rule: house colors must come from the approved paint palette



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Reporting the Violation

- Who reports rule violators?
- Is it acceptable to take photos/video to show proof of violation?
- Who enforces the rules?

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Rule enforcement framework: the toolkit

1. Friendly letter or telephone call from board or manager

“Just so we’re on the same page...”



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Rule enforcement framework: the toolkit

2. Formal letter from management demanding compliance

“Seriously, this needs to stop.”

- Describe the behavior
- Identify the rule
- Advise as to consequences if behavior continues

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Rule enforcement framework: the toolkit

3. Board imposed discipline: The conduct must violate a specific rule!

- Fine schedule distributed annually to members (CC §5850)
- Notice a hearing (CC §5855)
 1. 10 days' notice for fines/ 15 days' notice for suspension of member privileges (CC §7341)
 2. Notice to contain date, time, and place of meeting along with nature of violation
- Member has right to address the board/executive session at request
- Hold the hearing, weigh the evidence, decide, inform the owner

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Rule enforcement framework: the toolkit

4. IDR - Internal dispute resolution

- Must provide a “fair, reasonable, and expeditious procedure.” (§5905(a).) This includes “maximum reasonable use” of mediation, making use of a local third party neutral. (§5905(b).)
- IDR procedures (§5915) - key items are:
 1. Association must participate if initiated by member. Member has option to participate if initiated by association
 2. Process is free to member
 3. An agreement reached is judicially enforceable if it does not conflict with law/governing docs
- REMINDER: Include IDR process in annual policy statement notice. (§5915.)



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Rule enforcement framework: the toolkit

5. Strong Attorney Letter

- *Letterhead, letterhead, letterhead*

6. ADR (alternative dispute resolution)

- *Pre-litigation requirement*

7. Litigation

- *Injunctive relief*
- *Damages*
- *Recovery of attorney fees*



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Rule enforcement application

“When in Rome . . .” (1 of 3)

Paula & Her Big Truck

- How do you proceed?
- Suggested approach



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Rule enforcement application

“I did it my way” (2 of 3)

Tenant repeat violator

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Rule enforcement application (2 of 3)

- How do you proceed?

1. Revise fine policy to allow for larger fines against repeat, egregious conduct, and apply to tenant to increase pressure.
2. Issue letter to tenant demanding that tenant vacate the premises and offer \$1,000 if vacated within 60 days (“cash for keys”)
3. Issue attorney demand for ADR to owner on basis of violations with threat to evict, including recovery of attorney fees.

- Suggested approach



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Rule enforcement application *Napoleon joins the board (3 of 3)* Board member violator



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Rule enforcement application (3 of 3)

- How do you proceed?

1. Ask the board member to recuse themselves
2. Form executive committee
3. Remaining board members pursue enforcement against board member same as other owners
4. Board to adopts code of conduct for all board members to sign and directors receive education on fiduciary duties of the board
5. All of the above

- Suggested approach

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Best practices / final thoughts

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