



COMMUNITY MATTERS

LUEDER, LARKIN & HUNTER

News and Trends in Community Association Law

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Notice Me: Best Practices for Notice Requirements

by | **Darrelyn S. Hughes, Esq.**

When a property draws a community association's attention, it is usually because a community member has noticed something "wrong" such as a poorly kept lawn,

structure, or other maintenance-related issue. When seeking to remedy the problem and enforce the association's covenants, it is imperative that the governing documents (including the declaration, by-laws, and any rules and regulations) be reviewed for any requirements that are in place regarding communicating the issue to the owner before taking certain actions. In other words: When you "notice" an issue, you should also "notice" the owner. Providing proper notice can give an owner time to resolve issues before the matter escalates, avoiding costly lawsuits or self-help expenses. In other cases, proof of notice can help the HOA establish a strong case in the event filing a lawsuit becomes necessary. Failing to properly notify an owner before taking legal action can lead to adverse outcomes.

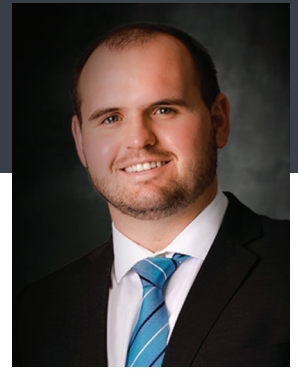
When reviewing your governing documents for notice requirements, key provisions to look for include the following:

1. **Hearing:** Do the governing documents require the board to give the owner a hearing on disputes before taking certain actions? If so, does the owner need to be notified of their right to a hearing? If you are unsure, consult counsel before proceeding.
2. **Alternative Dispute Resolution:** Some covenants require the board and owner to try to resolve their dispute by utilizing a neutral third-party before filing a lawsuit. If your declaration makes any reference to alternative dispute resolution, arbitration, or mediation, consult your attorney for best practices to comply with this provision. Failure to comply with this provision could lead to costly lawsuits or the association completely waiving covenant enforcement rights as to the owner for the violation that is occurring.
3. **Account Delinquency:** Most declarations require associations to notify the owner in writing that their account is past due before accelerating assessments or taking legal action. Many well-meaning board members may wish to reach out to their neighbors personally to offer a payment plan. However, verbal notice is rarely sufficient to satisfy the declaration's requirements, and it is harder to prove that verbal notice occurred and what exactly was said and by whom if the situation escalates down the road to a lawsuit, for example. Further, by speaking with an owner directly regarding a legal matter, you may become a necessary witness to further legal action. If you are compelled to reach out to a community member before escalating the matter to collections, consider taking this opportunity to see if any written notices should be sent to the owner instead.
4. **Meetings:** The Georgia Condominium Act ("COA") and Property Owners' Association Act ("POA") require that notice of annual or regularly scheduled meetings be given at least 21 days prior to the meeting. For other types of meetings, seven days' notice is required. Ensure the meeting notice states the time, place, and purpose for the meeting. If your community is not governed by either the COA or POA, be sure to review meeting notice requirements in your governing documents.
5. **Self-Help:** If your community is governed by the COA or POA or, if it is not but your governing documents allow it, an association may want to utilize self-help to resolve a property's maintenance issues. This tool can be especially helpful when the owner is non-responsive, lives off-site, or is a corporate entity. If utilizing this tool, be sure to comply with notice requirements. If your declaration does not require the sending of written notice prior to utilizing self-help, you must still provide at least ten days' written notice to comply with these statutes.
6. **Snail Mail and Electronic Mail:** Generally, the association is only required to prove that it sent notice rather than prove the owner actually received such notice. However, we recommend sending notices to the property address, any additional address the owner has given to the association in writing, and the email address on file if one is available. Some older covenants require all notices to be sent first class or certified mail.

If you are unsure whether you have properly given notice to an owner before taking action, speak with your attorney. Remember, if you notice an issue, do not forget to properly "notice" the owner. ❖

Following the Rules: Fines, Self-Help, and Court Orders

by | **Andrew S. Mozingo, Esq.**



From maintenance requirements to architectural approval procedures, many covenants exist for the purpose of upholding a community's standards. But what can a community

association do when an owner ignores these obligations? How can an association enforce its covenants and restrictions to maintain the community's standards?

While not the only options that might be available, an association will generally have three primary ways of enforcing its covenants: fines, self-help, and injunctive relief. For some covenant violations, all three of these options can be exercised simultaneously. However, in certain scenarios, an association will only have one of these remedies at its disposal. Choosing the best way to enforce a community's covenants requires an understanding of how each of these approaches can offer a solution. Which option makes the most sense will depend on the situation and should be decided on a case-by-case basis.

Fines may well be an association's most effective tool for enforcing compliance. Fines offer a compelling reason for an owner to address their violation and prevent it from becoming an issue again. Unfortunately, not all communities have the authority to impose fines. For communities that do have this option, an owner might simply ignore the mounting penalties. When continuous fines do not convince an owner to address the violation, communities are not only left dealing with the issue, but the penalties imposed can begin to appear excessive and unreasonable. Where a board only wanted to have a violation addressed, the association could soon find itself looking like the villain just for trying to enforce its covenants.

When fines begin to rack up and an owner has ignored the penalty, self-help can offer a solution. Self-help is a process in which the association, after sending proper notice, enters the property to correct a violation itself. The association may then assess the costs incurred to address the issue to the owner and property.

Imagine a home whose owner is nowhere to be found. The lawn has not been mowed in months. It seems the front door might end up lost in a jungle if things keep heading in this direction. This situation would be a good candidate for self-help. Fines would likely not have solved the issue, and self-help immediately improves the condition of the property. But while self-help may sound like a great solution to a violation like lawn maintenance, this remedy does not lend itself to all violations. Self-help cannot fix a leasing violation. Entering a home to fix broken window treatments would also never be advised. Other factors, such as the possibility of violence or aggression, must also be considered. When an owner objects to their

association exercising self-help, a community will almost always have a more appropriate remedy available.

If fines do not persuade an owner to address the issue, and self-help is either impractical or unavailable, an Association can still turn to the courts for help. Filing a lawsuit for injunctive relief requests an order from the court requiring an owner's compliance with the covenants. When an owner fails to comply with an order granting injunctive relief, the association may seek sanctions from the court, including punishment for contempt of court. Courts consider this an "extraordinary" remedy, and seeking sanctions can be a lengthy and expensive process. However, when an owner leaves the community with no other alternative, seeking sanctions for failure to comply with the court's orders remains the "nuclear option" in an association's arsenal.

Associations should reach out to their attorneys for guidance to help find the most effective remedy to accomplish the ultimate goal: compliance with the covenants. ❖





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