

COMMUNITY LIVING

Conduct a hearing before levying fines to alleged violators

By Pamela Dittmer McKuen
Special to the Tribune

Community association residents who violate rules must be given due process before receiving a fine or other penalty. But what is the process?

In the context of an association, "due process" loosely refers to Section 18.5(c)7 of the Illinois Condominium Property Act. The law gives boards the power to levy reasonable fines on violators after they have been given "notice and an opportunity to be heard." It applies to both condominium and non-condominium associations.

Boards, however, are on their own when it comes to interpreting the vague wording of the law, especially if their declarations or covenants don't spell out how to serve notice and conduct a hearing, said association attorney David Rudolph of Chicago.

"Then you have to look at what the courts would say was equitable and fair if the resident files a lawsuit against the association and says I wasn't given a proper hearing," he said.

Violation proceedings should begin with a written and signed complaint, said association attorney Chuck VanderVennet of Fosco VanderVennet & Fullett in Mt. Prospect.

"We counsel against accepting anonymous complaints because they can't be verified," he said. "A prong of criminal law that creeps in a little bit is the right to confront one's accuser.

Getting one's due

Before a fine is levied:

- A complaint should be written and signed.
- A letter should be sent to the alleged violator that explains the infraction and the consequences.
- The resident should be offered a hearing before the board.

We don't have statutory language that makes that happen but it still is within the realm of reasonableness to question the board's ability to evaluate the credibility of witnesses if they are not brought forward."

The next step is sending to the alleged violator a letter that explains the infraction and the consequences. It also invites the resident to meet with the board to explain what did or didn't happen before the board takes action. The resident can bring witnesses and an attorney.

"The association could say if you want a hearing, let us know by blank date," said Rudolph. "If they don't exercise the right to a hearing, they don't have one, but they've had the opportunity."

If the resident declines a hearing, the board can levy the fine, he said.

When to hold the hearing depends in part on the severity of the violation, said Tom Skweres, vice president of the condominium division for The

Habitat Co. in Chicago.

"If the violation is causing harm to the association, you'll want to shorten the period of time before the person appears before the board," he said. "If it's nothing more than leaving a doormat in front of the door, you might give them longer."

Be flexible when setting times and dates for hearings, Rudolph advised.

Hearings should require the presence of the resident who is accused of a violation, said VanderVennet. Written responses are not sufficient.

"You can't cross-examine a piece of paper," said VanderVennet. "That's something we learned early in law school. What about the credibility of the piece of paper? The board is in a much more difficult position if it doesn't have witnesses on both side to evaluate and determine what happened."

Prudent boards send notice and offer hearings for all alleged violations except for late payment of assessments, said the attorneys.

"We even suggest hearings for charge-backs of expenses for damage they or their tenants or their guests or their pets cause," said VanderVennet. "The board is authorized to charge back these expenses, but if they give notice and hold a hearing, they are on a more solid ground."

The keys to fair violation proceedings are written rules, enforcement procedures and sanctions—then applying them equally to all residents, he said.