

Compliance Issues
-
**Effective Enforcement and
Discipline**

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OMNI Community Management

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I. Enforceability of the Governing Documents

- California Civil Code Section 5975(a)
- *Nahrstedt v. Lakeside Village Condominium Assn.* (1994)

Enforceability of Rules

1) In Writing - §4350(a)

Enforceability of Rules

2) Within The Authority of the Board - §4350(b)

- conferred by law

- contained in the governing documents

Enforceability of Rules

3) Not “In Conflict With” The Governing Documents – 4350(c)

- *Friars Village Homeowners Association v. Hansing*
(2013)

- *Ekstrom v. Marquesa at Monarch Beach HOA* (2008)

Enforceability of Rules

4) Adoption In Good Faith And In Substantial Compliance With The Code – 4350(d)

Ekstrom v. Marquesa at Monarch Beach HOA (2008)

Clear Lake Riviera Community Association v. Cramer (2010)

Enforceability of Rules

5) The Rule Is Reasonable – 4350(e)

- Nahrstedt v. Lakeside Village Condominium Assn (1994)
- *Sui v. Price* (2011)

Enforceability of Rules

6) Additional Discussion Points Regarding Rules:

a) “Grandfathering”

Villa de Las Palmas HOA v. Terrifaj (2004)

a) Association Discretion – What does it mean:

Rancho Santa Fe Assn. v. Dolan-King (2004)

II. The Enforceability Of Discipline

– Roberts Rules, Art. XIII, Rule 72 (4th Ed.)

– Procedural Due Process

○ Notice

○ Hearing / Opportunity to be Heard

– Discipline

○ Fines / Monetary Penalties

○ Suspension of Privileges

○ Towing?

III. Complex Enforcement Issues

1) Neighbor to Neighbor Issues

- *Haley v. Casa Del Rey HOA (2007)*
- *Reeves v. Carrollsborg Condominium Unit HOA (1997) (Washington D.C.)*

2) “Personal” Rights

Smoking

- *Birke v. Oakwood Worldwide (2009)*
- *Chauncey vs. Bella Palermo Homeowner Association (2013)*

Self Help

right of entry

towing

3) Innovative Solutions

a) Common Sense

Precedent?

b) Neighbors Helping Neighbors

“Informal” Mediation?

c) Policies That Discourage Violations

e.g., guest parking

d) Enforcement by Local Government

Pre-Litigation Options

- **Internal Dispute Resolution ("IDR")**
 - Civil Code Sections 5900 - 5920
- **Alternative Dispute Resolution ("ADR")**
 - Civil Code Sections 5925 - 5965

Litigation Remedies

- Temporary Restraining Orders / Preliminary Injunctions
- “Equitable” Relief
 - Clear Lake Riviera v. Cramer
- “Legal” Relief
- Attorneys’ Fees - Civil Code Section 5975
 - Watts v. Oak Shores Community Assn (2015)