



Tenants, Landlords and Enforcement Issues

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What can the association do, if anything, about a problem-causing tenant? Can the association enforce its CC&Rs and rules and regulations against tenants?

Tenants are rarely, if ever, members of the associations in which they reside. Instead, the property owner (a.k.a. the landlord) holds the membership in a given association. Membership is tied to legal ownership, not residency. This creates a problem for many associations when tenants fail to abide by their governing documents. Associations cannot fine tenants directly, and cannot seek injunctions against them solely. Associations do not have the authority to evict a problem-causing tenant from a property within the community—only the landlord owner has the legal capacity to evict his or her tenants. The tenants and the associations have no “privity” of contract. In other words, because the tenants did not purchase property bound by the recorded CC&Rs there is no contractual relationship on which to base a lawsuit or a fine.

However, based on the CC&Rs, a property owner is contractually liable to the association for the acts of his or her tenants. The association has authority over the owners to compel them to have their tenants adhere to the association’s governing documents.

Imposing fines is one of the methods available to an association to provide an incentive to owners to have their tenants comply. Although Arizona statutory law provides that such fines are no longer part of the association’s automatic lien (thereby stripping them of much of their leverage and significance), they remain a contractual obligation of the owner. For example, fining landlord owners \$250.00 per occurrence (assuming the governing documents including rules or fine policies permit a fine of that magnitude) may compel them to immediately cure the violation, and/or evict their tenants if they fail to comply. Bear in mind that fines must be reasonable (something a court would determine if challenged), and before they can be imposed, the association must provide the owner(s) with notice and an opportunity to be heard.

If imposing fines has no impact on the owner, the association could initiate a subsequent collection lawsuit where those accruing fines are sought as contractual damages. This method tends to be a significant catalyst in motivating homeowners to cure the violation. The traditional collection methods of garnishment (including rent) are available.

Associations also can be successful in gaining the landlord's attention if their policies permit cutting off services for violations, or for nonpayment of fines. For instance, the association may deny pool access, water or other utility service, cable service, or gate access.

Although we have not seen it much in Arizona, in some states associations have amended their CC&Rs to require that landlords evict for certain offenses, or they require landlords and tenants to sign a document assigning eviction power to the association. Finally, some associations amend their documents to require landlords to conduct background and/or credit checks, and to have tenants sign "crime-free" lease addenda, making criminal offenses grounds for eviction.

If it becomes apparent that the homeowner refuses to cure the violation, or the tenant's conduct is severe enough to justify immediate referral to the association's legal counsel, we strongly recommend that the association file an injunction lawsuit seeking an order requiring the homeowner (and tenant) to cure the violation. In Arizona, the association and its board of directors have an affirmative duty (not a mere right) to enforce the provisions of the CC&Rs.

Based on the foregoing, if a tenant is failing to abide by an association's governing documents and causing problems for an association, the association must pursue landlord owners who fail to correct and/or take responsibility for the conduct of their tenants. The association's course of action is virtually always against the owner(s), not the tenants.

If we can assist in enforcement, or modifying governing documents, please contact us.