

Persistence usually gets HOA to act on problems

By Michael Hunter

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Q. A board of directors ignores glaring infractions of the rules and regulations such as window treatment must be backed in white, hanging of school flags, and window screens in bad repair. What can you do if you have brought up these issues and been ignored?

Failure to enforce the restrictive covenants consistently and uniformly is one of the most common complaints homeowners have against their HOA board of directors.

Remember that HOA has only two basic functions: to maintain the community common areas and amenities, and to enforce the restrictive covenants. This power and duty is vested in the HOA's board of directors, who are elected by the members of the HOA through a democratic process.

If the board is not consistently and uniformly enforcing the restrictive covenants, rules and regulations, then they are not fulfilling their "fiduciary duty" to the members of the HOA, as required by N.C. law.

If you feel that the HOA board is not fulfilling its duties, you have a few options as a homeowner. For one, you can request a meeting with the board to discuss your concerns.

N.C. laws read in part: "At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak."

If you can't get satisfaction from meeting with the board, you can consider filing a lawsuit against the board for breaching their fiduciary duty to the HOA members, and requesting that the court order the board to enforce the restrictive covenants.

If you choose that route, be warned that such action can be costly and time-consuming. You may or may not be able to recover your attorneys fees, depending on what your community's governing documents say, and the board members who are sued may have the right to a legal defense at the HOA's expense.

In general, HOA board members want to do the right thing, and will respond to a good-faith, organized attempt by owners to get the board to address their concerns. With a little perseverance, hopefully you can avoid litigation and resolve the matter.

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