

## Flooding launches a border war, HOA action

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*Q. Our homeowners association has become involved in an issue between two homeowners related to the natural flow of water from one home into the next.*

*Homeowner No 2 has put up a 4-inch metal retainer as well as sandbags just inside his property line to keep the water from overflowing into his yard and possibly entering his foundation. This water then backs up into the yard of homeowner No 1, causing puddling and possible entry into his foundation.*

*The HOA board has requested that No.2 remove the retainer and sandbags as specified in the covenants, conditions and restrictions (CCRs), which in essence, forbid them unless first approved. The CCRs further state that with 10 days notice, the HOA may remove obstructions if the owner doesn't.*

*Homeowner No. 2 won't budge. The HOA doesn't want to remove these materials as this could become a liability if the water damaged his foundation. However, we could face the same liability if the water were to back up into the foundation of No.1. What are our options?*

When a homeowner violates the CCR's, the HOA generally has three options:

It can levy fines against the owner, after giving the owner notice and the opportunity to be present at a hearing.

The HOA can file a lawsuit against the owner, seeking a court order on the matter.

The HOA can exercise "self-help" by entering the owner's property and curing the violation itself. Even if your CCRs grant the HOA a "right of entry" onto someone's lot to remove or restore a condition that violates the CCR's, I do not recommend this except as a last resort. Tearing down a fence, shed or metal retainer built without proper approval could get you sued.

I'd begin by sending notices to No.2 advising him that his lot is a violation of the CCRs, and asking that the obstructions be moved. If he doesn't comply, then you can schedule a hearing, give the owner written notice and consider levying fines.

Unpaid fines can usually be enforced against an owner in the same manner as unpaid HOA assessments - through the lien/foreclosure process. Note: I always urge my HOA clients to waive most or all of the fines when the homeowner cures the violation.

It seems what No.2 may need to do is try to direct the surface water to a nearby drainage culvert or storm drain by installing a water collection box and underground pipes or other landscaping features.

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