

E K M A R K & E K M A R K, L.L.C.
ATTORNEYS AT LAW

During the 2004 legislative session, state law was changed so that unpaid monetary penalties (commonly referred to as fines) that are imposed for violations of the governing documents can no longer form the basis of an association's assessment lien against a residence. Just because association lien rights no longer secure unpaid penalties against the property does not mean an association is without recourse.

The real question associations should ask in dealing with violations giving rise to unpaid penalties is the following: Is resolution of the violation the goal or is recovering the unpaid penalties the goal? Keep in mind that an owner can pay the penalties but still not cure the violation.

With that in mind, each situation should be analyzed on a case-by-case basis. In addition, associations need to act as consistently as possible and act in accordance with the authority allowed under the applicable governing documents (Declaration, Bylaws) and state/federal law.

One possible option is to pursue an owner by bringing a suit for a money judgment to recover the unpaid penalties. Such suits would typically be filed in justice court. Once the judgment is obtained, then it would need to be collected.

Another option is to pursue the owner for the violations. The owner's file could be sent to the association's legal counsel for a compliance letter. If the letter falls on deaf ears, the association could file a lawsuit seeking a court order requiring the owner to cease and desist the problematic activity or behavior. Depending on the governing documents, the association may be able to seek recovery of its attorneys' fees.

If the governing documents permit, a Notice of Violation could be recorded against the property. This document is similar to a lien as it puts potential purchasers on notice of the violation. Like a lien, once the violation is corrected, the Notice of Violation would need to be released.

Self help might also be an option whereby the association cures the violation. Again, this should only be done if the governing documents permit it, with life and safety concerns always being of paramount importance before embarking on self help.

Therefore, while association liens no longer secure unpaid penalties for deed violations, associations still have a wide array of options in dealing with deed violations. To be certain about options, consulting legal counsel is always a wise choice.

The information contained in this Homeowners Association Tip of the Week© is for informational purposes only and is not specific legal advice or a substitute for specific legal counsel. Readers should not act upon this information without seeking professional counsel.

If you do not want us to contact you by e-mail, you may unsubscribe from our online community by replying to this e-mail with the word "Remove" in the subject line.

Page 2

Telephone 480/922-9292 * Fax 480/922-9422
e-mail curtis@ekmarklaw.com
www.ekmarklaw.com