



SELECTIVE ENFORCEMENT

A Unit owner's Potential defenses to an Association's Enforcement of Rules and Regulations. From Website meeb.com

The inevitable turnover that occurs with almost all condominium boards has the unfortunate byproduct of a lack of consistency in the enforcement of the condominium's rules and regulations. While a board may have seen no harm in turning a blind eye toward certain minor infractions of a rule, what happens when the board believes that it must enforce the same rule against a unit owner that has committed a more egregious transgression?

For example, a board that has previously ignored violations of a rule against keeping pets – in instances where unit owners have owned goldfish, cats, and lapdogs – may feel compelled to take action when they see a unit owner walking a menacing pit bull in the common areas. Can the board's previous failures to enforce the "no pets" restriction prevent them from enforcing the action against the pit bull owner?

Some jurisdictions have recognized a unit owner's defense of "selective enforcement", holding that condominium associations, which have previously failed to enforce certain restrictions, have waived their ability to enforce those rules.

Many jurisdictions have held that a failure to enforce against minor infractions of restrictive covenants does not constitute a waiver of the restriction, so as to estop enforcement restrictions against more egregious violations.

Obviously, the best way for an association to avoid a unit owner's defense of selective enforcement is to enforce the rules and regulations contained within the condominium's governing documents in a diligent and consistent manner.

If there are rules and regulations that the board seems to be consistently ignoring, however, perhaps the rule should be amended or eliminated. For example, perhaps a strict "no pets" policy could be tailored to allow for less threatening animals, while prohibiting large breed dogs (i.e., pets that could impact an association's ability to secure insurance coverage). An appropriately revised restriction may better reflect the evolved attitudes of the condominium's demographic and will therefore presumably be more tenable.