

Friday, June 1, 2012

Is This Board's Waiver of Its HOA's Rules Wise?

In this week's tip, we ask whether a board's acquiescence to an owner's rule violation is a good idea. (Hint: No.)

An HOAleader.com reader writes, "A homeowner replaced his roof and chose a color that isn't in compliance with our replacement standards. It's not even close to the existing colors. The board stated at the community annual meeting that the owner didn't follow the procedure of obtaining approval through our architectural request process. The board chose to ignore the homeowner's negligence and opted to have each of the adjoining townhomes in his section match his noncompliant color when the time comes for them to replace their roofs. Their reasoning is that the homeowner can't afford to replace the new roof, and they don't believe it will affect the property value.

Our experts say that boards should enforce their HOA's rules unless there's a really, really, really good reason not to—and that's hard to find.

"Most covenants say that boards can decide not to enforce all the provisions all the way, and there's nothing owners can do about it," explains Jeff Vinzani, an attorney in Charleston, S.C., who represents associations. "But in this case, people are actually violating the HOA's covenants. In South Carolina, home owners that the board tries to enforce rules against in the future could argue the board has no such authority because, in essence, it has unclean hands."

Vinzani once lived in an HOA that had a similar problem. "I lived in a neighborhood with twin homes, like duplexes," he recalls. "The board allowed one party to paint one side of a house and didn't require the other owner to paint his side. The new paint wasn't quite the same, and the other side's paint was chipping off. One owner thinks his side looks good, and the other owner says, 'I could have just touched up my paint, but now I can't because my paint won't match.' Those owners were sort of at each other after that."

"When you've got standards, they've got to be enforced," agrees Jed L. Frankel, a partner at Eisinger, Brown, Lewis, Frankel & Chalet PA in Hollywood, Fla., who advises community associations. "If you don't enforce them as to one person, you can't enforce them as to anybody. The reasoning behind not enforcing them doesn't really matter. It's very important when you have color and other architectural restrictions the association cares about and wants to enforce that these rules be applied across the board."

However, some issues aren't so clear cut. Learn more about the tough cases and what our experts think of this board's decision in our new article, [When Can You Waive Your HOA's Rules?](#)

Best regards,
Matt Humphrey
President