



Bringing Bright Ideas to the Neighborhood





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Speakers:



Michael Perez
Keystone, AAMC



Dyanne L. Peters, Esq.
Tinnelly Law Group



Rob Ward, Esq.
Adams | Stirling PLC

Enforcement Strategies: What to **Know** and What to **Avoid**



Objectives

- Purpose of enforcement
- Scope of enforcement
- Employ an enforcement strategy
- Enforcement procedures



Episode I – Purpose of Enforcement



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Why do we enforce?

Promote harmonious living in the community

Protect property values

Fulfill Board duties

Gain member compliance

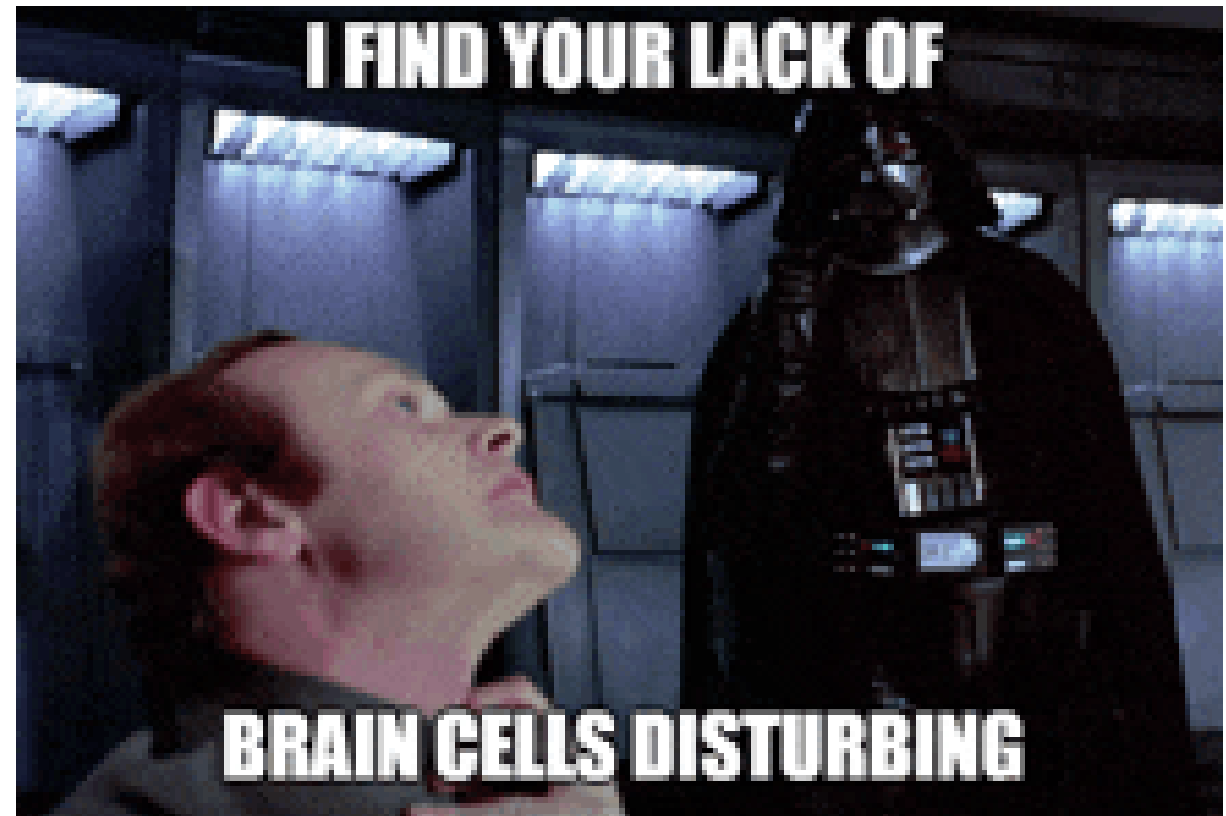
Inconsistency in enforcement



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Enforcement is NOT...

- To punish annoying people...



Nor is it....

- To boost revenue!



What you need to keep the DARK SIDE at bay:

- Clear rules and authority
- Enforcement Policy
- Fine Schedule

All of the above must now
comply with AB 130!

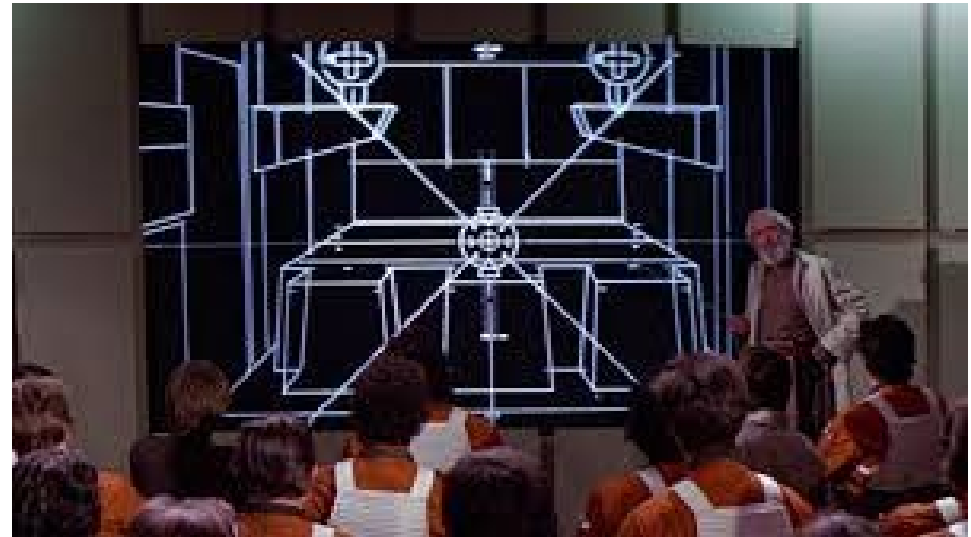


Episode II: Enforcement strategies to defeat the Evil Empire!



Scope of Enforcement

- Review language in CC&Rs and Rules
- Broad scope of authority...but...
- Beware of limiting provisions



Other Strategies

- Adopt Board and Member Code of Conduct
- Virtual Meeting for unruly members



When the Association Perhaps Does NOT Have That Authority

- Neighbor-to-Neighbor Disputes
- Emergency or Imminent Safety – Police/ Call 911
- Other outside entities that may assist – Social Services, City/County, DMV, etc.



Episode III: Enforcement Procedures

What to Do When the Empire Strikes Back!



How are violations usually reported?

- Owners
- Residents?
- Anonymous complaints
- Photographs
- Walkthroughs
- Compliance committee
- Security
- Kept confidential?



Investigating Reported Violations

- Association's Duty to Investigate – part of fiduciary duty
- Who investigates and how?
- Documentation
 - Photos
 - Video/ring cameras!
 - Audio



Notifying the Member/Homeowner

- How are notices issued?
 - Start cordial – more flies with honey approach
 - Send to occupant?
- Proper Notice
 - Describe alleged violation and potential discipline
 - “It was reported that your dog was not on leash and digging in the flower bed in violation of Rule 3(a).”
 - “If true, you may be subject to monetary penalties, suspension of privileges, and other disciplinary action.”

NOTATION – BE SPECIFIC



Dear Owner:

It was noted that you are parking your car in violation of the governing documents.

- Management



Dear Owner:

It has been reported that since 4/1/22, you have been parking your red Corvette in the Guest Parking space next to your Unit which is a violation of Parking Rule No. 10 and Section 6.8 of the CC&Rs. (See enclosures.)

- Management

Imposing DISCIPLINE

- Due Process
- Civil Code §5855
 - Date, Time, Place of Hearing
 - Virtual Hearings



NEW ENFORCEMENT PROCEDURES CIVIL CODE § 5855

Before the
meeting

Opportunity
to cure

Financial
commitment



EXECUTIVE SESSION

Even if member requests otherwise
Civil Code §4935(b)

Rescheduling the Hearing



- Boards should try to honor the first request to reschedule
- Thereafter, require good cause

Letter vs. Email

- Members can submit a letter rather than appear personally (or hologram?)



Episode IV: Appearing Before the Jedi Council

Hearings and Evidence



LAWYERS! Do we even WANT them there?

- Members do not have a right to a lawyer present at a violation hearing
- Exception: IDR meeting



Most Used Defenses...

- Selective Enforcement
 - “Why pick on me when everyone else has violations too!?”
- Discrimination
- “I didn’t do it”
- “It wasn’t me, it was my neighbor”



Scope of Owner's Role

- Presentation of evidence
- Documentation
- Witnesses? (Check gov docs.)
- Board Role at Hearing



Presentation of Evidence

- Evidence Code NOT in play
- Documentation
- Witnesses (check governing documents)
- Deliberation
 - Dismiss the alleged violator from Exec Session
 - Discuss the evidence
 - Impose penalties (if any) consistent with policy
 - Options for de-escalating the conflict



Decorum

- What if they don't show?
- Conduct at the hearing
- Expectation of Professionalism
 - Removal if abusive



Fines/Penalties – AB 130 Strikes!

- Fine Schedule (\$100 Limit/lesser amount per CC&Rs)
- The Dreaded Daily Fine – permissible now under AB 130?
- Continuing Violations vs. Curable Violations
- Adverse Health and Safety Violation Exception

NO LATE FEES OR INTEREST



Sanctions

- Suspend Privileges
- Voting Rights
 - can they be suspended?



Episode V: Post Hearing/Notice of Decision

- Mail notice of decision by 1st class mail or personal delivery within 14 days (unless governing documents provide shorter notice)
- What if fining doesn't gain compliance, especially now with AB 130?
- Step Up Enforcement
 - IDR (meet and confer with or without lawyers)
 - ADR (Mediation/Arbitration)
- Architectural Violations – not the same thing

Episode VI: The FORCE Awakens!

- LITIGATION
 - CHRO/injunctions
 - Workplace violence - new harassment option (SB 428 as of Jan. 1, 2025)
 - Clear/convincing vs. preponderance; higher threshold burden
- Other Legal Relief and Remedies
 - Attorney's fees
 - Reimbursement assessment for costs and fees incurred?

TAKEAWAYS – May the enFORCEment Be With You!





THANK YOU