

Chapter 9 - CC&R Enforcement



Creating Community

ABC'S OF HOA LAW IN NEW MEXICO

A Guide to New Mexico Community Association Law

CC&R Enforcement

When an association is created, it is usually created with the power to enforce the restrictions that have been recorded against the property governed by the association. At some point, an association will probably be faced with the need to enforce its governing documents. The question that then arises is whether the association has the power to require the owner to comply with the provisions of the association's governing documents. When the association runs into that situation, the association should keep the following information in mind.

1. The association should look at what power it has been given in its governing documents to enforce the restrictions contained therein. If there are any specific procedures that the association must follow to enforce, the association needs to follow those procedures.
2. When looking at its enforcement rights, the association should also see whether its governing documents grant the association its attorney's fees and costs for pursuing the owner's violation.
3. From a legal perspective, New Mexico courts have been very supportive of upholding restrictions that exist within an association's governing documents. The courts see these restrictions as a property right to uphold the nature and value of the community. The courts have even stated that it is not proper to analyze whether a specific restriction is reasonable. Rather, if a restriction exists against the property and is not ambiguous, it should be upheld.
4. If an association passes any amendments to its use restrictions, it needs to make sure that those amendments are properly recorded in the correct county, to put all future owners on record notice of the amendments. Furthermore, the association should notify all present owners when an amendment has been approved and recorded, and provide the present owners with a copy of the recorded amendment.