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Self Help: Could You vs. Should You

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So, Mr. Jones is not maintaining his property in violation of the declaration. He continues with his failure to maintain despite numerous letters from the Board requesting that he maintain his property. But there's hope, right? The declaration allows for the association to enter onto Mr. Jones' property and maintain it for him, then charge Mr. Jones for the costs of the maintenance. Sounds simple. But wait. After a call to your attorney, you hear the dreaded words, don't do it, get a court order first. Why? If the declaration says the association can do it then why does your attorney advise not to do it.

DECLARATION ALLOWS FOR IT

The typical declaration contains a provision, commonly known as a "self-help" provision. The provisions often provide that the association can enter onto an owner's property to correct violations that have not been corrected after notice to the homeowner of the violation, e.g., failure to maintain or landscape. The language is typically as follows:

Violation of any section of this Article by an Owner shall permit the Association to enter on the Site of the Owner, after giving the Owner reasonable notice, and cure the violation or cause compliance with this provision and to levy and collect a Reimbursement Assessment for the costs and expenses of the Association in so doing; provided, however, that there shall be no entry into the interior of an Improvement intended for human occupancy without the consent of the Owner thereof unless a clear emergency exists.

DON'T DO IT

There are several reasons your attorney may advise against the use of self-help. One is to protect the association from a breach of the peace citation from the police. Another is the readiness of property owners to protect their property by force. Seriously. People are very protective of their property rights and may not be against protecting their property by force, including deadly weapons. In any event, the owner will no doubt contact the police if he/she is home at the time. Police generally will not care that the declaration allows for "self-help." Without a court order, the police will not allow you to "trespass" onto another's property. You may be issued a citation or just let go with a warning. Either way, you won't get to correct the violation.

We advise associations to seek a court order before entering onto another's property to cure a violation. The association should have its attorney send a letter demanding the violation be cured within a short period of time or further legal action may be taken. If there is no compliance in that time frame, a county court complaint can be filed against the owner. The court order should provide that if the owner does not comply with the order within a certain number of days, the association can enter onto the property and correct the violation and charge the owner the costs of the correction. What's the difference you ask? Well, now you have the Court's written blessing to enter onto the owner's property and cure the violation. It is no longer a trespass - it is court sanctioned. So, when the police are called, you can show a certified copy of the court order allowing you to enter the property and the police will uphold the order. Better yet, you should contact the police in advance and let them know what you're going to do and when, and send them a copy of the court's order. You should also give the owner notice of what you'll be doing on the property and when. All this ensures that there is no breach of the peace and the association's agents are protected from potential harm.

IF YOU MUST

Invariably, however, some associations will insist on going the way of "self-help." If they insist, we offer this advice. Take precaution and follow these steps:

- Check the declaration to ensure there is a provision for self-help;
- Check the declaration to ensure self-help is allowed for the particular violation you wish to cure; some documents may limit the authority to enter property of another to certain types of violations, such as architectural violations;
- Follow all procedures, if any, in the declaration for exercising self-help;
- Give the owner ample notice that someone is going to be on their property to avoid, at the very least, an altercation that may escalate to violence;
- Get in, get out. Do the corrective work quickly and with no damage to the owner's property. If there's damage, the association must repair it.

CONCLUSION

In order to protect the association from a possible citation, suit or harm to its agents, we recommend that the association not exercise a "self-help" option in the declaration. However, if the association is adamant about it, be sure to follow the procedures in the declaration for self-help and to give notice to the owner well in advance.