

## **Q&A: Notice of Violation and Fines**

By: Henry Goodman, Esq.

**Q** We send violation notices and the owners just throw it in the trash. We would prefer to threaten fines rather than legal proceedings. Specifically, on issues such as leasing units without board approval or notice, barbecue grills on patios, and animals in units. Our documents don't specifically define barbecue grills; however we feel it falls under nuisance as in a fire hazard. There is a no pet policy in our documents, and a purchase application and/or leases must be approved by the board. I seem to think we can fine up to \$100 per day not to exceed \$1,000, but can't seem to find legislation to support that. Any advice?

—Enforcer in Enfield

**A** "Under the theory that you can lead a horse to water but you cannot make him drink, the law in Massachusetts provides that the sending of a notice constitutes the proper legal giving of notice (the "letterbox" rule)," says Henry Goodman, a partner at the law firm of Goodman, Shapiro, & Lombardi, LLC, in Dedham, Massachusetts. "Accordingly, when there is a properly sent notice, the owner is deemed to have read it even if he throws it in the trash. The best way of proving that such a notice has been mailed is by way of some method of delivery wherein there is a proper notice of delivery, such as UPS. Most documents provide that mailing to the address last given to the association is sufficient notice.

"If the board is really intent on not litigating, it may be best to spend extra money on having the letter served by a sheriff or constable. Most people will not ignore a document they received in that fashion.

"In order to be enforceable, certain restrictions on use must be in the master deed or bylaws according to Massachusetts law. For example, restrictions on animals in units and restrictions on leasing should be in those documents. On the other hand, restrictions regarding barbecue grills on patios need only be in the rules and regulations or by way of a resolution.

"There should be authority in the bylaws giving the board the right to promulgate fines and penalties. Fines must be reasonably related to the harm intended to be prevented to not be considered to be confiscatory and therefore voidable. Fines are a tool and if that tool does not work, then another tool s must be used. If the board only accumulates paper fines, they will become so high as to be considered confiscatory and voidable.

"There is reference to fines and the authority to issue fines at the end of Massachusetts G.L.c 183A § 6(a)ii and in Subsection b."