

57-8a-213 Board action to enforce governing documents -- Parameters.

- (1)
 - (a) The board shall use its reasonable judgment to determine whether to exercise the association's powers to impose sanctions or pursue legal action for a violation of the governing documents, including:
 - (i) whether to compromise a claim made by or against the board or the association; and
 - (ii) whether to pursue a claim for an unpaid assessment.
 - (b) The association may not be required to take enforcement action if the board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances:
 - (i) the association's legal position does not justify taking any or further enforcement action;
 - (ii) the covenant, restriction, or rule in the governing documents is likely to be construed as inconsistent with current law;
 - (iii)
 - (A) a technical violation has or may have occurred; and
 - (B) the violation is not material as to a reasonable person or does not justify expending the association's resources; or
 - (iv) it is not in the association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.
- (2) Subject to Subsection (3), if the board decides under Subsection (1)(b) to forego enforcement, the association is not prevented from later taking enforcement action.
- (3) The board may not be arbitrary, capricious, or against public policy in taking or not taking enforcement action.
- (4) This section does not govern whether the association's action in enforcing a provision of the governing documents constitutes a waiver or modification of that provision.

Enacted by Chapter 355, 2011 General Session