

# Selective Enforcement ~ #2

<https://kortepa.com/selective-enforcement/>

*(Sugarhill Note: this is a perfect example of a law firm reaching out for clients to defend against selective enforcement, a good moneymaker for lawyers but a real disaster for a HOA)*

## Selective Enforcement Defense Against HOA

### Have You Been Singled Out?

A homeowners' association has the duty to enforce the covenants of a community in a procedurally fair and reasonable manner. When a homeowners' association board breaches this duty, the homeowner is entitled to the defense of selective enforcement against the HOA.

**There are two types of selective enforcement:**

- When an Association acts arbitrarily by enforcing some covenants but fails to enforce others
- When an Association acts arbitrarily by enforcing the same covenant differently against one owner and another, typically choosing to enforce against one owner but not others.

### Common Areas of Selective Enforcement

- Pet restrictions
- Architectural restrictions
- Fencing restrictions
- Parking restrictions
- Age restrictions

### HOA Enforcing Rules That Have Never Been Enforced

Boards may try to enforce rules that have long been ignored by prior boards by providing written notice to all members, informing them that on a certain future date the association will begin enforcing the restriction once again. In other words, the association must draw a line in the sand, place its members on notice and then consistently and uniformly enforce that restriction going forward. See *Chattel Shipping & Inv., Inc. v. Brickell Place Condo. Ass'n*, 481 So.2d 29 (Fla. 3d DCA 1985) (The court found the selective enforcement defense failed where a board notified unit owners it would not take action with respect to existing violations but any subsequent violations would not be permitted.) If the restriction involves permanent or semi-permanent matters, such as balcony enclosures or pet ownership, then prior violators must be grandfathered in as the selective enforcement defense would still apply to them.

HOAs are responsible for enforcing the covenants in a **fair and equal manner that does not single out one homeowner over another**. In some cases, an HOA effectively singles out a specific homeowner and targets them with violations and fines while allowing other owners in the community to commit the same violations without repercussion. The declarations and covenants state the specific duties with regards to the maintenance and upkeep of each property within the association. If your HOA is failing to uphold these legal requirements, you are allowed to demand compliance and take legal action.