

patio, in violation of the covenants of his HOA. The board ignores this violation, and it is eventually waived (and, by the way, we're assuming that the violation is not a local code violation, which raises other issues). When the board later decides to cure their waiver, this screened in porch would be grandfathered into the rule, and would be allowed to remain. However, if the owner ever wanted to screen in his back porch, that would not have to be allowed—it is only the specific violation that is being grandfathered in.

So the concepts of waiver and selective enforcement are critical for every board member to understand—if you, as a board, intend to enforce the rules of your community, you must enforce them consistently, against every person, no matter the situation or any extenuating circumstances (absent, of course, federal or state legal issues, such as a requirement to allow owners to keep support animals). As a board member, I regularly hear from owners who are surprised and annoyed to find that our board is not willing to make exceptions for them, even when those exceptions are reasonable—but the law doesn't allow exceptions. It's sometimes hard to understand, and harder to accept, but that's just the way it works. The rules are designed to prevent boards from playing favorites, but it also has the negative consequence of making enforcement of the rules completely inflexible.

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