

“Injunctive Relief” Affords HOAs and Their Members a Means for Enforcing Governing Documents
by [Lawrence Szabo, Esq.](#) | Aug 13, 2018 | [Governing Documents](#)

Note: Colorado has not provided HOA homeowners with an affordable out of court dispute resolution process. Court cases for the simplest complaint can cost thousands. Furthermore, court matches the limited resources of the homeowner against the unlimited financial and legal resources of the HOA. Presently, homeowner complaints not involving monetary recover are mostly litigated in higher courts and not Small Claims. Also, Small Claims court has been reluctant to invoke injunctive relief. HB 22-1137 discusses using Small Claims for all HOA homeowner complaints. This proposal is still subject to challenge and the homeowner’s cost to appear in court will not be “affordable” and most likely cost up front dollars to hire an attorney of \$1,000+. (this paragraph is from the Colorado HOA Forum, www.coloradohoaforum.com and not part of the author’s verbiage)

“Injunctive relief” is a form of equitable relief that is granted by a judge pursuant to a court proceeding involving issues where monetary relief in the form of money damages will not be adequate because the conduct being complained of is of a continuing nature. Thus, through an action for injunctive relief, an association or an association member can seek to have a covenant in the association’s governing documents enforced. If the judge grants the injunction it will render orders that either bar the offending party from continuing to violate the particular covenant, or mandate that the offending party perform some act. When injunctive relief is sought, it is not necessary to prove monetary damages or that actual or substantial injury has been caused. Proof of the violation of governing documents is all that is necessary to entitle a party to seek injunctive relief.

By way of example, a party who violates building restrictions contained in a homeowners association’s governing documents can be compelled

by a judge to build in conformity with the restrictions through the use of a mandatory injunction. In addition, if the party fails to perform the mandated act within a certain period of time, he or she can also be found liable for damages. In extreme cases (i.e. where there is a risk of serious danger), an association may need to go even further than a mandatory injunction and seek an additional order that permits the association and its agents to enter the offending party's property to correct the condition at the owner's expense.

Because the resolution of a lawsuit in which injunctive relief is being sought can take a year or more to resolve, thereby creating a situation where the conduct being complained of could continue during that period of time, upon application of the party seeking the injunctive relief, the court can issue a temporary restraining order and/or a preliminary injunction. This provides temporary relief while the lawsuit seeking the permanent injunction is pending. Temporary restraining orders and preliminary injunctions are issued to prevent waste, to avoid irreparable injury during the pendency of the action, or to avoid rendering a judge's ultimate judgment ineffectual.

While this may appear to involve very little, the actual process of obtaining injunctive relief can be complicated and expensive because it generally necessitates the use of an attorney. The process necessitates the filing of a complaint which lays out the facts and specifies the form of the injunctive relief being requested, and if interim relief (temporary restraining order and/or preliminary injunction) is being requested, the complaint must be accompanied by additional applications, declarations, and points and authorities presenting satisfactory evidence to the court that grounds exist for the restraining order or preliminary injunction. In addition, the granting of temporary injunctive relief generally requires the posting of a bond in an amount that is set by the judge. Absent the parties reaching an agreement outside of court, the mechanism for enforcing compliance with an association's governing documents is through injunctive relief granted by a court.