



RULES WERE MADE TO BE _____?

This course is approved by the DBPR Council of Community Association Managers, for 4 hours of continuing education credit in the area of:
OTHER/ELECTIVE.

Gold Coast Professional Schools, Inc Provider #000842
Correspondence Course Approval # 9625257
Classroom Course Approval # 9625258

Introduction

This course discusses rules and regulations guiding Associations and their members. For the most part, it is equally applicable to condominiums, cooperatives, timeshares, homeowners associations and mobile homes. The course is not designed to provide a specific strategy for any one association, but rather to help the manager and board by providing sufficient information to make informed decisions for their associations.

Some of the information presented in this course may not apply to every community association. However, the DBPR requires that community association managers be familiar with the laws and rules governing all types of associations. Further, by doing so, a manager may find him or herself more qualified to advance within the community association management profession.

Thank you for choosing Gold Coast Professional Schools. It is our objective to provide you with the best possible course and materials. If you have any questions or comments about this course, or about any other courses or materials, please contact us at 1-800-732-9140 or by writing to:

Gold Coast Professional Schools
Attention: Director, Community Association Management Program
5600 Hiatus Road
Tamarac, Florida 33321
E-mail: progers@goldcoastschools.com

Table of Contents

Overview 91

Exercises 91

Laws & Statutes 94

Association Documents 98

Adopting Rules & Regulations 100

Adopting Rules – Summary 102

Requirements for Enforcement of Rules & Regulations 103

Process for Enforcement of Rules & Regulations 104

 Letters of Notification 105

 Fines and Other Penalties 105

 Hearings 106

 Other Remedies: Mediation, Arbitration, Court 107

 Exceptions 109

Complaints from Owners 109

Reviewing & Changing Rules & Regulations 111

 Changes to Declarations, Bylaws & Covenants 111

 Board Approved Rules & Regulations 112

Special Rules & Regulations 112

 Collection of Assessments 112

 Collection of Fines & Other Charges 114

 Architectural Requests 115

 Home Businesses 116

 Common Elements 117

 Pets 117

 Satellite Dishes 118

 Parking & Vehicles 118

 Grandfathering in 119

 Transfers, Sales & Other Conveyances 119

 Elections 120

Factors Affecting Enforcement of Rules & Regulations	120
Effect of changes in composition of unit owners & residents on rules	120
Internal Political Issues	120
Changes in state law or regulation	121
Changes in local laws or regulations.....	121
Court & Arbitration Decisions	121
DFLSCMH Declaratory Statements	121
Role of the State Ombudsman	121
Role of Division of Land Sales, Condominiums & Mobile Homes	122
Summary	124
Final Exam	125
Exam Instructions and Answer Sheet	292

Overview

In 1979, the Florida Supreme Court said of condominiums: “Inherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the owners, since they are living in such close proximity and using facilities in common, each unit owner gives up a certain degree of freedom of choice which he might otherwise enjoy in a separate, privately owned property. Condominium owners comprise a little democratic sub-society of necessity more restrictive as it pertains to the use of condominium property than may be existent outside the condominium organization.” (Hidden Harbor Estates, Inc. v. Normen, 339 So. 2d 346)



This statement applies equally to cooperatives, homeowner associations, timeshares or any other community association in which there is mandatory membership; with common amenities and facilities shared by the members; where the association operates and manages the community. In exchange for the shared amenities – such as swimming pools, tennis courts, etc., and an Association that cares for and maintains the property, we agree to live by certain rules and regulations. Some of these are imposed by the State, some by the association’s documents, and some by agreement of the board or unit owners. The objectives of rules and restrictions are to preserve, protect, and enhance the association’s property value and assets, promote harmonious living, and ensure that residents can use and enjoy the property.

In this course, we will discuss the sources of different rules and regulations, the requirements and process for enforcement of rules and regulations, how to change rules and regulations, and various factors influencing enforcement. We will look at rules that govern the association, as well as rules applying to unit owners and residents. We will review the roles of the unit owners and board members, of the courts, and of the State of Florida. We will also discuss how the State Condominium Ombudsman can assist condominium associations in resolving problems related to rule enforcement.

Exercises:

Before we begin to review the course materials, let us take a few minutes to examine a few situations in which an association might find itself, based upon the Rules & Regulations the Association has created. Think about what you, as manager, would recommend. At the end of the course, you may wish to look at these examples again, and see if your recommendations have changed.



1. Stormy Days:

The Stormy Daze Declaration of Condominium has the following rules:

- ♦ Owners can rent their units
- ♦ Association can screen potential renters
- ♦ Renters can be denied if they have a criminal record, or if they have a history of damaging property in which they resided
- ♦ No commercial vehicles are allowed

Its Bylaws has the following provisions: *“The Board of Directors can make reasonable Rules & Regulations to enforce the Declaration, collect assessments, and promote the health, happiness, and peace of mind of all unit owners.”*



Sam Hadley is 75 years old and has been living in Stormy Daze for ten years. His wife died about two years ago. Recently, he met a 24-year-old cabaret singer, Sally Bowles, who has moved in with him. Right after Sally moved in, Sam purchased a Nissan Frontier, on which they installed a camper. Many owners are very upset about both the truck and Sally. The Board sent Sam a letter telling him that there is a rule against trucks, the Board did not approve Sally, and therefore, he must remove the truck and Sally.

Did the Board act properly? What should the Board do, if anything, in this circumstance?

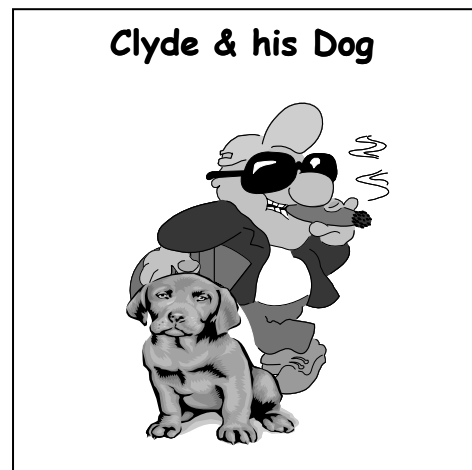
2. Clyde and His Dog

Shangri-la Heights Condominium has always operated well and the board members on each of its successive boards have enjoyed friendly and cooperative relationships with the other owners. The Declaration of Condominium for the Shangri-la Heights prohibits dogs. However, the board members have been aware for years that Harriet Goode-widow, Felicity Hartstrum, Jerry Boniface and several other elderly members of their community have small dogs. Because these dogs were so well behaved and their owners were so nice, quiet, and always picked up after their dogs, no one complained and the board overlooked the infraction.

Now, however, Shangri-la Heights has a new owner, Clyde Barrow, who has a small dog, Romeo. Unlike the other dogs in the community, Romeo barks loudly and constantly. In addition, when Clyde walks Romeo on the common elements, he does not bother to pick up after the dog. There are now dog droppings from Romeo littering the condominium property.

Owners have repeatedly requested Clyde to quiet Romeo and pick up after him. Clyde informed them that his unit was his castle; Romeo barked along with Metallica, one of his favorite heavy metal groups. He enjoys hearing Romeo sing, and told his neighbors Romeo could bark as loud as he liked inside the unit.

The board members have received numerous complaints about Clyde and Romeo. At a properly noticed meeting, the board voted to enforce the pet restriction by asking Mr. Barrow to remove his dog permanently from Shangri-la Heights. Did the board act properly?



3. Rose and the Dandelions

The Board of Directors of the Cloudy Hills Association has decided to no longer plant impatiens in the condominiums flowerbeds, but instead has planted dandelions, which require little if any attention.

Rose Bush, an owner, is well known for the beautiful plants she grows in pots on her second floor balcony. Although she has lived in Cloudy Hills for five years, Rose has never attended a board meeting, nor voted in any annual election. When the Board established a committee to review less costly landscaping alternatives, they asked Rose for her help and expertise. Rose declined, stating she was much too busy caring for her own plants.



However, Rose is very unhappy with the recent change to dandelions. She sent a letter of complaint to the Board, without result. Therefore, she notified the Board that she would not pay her monthly maintenance assessment. She is now two months in arrears. Further, Rose is now removing the dandelions from in front of her unit, and planting impatiens.

Did Rose act properly? What alternatives does she have? What action should the board take?

4. Reeveer and his Greyhounds

The Sunnyside Village Declaration of Condominium specifically prohibits pets. It does allow house businesses if they are unobtrusive. Harry Reeveer, a retired veterinarian, has recently started assisting the local dog track by taking in and finding homes for greyhounds. He usually has one or two dogs in his unit, but just for a day or two until they are placed. The dogs are quiet, do not bark, and Harry carefully cleans up after them when he walks them. Owners have found the dogs to be friendly and affectionate toward their children.



The Board has cited Harry advising that he cannot have dogs in his condominium unit. Harry has replied that the greyhounds are not pets but patients. Further, he provided a note from his cardiologist stating that Harry needs to have animals around as they help lower his blood pressure.

The Board wrote Harry a letter demanding that he get rid of the dogs within five days. Harry has

complained to the local fair housing agency stating that the board has failed to accommodate his handicap. The association has asked Harry to go to mediation and he has agreed.

You are the mediator. What solutions do you think each side should agree to and why?

5. *Tennis, Anyone?*

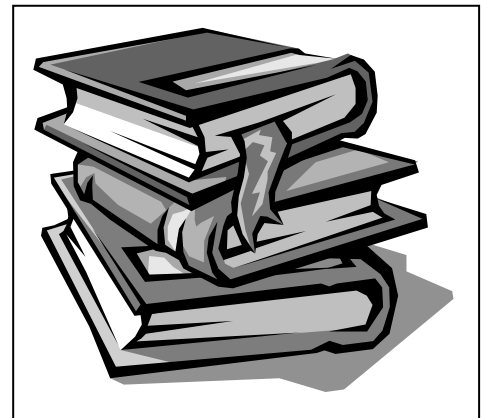
The Greentroll Bridges association has two lighted tennis courts for night play. Owners often invite friends in to play, and the courts are used from early morning to late night. The board has noticed that the costs for maintaining the courts is increasing and recently passed a rule that unit owners must pay a \$100 fee each time they use the tennis courts. The Declaration and Bylaws state that the tennis courts are open to all unit owners, and that the Board may adopt reasonable rules for their use. The Board has padlocked the gate into the courts, and will not give out the key until the unit owner has paid the fee. Some of the outraged unit owners cut through the fence surrounding the courts. Several unit owners have taken affairs into their own hands, and have cut the locks. The Greentroll Bridges board has not been able to identify those responsible and now refuses to allow anyone to use the tennis courts.



The unit owners have filed suit against the board. The judge has sent the case to mediation. You are the mediator. What solution do you think is reasonable and fair, and why?

Laws & Statutes

Unlike other organizations and companies, community associations⁵ are highly regulated by Florida Statutes. Therefore, rules and regulations governing an association's action must conform to provisions of the Not-for-Profit Corporate Act (Chapter 617, F.S.), as well as the statutes governing the specific type of community association. Some of the statutes require the association to function in a specific way; others provide guidelines for adoption of rules and regulations by the association.



The laws provide specific rules and regulations that each type of association must follow in its operations, including in developing and enforcing rules and regulations for unit owners. These laws may also define specific responsibilities that unit owners have to the association and other unit owners. Specific statutes include:

- ♦ F.S. 718 – Condominiums
- ♦ F.S. 719 – Cooperatives
- ♦ F.S. 720 – Mandatory Homeowners Associations

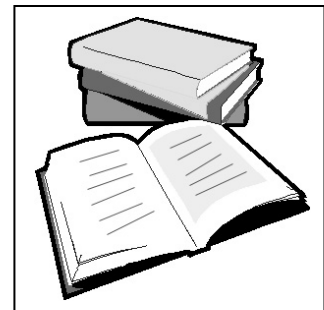
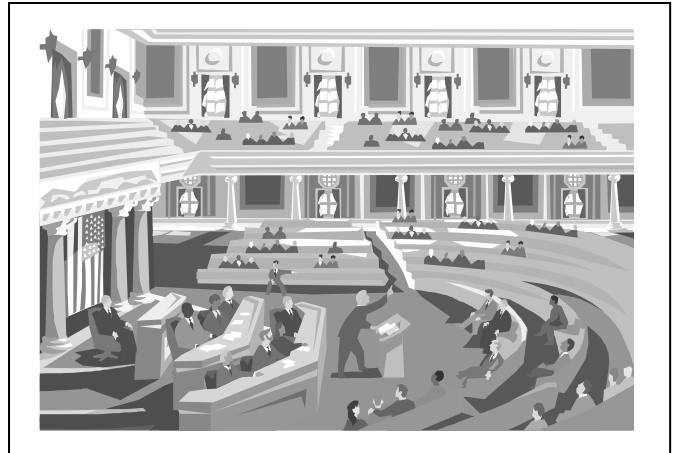
⁵ Note: since April 1, 1992, the State has required all community association to be not-for-profit corporations.

- ♦ F.S. 721 – Timeshares
- ♦ F.S. 723 – Mobile Homes
- ♦ F.S. 617 – Not-for-Profit Corporate Act

In this course, we will focus primarily on condominiums, cooperatives, and HOAs.

Some of the rules incorporated into the Condominium Act and Cooperative Acts include:

- Association access to units during reasonable hours for repairs or replacements of common elements and limited common elements or to prevent damage to common element, limited common elements or other units
- Association responsibility to adopt a budget for the operation and maintenance of the association and its property and to collect assessments from owners to pay for their operation and maintenance
- Association right to screen potential owners and lessees (if in the documents)
- Requirement for adopting and amending administrative rules and regulations governing operations and use of common elements, and restrictions on and requirements for use, maintenance and appearance of the units and use of the common elements
- Requirements for notifying owners of meetings, sharing budgetary and financial information, and making amendments to documents and rules
- Limitations on making material alterations to the property
- Requirements for disclosure of rules and regulations at the time of a sale or lease
- Requirements for collecting assessments
- Requirements for enforcing rules and charging fines, including establishment of a fine committee
- Requirements for unit owner examination of records with reasonable notice



In 2004, the Legislature amended the Condominium Act to limit an association's powers regarding leasing of units. Specifically, if an association amends its documents to prohibit or limit rentals, the amendment will only apply to unit owners who consent to the amendment or to those who purchase after the amendment date. That is, if the owner did not vote or voted no, the restriction does not apply to him or her. Remember – this affects condominiums only.

The legislature also amended the Homeowners Association Act (Chapter 720, F.S.) in 2004 to include requirements for holding meetings, sharing budgetary and financial information, and resolving disputes. HOAs must provide written notice of:

- ◆ membership meetings
- ◆ meetings regarding assessments
- ◆ meetings regulating the use of parcels within the community

The HOA must allow owners to attend meetings and to speak on agenda items, within association guidelines. The 2004 Legislative changes permit HOA members to petition for inclusion of items on a Board or member meeting agenda, and establish guidelines for owner examination of records, including fees for copying, and defines records exempt from examination. In 2007, the Legislature amended F.S. 720 to limit association authority over architectural changes. F.S. 720 also permits the HOA to deny an owner the right to vote or the use of common elements, if the owner is in violation of a rule or delinquent in paying assessments. The provision must be included in the HOA documents, and the owner must have the opportunity to have a hearing in front of other (non-Board) owners.



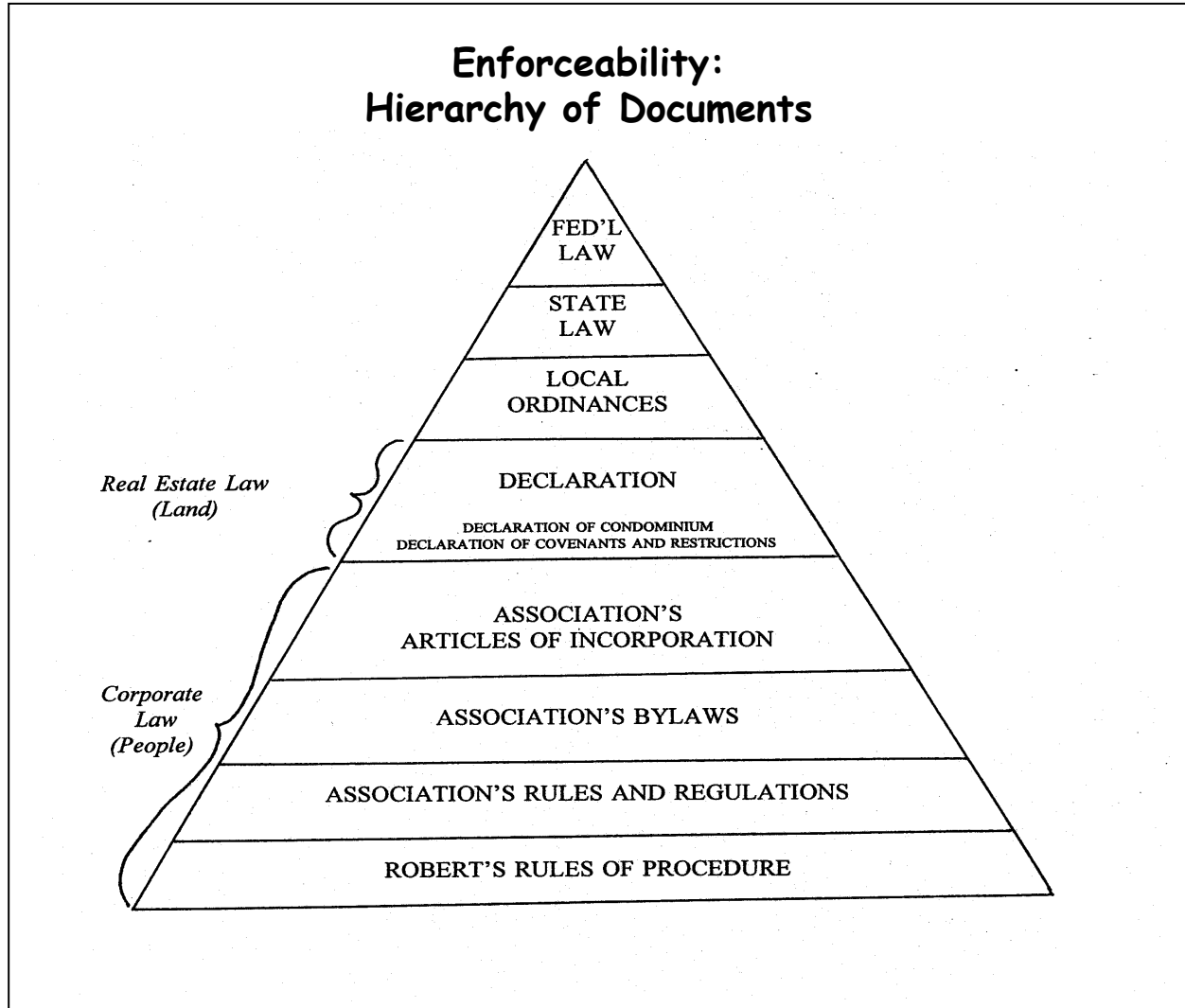
Because the Legislature may amend the statutes regarding community associations every year, managers and board members should attend annual legal update courses, and should consult the association attorney when contemplating changes to its rules and regulations.

Other laws and statutes may provide rules and regulations that associations must follow. Rules and regulations cannot violate fundamental rights, such as freedom of speech, civil rights, or property rights. Some of the federal laws that may govern associations include but are not limited to:

- Americans with Disabilities Act (ADA)
- Federal Fair Housing Act
- Occupational Health & Safety Act
- Fair Labor Standards Act
- Religious Freedom Act
- Telecommunications Act (satellite dishes)
- Group Home Placement

Some of the State laws that may govern associations include:

- Florida Fair Housing Act
- Florida Building Code
- Comprehensive Development Planning



The Florida Fair Housing Act makes it illegal to discriminate in the sale or rental of housing, in financing of housing, and in most residential real estate transactions because of race, religion, color, sex, country of national origin, disability or handicap, or familial status. Florida statutes oversee placement of group homes in HOAs. By their structure, condominiums and cooperatives are generally exempted from group home requirements. The Florida Clean Indoor Air Act governs smoking in common and limited common areas. Specifically, it generally prohibits smoking in indoor or enclosed areas where residents and visitors may gather.

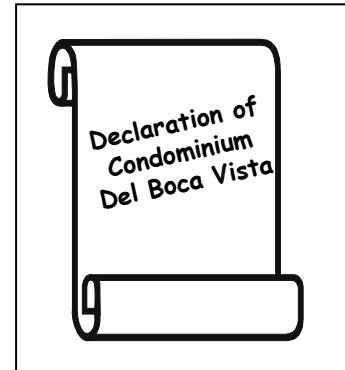
Local ordinances (county and city) may affect rules and regulations of an association. For instance, local ordinances may prohibit keeping certain types of animals as pets or may include leash laws; they may restrict the height of fences or the construction of decks. Some municipalities and counties may define the number of persons permitted to reside in a residence. Local ordinances can be helpful in enforcing association rules and regulations.

Association Documents

When referring to association documents, we generally include three distinct documents: Articles of Incorporation (Corporate Charter), Bylaws, and a Declaration of Covenants & Restrictions.

As we learned in the CAM pre-licensure course, a condominium association is created when the developer:

- Creates a corporation by filing Articles of Incorporation with the Florida Secretary of State;
- Files a Declaration of Condominium, and other documents with the county court in which the property is located, and
- Files a Declaration of Condominium with the Department of Business & Professional Regulations (DBPR).



A cooperative is formed when the developer:

- Creates a corporation by filing Articles of Incorporation with the Florida Secretary of State;
- Files the Articles, Bylaws, and Leasehold Agreement with the Department of Business & Professional Regulations (DBPR).

A mandatory HOA is formed when the developer:

- Creates a corporation by filing Articles of Incorporation with the Florida Secretary of State, and
- Files a Declaration of Covenants and Restrictions, and other documents with the county court in which the property is located.

When the developer prepares these documents, he establishes the basic rules and regulations (covenants) that govern the association and the unit owners. Each unit owner receives a copy of these documents and signs a statement that he/she has received and read them. Because the developer has filed the documents with the County Court, judges generally give the Association's documents more weight than rules passed by the board of directors. The board inherits responsibility to enforce covenants and rules when it assumes control of the association. Only by amending the documents can the owners typically change covenants, which often require a large percentage of unit owners.

The Articles of Incorporation is the corporate charter for the association. It provides the basic structure for the corporation: number of directors, date of annual meeting, etc. Generally, the Articles do **not** include rules and regulations.

The Bylaws of the association generally provide the procedures for carrying out the association's responsibilities: when to have meetings, the responsibility of directors and officers, and so on. Although not common, the Bylaws may also include rules and regulations governing common facilities. The manager and board should carefully review the Bylaws to be sure that they follow the rules set out for the Board.

Associations also have specific declarations of covenants and restrictions that establish the formal regulations for all the property in the residential community, including the basic rights and responsibilities for each owner, resident, member, and guest. These formal restrictions grant easements and use rights to owners and guests, delineate services and privileges to be provided residents of the community, and establish the obligations and standards for maintenance and upkeep of the property. The covenants & restrictions also establish rules and regulations that unit owners must follow, and/or limit the use of the units and common property. These are generally in the form of “use restrictions.”

In a homeowner association, the covenants & restrictions are called a “Declaration of Covenants & Restrictions.” In a condominium, this document is named the “Declaration of Condominium.” In a cooperative, the rules may be included in the Bylaws, in a leasehold document, or, rarely, in a Declaration of Covenants and Restrictions. The use restrictions are usually listed in a specific section of the Declaration. Examples of use restrictions include:

Examples of Rules & Regulations

- Use of common elements and limited common elements
- Payment of maintenance & assessments
- Architectural changes to limited common elements and (sometimes) unit
- Screening of transfers, sales, leases, and other conveyances
- Satellite Dishes
- Parking
- Quiet & peaceful enjoyment
- Pets

- Pet restrictions
- Number & types of vehicles permitted on the property
- Number of residents permitted per bedroom
- Parking restrictions
- Restrictions on the sale, lease or transfer of units
- Restrictions on display of signs or flags
- Restrictions on items that may be kept or displayed on limited common elements, such as balconies
- Times during which move-ins, deliveries, or non-emergency repairs are allowed
- Right of association to enter unit for repairs or inspections with reasonable notice
- Procedures for collection of assessments, including late fees
- Fining ability for use restriction and rule violation

The Condominium, Cooperative, and HOA Acts authorize the Board to adopt reasonable rules and regulations pertaining to the use of the unit and common elements of the association. The Board may also adopt procedural rules to enforce the use restrictions.

The rules must conform to the law and documents. The Board generally adopts rules through policy resolutions, although in some cases a vote of the unit owners is required. Often, a board-promulgated rule will interpret or provide enforcement guidelines for a use restriction found in the Declaration.

The standard for board promulgated rules and regulations is whether the rule or regulation is reasonably related to the sound operation of the association and/or promotion of the health, happiness, and peace of mind of all unit owners. Further, the board must uniformly and fairly apply all use restrictions, rules, and regulations. The courts have ruled that association rules and regulations are generally enforceable unless they violate a fundamental public policy, bear no rational relationship to the protection, preservation, operation, or purpose of the association, or create more harmful effects on the use of the unit or association property than benefits. We will discuss enforcement of use restrictions and rules and regulations in the next section.

Note that if a Board fails to enforce a use restriction, rule, or regulation, the courts may rule that the Association has waived its right to enforce that specific item. Likewise, the Board must act promptly in enforcing use restrictions and rules, or the Courts may find that the Association is negligent, having undue delays in asserting its legal rights to do so (this is referred to as “laches”).

Managers and board should keep in mind that there is a hierarchy for enforcement of rules and regulations. Generally, federal law supersedes state law, unless the state law is stricter. State law and local ordinances generally take precedence over the association documents, unless the association documents are stricter. For instance, the Condominium Act requires that the board give unit owners a 14-day written notice prior to approval of the annual budget. The Bylaws of the association could require that owners be given a 30-day notice prior to approval of the budget. Because the association documents are stricter, the board would need to give 30 days’ notice. However, if the Association documents required a 10-day notice, the Board would be required to give 14 days by statute.

Adopting Rules & Regulations

How an association goes about governing itself and the rules it passes determines whether the association is a place to live or a community where people live. As we noted above, when the board determines that a rule is needed, the first step it must take is to assure that the rule will conform with federal and state laws, with particular attention to the Condominium, Cooperative or HOA Act (whichever is applicable), the association’s Articles of Incorporation, Bylaws and its covenants & restrictions.⁶ Associations should periodically review the rules it has in place, and determine if they continue to be necessary and effective. The rule of thumb is that an Association should review its documents and rules at least every 5 years, to see if they continue to reflect the needs and values of the community.



Some of the questions a board should ask when considering a rule include:

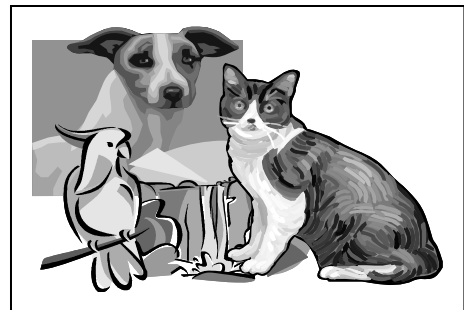
- What is the problem that the rule is addressing? If the association allows pets, but is having problems, it needs to identify clearly, what the pet problem is. Are dogs barking loudly at night; are unit owners not cleaning up after their animals; are pets wandering uncontrolled, rather than kept on leashes. Each of these problems might have a different solution.
- Does the rule make sense? Suppose an association has recently changed its rules to allow dogs as well as cats. The current rule says no animal is permitted outside of the unit. The rule may need to be modified to allow dog owners to take their pets outside on leashes and clean up after them.



⁶ HOA – Declaration of Covenants & Restrictions; Condominium – Declaration of Condominium; Cooperative - Bylaws or Proprietary Lease.

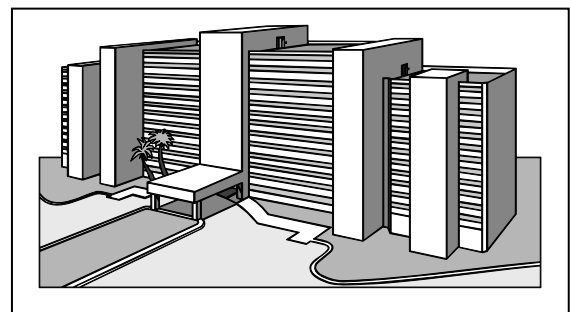
- Do we already have a rule that addresses this problem; if so, is it effective? If the association already has a rule, before passing another rule or amending it, the association should determine if the current rule works. And, if it does not work, the board needs to determine why. Maybe the rule is no longer needed.
- Is this the least restrictive way to approach the problem? If the association only allows deliveries between 9 AM and 5 PM on weekends, having a delivery van towed is unreasonable. Requiring the delivery van to leave and reschedule the delivery is more effective and much less restrictive.
- Is the rule enforceable? An association built in the 1970s, had a rule prohibiting walking in the wooded park it owns. Instead, it provided walkways and benches for its then elderly residents. In the past five years, the association has experienced an influx of young owners with children. Because there are no facilities for children, they use the park to play hide and seek. It may not be possible – or practical – for the association to continue its rule prohibiting walking in the wooded park.
- Does the rule create new problems? Using the above example, if the association continued its prohibition on walking in the wooded park, possibly the children would play in the streets, thus causing a safety hazard.
- Is the rule appropriate for the community, given its current demographic makeup, or is it outdated? Ten or fifteen years ago, many communities prohibited certain vehicles, such as trucks and vans. Many families now have SUVs and trucks that do not comply with the rules on vehicles. The association should consider updating the documents, to allow these vehicles. Perhaps the association wants to prohibit vehicles over a specific weight, with more than two axles, or of a “commercial” nature.

- Will the rule get the results the board wants? Owners walking their dogs have not cleaned up after their pets; the association passed a rule mandating that pets be walked in a specific area. While owners complied with the new rule, they still did not pick up after their pets, thus creating a health hazard. The association amended the rule to require pets to be walked in designated area, required that owners pick up after their pets, and provided clean up stations along the dog-walking path.



- Does the rule create problems, such as safety hazards? A high-rise association had a rule that nothing could obstruct the balcony railings. A unit owner with a small child wanted to place safety netting along the balcony, so that her child could not fall. This rule may need to be amended to allow for safety netting.

- Does the rule unfairly target a specific person or persons in the community? In one association, the board passed a rule permitting married unit owners to be granted two spaces. All other unit owners were permitted one space, regardless of the number of owners. The board should grant either one space per unit, or one space per owner, with perhaps a maximum number. Similarly, an association in Ft. Lauderdale

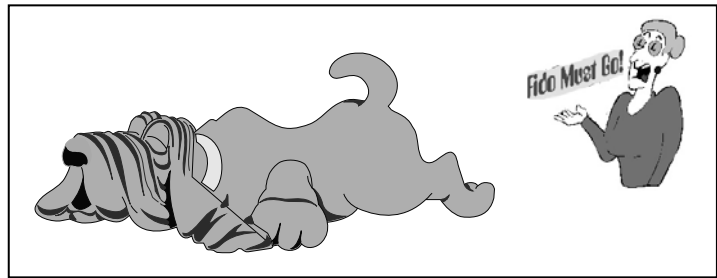


outlawed mezuzahs, but allowed Christmas, Halloween and other *seasonal* displays. In this case, the State ruled that the Association could not disallow the mezuzahs.

- Does the rule allow alternatives? In a townhome community, the association did not permit children to ride their bikes or play on the community streets and it prohibited them from riding their bikes or playing on the grass. The children therefore used the clubhouse to play and ride their bikes, thus damaging the expensive clubhouse carpet. The board eventually changed the rule to permit the children to ride bikes and play in designated outside area.
- Does the rule have support from the community? If the majority of owners do not like a rule, they will likely not obey it. And this may lead them to disregard other rules. It is important to develop consensus whenever possible for the association's rules and regulations.
- Will unit owners need to be "grandfathered in?" An association has amended its documents, so that dogs over 25 lbs are no longer allowed. Any unit owner who has a dog over 25 lbs must be allowed to keep it.

Adopting Rules – Summary

The board needs to clearly identify the problem that it is attempting to address. It needs to review the alternatives it is considering, to determine if they will be effective. The board also needs to periodically examine the demographics of the association, to see if the current rules and regulations are working for the community.



Rules must be reasonable: they should be logical and specific, addressing the problem identified. They must be enforceable and fair. The Board should write the rules in simple language, clearly and concisely. Remember, the unit owner has to understand the rule in order to follow it. Example: *Owners shall keep dogs on a leash whenever the animals are outside of the unit.*

Rules should be stated in a positive manner, whenever possible.

Do not say: No items may be stored on balconies.

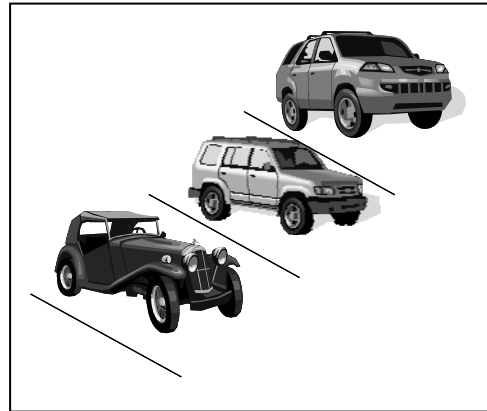
Do say: Planters and outdoor furnishings may be maintained on balconies. Please do not use balconies for storage.

The board should explain the reason for the rule.

Example: We ask that unit owners walk their dogs in the designated dog walk, use pooper-scoopers, and dispose of the waste in the receptacles provided. This will assure that we adhere to the county's sanitation requirements, and will help us maintain our beautiful lawns, thus maintaining our high property values.

The board should explain the consequences of noncompliance.

Example: Owners must park their vehicle in assigned spaces.
 Owners who park on the grass may be towed without warning and may be responsible for any damages to the grounds.



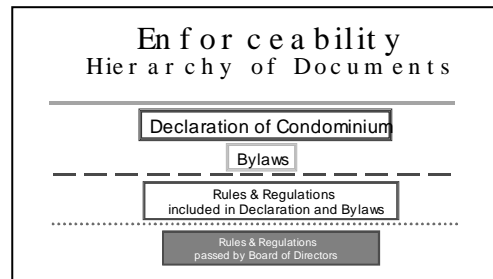
Once the board decides that a rule is necessary, the board must provide unit owners with notice that the rule is being considered. If the rule affects the use of the units, the board must provide each owner with 14 days written notice of the rule. If the rule does not affect use of units, the board must include it on the agenda to be posted 48 hours before the meeting. Generally, we recommend that boards and managers give all owners sufficient written notice of proposed new rules and rule changes, so that they have the opportunity to participate in the discussion.

At the board meeting, the board should read the proposed rule and explain the reasoning behind it. After a motion and second to approve the rule, we recommend that the board provide unit owners with an opportunity to speak. They may provide a solution that the board may not have considered.

Example: Wilson Terraces is having a problem with deliveries early in the morning and after midnight. The board decides to pass a rule that deliveries can only be made between 9 AM and 4 PM, Mondays through Fridays. At the meeting, some unit owners object, noting that they work those hours, and can only receive deliveries after 5 PM or on weekends. The board learns that the problem is only with a few unit owners, who recently moved in. After discussion, the unit owners agree that a reasonable compromise is to allow deliveries from 9 AM to 8 PM during the week, and from 10 AM to 2 PM on Saturdays.

Requirements for Enforcement of Rules & Regulations

Now that the board has adopted its rules and regulations, it must enforce them uniformly and fairly. The board should periodically republish the rules, as a reminder to the unit owners. The board needs to take a common sense, even handed approach to enforcement of the rules. The goal is voluntary compliance by residents.



Some boards and managers are proactive and seek out rule violations; others wait for rule violations to be reported to them. One problem with waiting for violations to be reported by other unit owners is that some owners look for reasons to complain about others, or may have grudges. Many professionals recommend a proactive approach – inspecting balconies to see if there are items stored that should not be; walking the parking lot to assure that vehicles are properly decal and parked; periodically walking the grounds to see if pet owners are picking up after their animals – followed by friendly reminders regarding compliance.

The board should document the problem, with photographs when appropriate. When possible, the board should obtain statements regarding the violation from two or more persons. If the board uses a rule committee or architectural committee, the committee should exclude board members. The board should provide committee members with periodic training, copies of the rules and documents,

and professional assistance to assure that they can do their jobs properly.

If there is a violation of a rule, the board must act within a reasonable period to enforce the rule. Failing to act promptly carries consequences: the board may lose, or waive, its ability to enforce this – or other – rules; unit owners may assume that they do not need to follow rules, or owners may lose confidence in the board's (or manager's) ability to govern the association. The board must impose reasonable consequences for the violation - both in the eyes of other unit owners and the courts. For instance, if a unit owner was not picking up after his dog, taking him to court to remove the pet after the first offense would not be reasonable. Providing him with a warning, or fining him, would be reasonable.



As noted earlier, if the Board does not promptly and equitably enforce use restrictions or rules, it may be found to be negligent. Also, the Courts may rule that due to the “undue” delay in enforcement the Association has lost its legal right to enforce that particular use restriction or rule.

When the board cites the owner for the violation, the board must provide sufficient time to correct the violation. The periods for correcting the situation may depend on the nature of the violation. While it is reasonable to expect an owner to pick up after his dog after the first warning, it is unreasonable to expect him to remove his 50 lb dog from the association in one day.

The board must treat all unit owners in a fair manner. If pets are not permitted in the documents, and the association treasurer has a cat, the board must impose the same standards on her as on any other unit owner. If the board allows her to keep the cat, the board has effectively waived enforcement of that rule. However, a board should allow for appropriate and reasonable exceptions. If the owner of the 50 lb dog agrees to remove his dog from the premises and asks for an extra two weeks to find him a suitable home, the association should consider granting his request.

The board should give the owner the opportunity for a hearing. This allows the unit owner to defend his position and explain his situation. In some cases, the board may learn facts that can lead to a different, more reasonable outcome. Additionally, if the owner fails to comply with the rules, and the board takes the case to court, a judge may view the association more favorably.

Further, some governing documents spell out the requirements for hearing committees. The Association documents may require a Hearing Committee, and provide specific periods in which the Committee must act. They may include membership requirements, and they may define specific penalties for certain violations. If the documents permit fining, a condominium or cooperative must also adhere to state requirements for an owner's appeal of the fine.

Process for Enforcement of Rules & Regulations

Boards should verify the occurrence of violations of which they are informed and duly notice owner/violators. Depending upon the nature of the violation, some boards like to contact the owner in person or by telephone, and provide them an opportunity, informally to correct the problem violation. Other associations notify owners of violations by letter. The board should have a



written procedure that it follows for all owners based upon the nature of the violation.

While we recommend that all notices be in writing, for a minor first offense a phone call or personal visit may correct the problem with less upset. The manager of an association should handle use restrictions and rule violations in the manner established by the board. If the manager is more lenient than the board, the board and owners may feel he is not doing his job. If the manager takes a tougher stance than the board, he may be seen as overstepping his bounds.

Letters of Notification

The letter notifying the owner of the violation should include:

- Description of the alleged rule violation
- Possible penalty
- Request for specific action by a specific date to voluntarily comply
- Action that the board will take if the violation is not corrected within the time frame stated (or if it continues to occur)
- Opportunity to appear before the Hearing Committee, Board or other body to offer a defense
- Consequences of not appearing before the Committee (e.g., assumed compliance; additional action for non-compliance; fines)



If the unit owner agrees to comply, the board should send a letter acknowledging compliance. The association should retain copies of all documents related to the violation, in the unit owner file.

Fines and Other Penalties

Unfortunately, the board can ask that owners comply with rules and regulations, it can send letters threatening actions, but sometimes it takes a fine to get an owner's attention. Condominiums, cooperatives and HOAs can only fine if the Declaration or Bylaws allow fining. The statutes require that fines be no more than \$100 per incident, with a maximum of \$1,000 for a continuing incident.

Fines are a negative way in which to handle a problem, and associations should use fines only after giving owners an opportunity to correct the problem. The Board should not necessarily impose the maximum fine for every violation. If a unit owner fails to pick up after her dog, a reasonable fine for a first offense may be \$25. If a unit owner dumps his garbage in the trash room, and the maintenance personnel have to clean it up, a reasonable fine may be \$100. Note that, in this case, the Association could also charge the owner for the time the maintenance personnel spent cleaning up the trash. The association may impose a charge for cleanup, regardless of any provision in the documents, if this reflects the actual cost the association incurred due to the problem.

If an association imposed fines, it should include a schedule of fines within its rules. The Board should adopt a standardized fine schedule, as well as periods for notifying owners of violations and for correcting these. The letter notifying the owner of the fine should state the violation, dates and times of past violations of a similar nature, a time frame for correcting the violation, the fine which may be imposed, and the date and time the hearing committee is scheduled, should the owner wish to appeal.

However, the association cannot levy a fine until the violator has been afforded reasonable notice of the violation and had the opportunity to appear in front of the fine or hearings committee. The committee determines whether the fine shall be imposed. There is no appeal to the Board as the

committee's decision is final. If the owner fails to appear before the fine committee, committee should automatically levy the fine.

The Condominium, Cooperative, and HOA Acts require that any association with a fining system have a committee of members that will hear appeals of the fine. F.S. 720, the HOA Act, requires that hearings or committees must be composed of a minimum of three members, none of whom can be Board members. It further restricts membership by eliminating employees, the manager, or immediate family members of the Board, manager, and employees. Condominium and cooperative Directors may not serve on these committees, although the statutes do not set a limit on number of members. F.S. 718, the Condominium Act, and F.S. 719, the Cooperative Act, do require that only unit owners serve on these committees.

Fines cannot become liens on the property. The Association must take the owner to court to collect the fine. Often, when an owner fails to pay the fine but corrects the problem, the Association places the fine on the owner's account for collection at the sale of the unit.

The Homeowner Association Act (F.S 720) allows associations to suspend an owner's right to vote or to use common facilities for rule violations, as well as for failure to pay assessments. The HOA documents must include these provisions as penalties, and the HOA must provide the



owner with an opportunity to appeal to a committee of owners. Condominiums and cooperatives cannot deny an owner the right to vote, nor can they take away access to common elements. In no case can any associations restrict access to an individual's unit due to rule violations.

Hearings

If the unit owner requests a hearing, the committee should set up a mutually agreed upon time for the hearing. The association must provide at least 14 days notice. If a third party was a witness to the violation, the committee should insure that the individual attends at the hearing. The owner should be permitted to bring an attorney or other representative if he wishes. The hearing committee should



insure that the board representative will attend the hearing. Finally, the committee should prepare an agenda. The chair should begin the meeting on time.

After opening the meeting, the chair should introduce all parties to the proceedings. He should ask the board representative or manager to state the case against the unit owner in simple terms; give date(s) of occurrence of the violation; review letters requesting corrective action; and summarize the owner's response, if any. Note that sometimes the board will ask the committee chair to present the association's case. This is inappropriate, as the chair must be a neutral party to the proceedings.

Once the board representative or manager has completed his presentation, any other witnesses to the violation should speak. The chair should then ask the owner to respond. He should allow the owner to respond in his own words, and not permit the board representative or other members of the committee to interrupt. The owner should be permitted to present his witnesses, if any, regarding the violation. The chair and committee should not ask questions unless it is to clarify information; the hearing is not intended to be a court proceeding, and attendees should not be cross-examined or interrogated.

Once the committee has heard all evidence, the committee should thank participants. The committee may want to make a decision at that time, or it may want to discuss the issue further. When the committee makes its determination, it should send a letter to the owner and the board, stating the decision, why it reached that conclusion, and what action is required. If the owner was found to violate the rule and a fine is due, the letter should specify the time in which the fine must be paid. If the violation has not yet been corrected, the letter should provide the time frame in which the violation must be corrected.

Other Remedies: Mediation, Arbitration, Court

If the owner does not comply, or refuses to correct the use restriction violation, the board may need to take further or additional action. The board may include in its procedures arbitration or mediation as a means of gaining compliance with the rules.

In mediation, the board and the owner meet with a mediator, who facilitates discussion and helps them reach a mutual agreeable settlement if possible. The mediator writes the settlement terms into an agreement, which both parties sign. Mediation is especially helpful in resolving disputes between two unit owners, such as noise violations. It may be helpful in cases where an owner agrees that he is in violation, but the board and owner cannot agree upon a timeframe for compliance. Mediation is unlikely to be helpful in cases where the board and owner are in dispute over whether a violation occurred or exists. Generally, the two parties share the cost of mediation unless otherwise agreed. Associations should use only trained mediators who have experience with community association disputes. The State of Florida maintains a list of volunteer and paid mediators.

Arbitration is a non-judicial process in which an arbitrator acts as a judge, listening to and reviewing evidence presented by both sides. Once all evidence has been presented, the arbitrator makes a decision in favor of one side. If the arbitration is binding, the board and owner have agreed to abide by the arbitrator's decision. In non-binding arbitration, the losing party may take further steps. Arbitration may be helpful in resolving problems similar to those discussed above for mediation. Generally, the two parties share the cost of arbitration, unless otherwise agreed. It is extremely important for the board to use an arbitrator who is familiar with community associations.

F.S. 718 (Condominium Act) and F.S. 719 (Cooperative Act) require **non-binding** arbitration for certain disputes:

- Elections & recalls
- Meetings: Noticing, improper conduct, etc.
- Failure to allow inspection of books or records
- The board's authority to require a unit owner to take action, or not to take action, involving that owner's unit or disagreements concerning the board's authority to alter or add to a common area or element.



F.S. 720 (HOA Act) requires **binding** arbitration for:

- Elections
- Recalls

Boards and managers should bring to mediation and arbitration hearing copies of their documents, rule enforcement policies, and unit owner file. Only one person from the board should present the case to the mediator or arbitrator. Additionally, the board must empower its representative with decision-making authority to settle the case. While not required, some boards chose to have the association attorney represent them.

In 2007, the HOA Act was amended to require pre-suit mediation for disputes. The aggrieved party must serve responding party with offer of mediation using a form included in F.S. 720. The offer must be in writing, sent certified and first class mail. The aggrieved party suggests 5 mediators, from which the responding party will select one. If responding party agrees, the mediation must be held within 90 days, unless extended by mutual agreement. Each party pays half of the costs. The aggrieved party can go to court if the responding party:

- ◆ fails to respond within 20 days
- ◆ fails to choose 1 of the 5 mediators
- ◆ fails to prepay half of fee



If either party does not participate in mediation, he or she cannot recover attorney's fees or court costs.

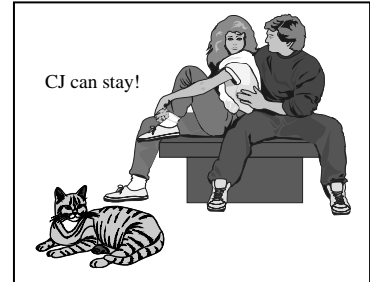
Most associations choose to go to court if the owner does not correct the violation or continues to violate the rule. In such cases, the board should rely upon its attorney to prepare the paperwork, file the case, and represent the association's interests.

Many judges will send disputes to mediation before they allow the case to be heard in court. In most cases, the court ordered mediation is a part of the court filing costs. Court mediators generally are not knowledgeable about association laws and documents. If a judge orders mediation, the board should consider hiring a private mediator knowledgeable about community associations.

If the case is not settled in mediation (referred to as an “impass”), the case will proceed to court. The judge will give each side the opportunity to present its case, and to cross-examine the other side. Not all judges are knowledgeable about association law or documents. The association may lose even if the evidence appears overwhelming in its favor. It is therefore important to have an attorney well qualified in community association law who can tailor the case presentation to the judge hearing it.

Exceptions

After hearing from the unit owner, sometimes the board may determine that it needs to make an exception to the rule. This can be risky as other unit owners may claim selective enforcement. The board should look carefully at the violation and determine the effect on the community if it grants an exception. For instance, if the association prohibits home businesses and an owner has a home bookkeeping business where she brings the work into her home and delivers it, the board may determine that it will grant an exception. Another owner who makes jewelry in his garage, may not be granted an exception if he uses propane or dangerous chemicals as part of the process.



Sometimes, the board must grant an exception. For example, the association documents may prohibit pets. However, if a resident has documentation from her psychiatrist that she needs a companion cat; the board must under the Fair Housing Act grant an exception.

Whenever the board grants an exception, it should document the decision in writing, including:

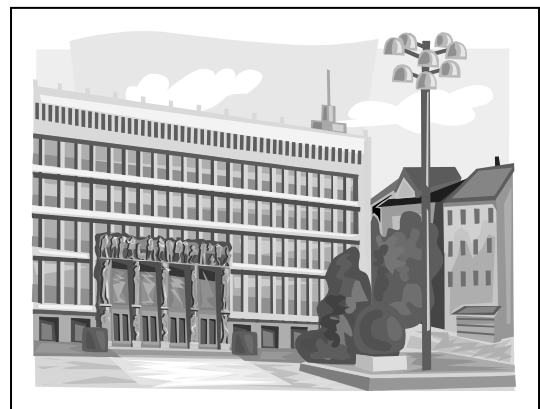
- The use restriction or rule violation in question
- The owner(s) to whom the exception is granted (or not granted)
- Why the board is (not) granting the exception
- The authority under which the board is (not) granting the exception
- Any professionals with whom the association consulted in making its decision
- Why the board believes that the use restriction or rule should continue in place

This includes sending a letter to the owner, advising him of the decision, and providing the same information.

Complaints from Unit Owners

The board will receive two types of complaints from owners: complaints about the board or an action (inaction) of the board, and complaints about other unit owners. If a unit owner complains about the board or the association, the board needs to verify if the problem is something that it has authority over or for which it is responsibility.

The Condominium, Cooperative, and HOA Acts have specific time frames for responding to unit owner complaints regarding records access:



- Condominium/cooperative – 5 working days
- HOA -10 work days

The association must provide access within 10 working days after receipt of a written request, or it may be liable for a fine of \$50 a day for a maximum of 10 days. The association has the right and should have written procedures for handling requests to view records. Note that the Association cannot refuse any reasonable request to review records, except those expressly exempted by statute.

If the unit owner asks a question, the Condominium and Cooperative Acts provide 30 days in which the board must respond to the question if the request was received by certified return receipt mail. Within the 30 days, the board must:

- Give a substantive response to the inquirer
- Notify the inquirer that a legal opinion has been requested, or
- Notify the inquirer that advice has been requested from the DBPR.

If the board requests an attorney's opinion, it has 30 days from the date of its initial response to provide the owner with the attorney's opinion. If the board requests advice from the DBPR, the board must provide the owner with a response within 10 days after it receives advice from the state. Again, the board has the right and should develop guidelines for responding to unit owner requests.

If the unit owner has a complaint regarding another unit owner, the board needs to determine if it has jurisdiction over the issue. Is the complainant parking in the complainer's space? Is he making too much noise and disturbing his neighbors? Does he have a prohibited pet? These are all issues that the board has jurisdiction over.



If the other owner hit her car, this may not be within the jurisdiction of the board. The board should advise the owner that she needs to resolve the issue with her neighbor. However, if the owner complains of a leak from another unit, while this technically is not the responsibility of the association, the board may need to intervene to protect both the common elements and the other units. Usually, however, the owner will contact his insurance company to cover the damages to his or her unit, although he or she may attempt to collect directly from the other owner.

If an owner is not satisfied with response of the board, the owner may complain to the DBPR, may take the association to court, may run for the board, or may initiate a recall of the board. The owner does not have the right to withhold monthly assessments or other monies due.

Regardless of the type of complaint, the board should respond as quickly as possible to the unit owner. By responding to unit owners promptly, the board helps to create a community atmosphere – even when the board has to say no. It also provides an opportunity to find out owner concerns, and remind owners of important meetings, of rules and issues, and to request his/her assistance in operating the association.

Reviewing & Changing Rules & Regulations

The association should periodically review its documents and rules, to make sure they are consistent with any changes in federal, state, or local ordinances, and to make sure they continue to reflect the will of the community. It may want to establish a committee of unit owners, and ask them to hold meetings to gather input from the community. Perhaps the pet rule is no longer a good idea. Maybe the community wants to amend the Declaration so that non-commercial vans and trucks are allowed. Maybe the one vehicle per household is no longer practical. By periodically examining the rules, getting community feedback, and involving community members in drafting rules, the board can change the community from just a place to live – to a community. This is particularly important in Florida, where our population is becoming more and more diverse.



Note that, when modifying the use restrictions – especially when it affects the use of a common area, or permits something new – the association should check with its attorney to assure it can legally do so, and its insurance agent to ascertain if the association will have any additional liability.

Changes to Declarations, Bylaws & Covenants

The Condominium and Cooperative Acts provide detailed instructions on how the Declarations and Bylaws must be amended. Specifically, the statutes require that new sections be underlined and old sections be lined through.

Examples:

~~No pets~~ Cats, dogs, and birds are permitted. Owners are responsible for cleaning up after their pets. All dogs must be leashed when outside of the unit. Cats and birds may not be allowed to roam outside the unit.

Unit owners are permitted to maintain ~~one~~ two vehicles on the property. Owners shall be assigned one parking spaces by the board. Owners may park a second vehicle in any available unmarked space.

No commercial trucks or vans are permitted on the property on Sunday, before 8 9 AM or after 6 5 PM on weekends, or before 9 AM and after 2 PM on Saturday, except for emergencies.

However, if there is a substantial rewording of a section, the association may print the reworded section, followed by the phrase: "*Substantial rewording of bylaw. See bylaw _____ for present text.*"

Currently, homeowners associations do not need to meet the same requirements as condominiums and cooperatives. We recommend that HOAs follow the same procedures as outlined above, as this method communicates clearly to the owners the proposed changes.



The Condominium and Cooperative Act requires that if the bylaws fail to provide a method of amendment, the bylaws may be amended if the owners of not less than two-thirds of the voting interests approve the amendment. The Condominium Act provides that no association formed after April 1, 1992 may require that amendments be approved by more than 4/5s of the voting interests. The HOA Act does not require a specific number of owners to amend documents; the HOA must review its documents to determine the number of votes necessary to amend each type of document.

The board must hand deliver or send copies of the proposed amendments to every unit owner at his last known address. Owners in condominiums/cooperatives can vote by limited proxy on each amendment, while owners in HOAs may use general proxies (unless otherwise stated in the documents). If the amendment passes, a condominium is required to file the amendment with the County Clerk. While this is not required for cooperatives or HOAs, we strongly recommend that all amendments be filed with the County Court.

Board Approved Rules & Regulations

Board approved Rules & Regulations may be changed by a vote of the board. If the rule affects the use of a unit in a condominium or cooperative, the board must provide owners with the rule change in writing at least 14 days in advance of the meeting at which the Board will consider the change. Unit owner may attend the meeting to discuss the change, and are entitled to speak to the change.



We recommend that the board publish the changes to the rules in the same manner as required for the Bylaws and Declaration. Unit owners will more readily be able to see changes. The board should

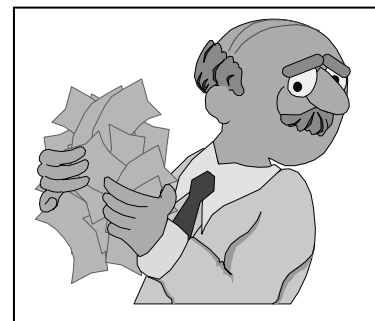
provide an explanation for the change so that owners understand how the rule will benefit them or help the community. If a change appears arbitrary, people will not understand why they need to follow the rules.

The board should also keep rules to a minimum. The more rules, the more difficult to remember them, and the more likely there will be problems. Moreover, rules should be simple. If the rule is so complex that it takes the association attorney to understand and interpret it, it is highly likely that residents will have a problem following it. Remember, the reason behind the rules is to preserve, protect, and enhance the association property value and assets, promote harmonious living, and ensure that residents can use and enjoy the property. If the rule does not accomplish that, it may be a bad rule.

Special Rules & Regulations

Collection of Assessments

The Condominium, Cooperative, and Homeowner Association Acts provide differing requirements for collecting assessments and penalties for non-payment. Depending upon the type of association in which a manager works, he should become familiar with the applicable statutes. Additionally, association must adhere to the Federal Fair Debt Practices Act.



The Bylaws or Declaration generally set the period in which assessments are due, including a date after which assessments are late or give the board authority to establish due dates. The board should assure that every owner knows the date assessments are due through publishing dates in the rules, through periodic reminders in its newsletter, by noting the date in new owner packages, and, if desired, through the issuance of payment coupons. Annual books of payment coupons and envelopes are a good way of reminding owners of due dates for associations, and can be purchased for about \$2 - \$4 an owner.

We recommend that within five days after the due date for assessments, the board send unit owners letters advising them that the association has not received the assessment, the penalty or late fee now due, and the action that the association will take if the assessment is not paid. The board should give the owner an opportunity to explain any problems.

Keep in mind that a board may *only* charge late fees if permitted in the association documents. Additionally, the Condominium, Cooperative, and HOA Acts allow associations to charge up to 18% simple interest annually, unless a lesser amount is stated in the documents. They may also charge a late fee of \$25 or 5% whichever is greater, as long as the documents permit a late fee.

Condominium and cooperative associations may not take away a unit owner's right to vote or use of the common elements in condominiums or cooperatives, although this is permitted in a homeowners association. Remember that the HOA can only take away the right to vote if the owner is at least 90 days delinquent, and the board has given at least 30 days notice. The owner must have the opportunity to appear before a "hearings" committee composed of owners.



If the owner is one who has a good payment record, the board should give the owner every opportunity to pay the assessment and/or explain his problem. Sometimes, an owner is having temporary difficulty, or the check truly did get lost in the mail. If an owner has a valid reason to be late on an assessment, the board may consider waiving the late fee and interest. As discussed earlier, the board must carefully document the reasons why it has taken this action. Likewise, if the board determines not to waive late fees or interest, it should record the reasons it has chosen to do so.

If the owner does not pay the assessment by the end of the month and has not provided a valid reason why he is delinquent, the board should turn the file over to an attorney who specializes in collections for associations. The board should direct the attorney to file a lien against the unit.

Condominium, cooperative, and HOA statutes differ in the procedures for handling liens. In a condominium or cooperative, if the owner continues to be delinquent thirty days after the association files the lien, the board can move to foreclose and force a sale of the unit. The association must give 30 days' notice of its intent to foreclose. After the 30 days, the association may move for foreclosure, giving the owner 30 days notice. If the condominium or cooperative does not give proper notice, it may still foreclose but cannot collect attorney's fees, court, or legal costs. Even at this point, an owner can pay the late assessments, interest, late fees, and legal fees.



An HOA cannot file claim of lien without written notice, sent certified or registered mail, return receipt & first class,⁷ providing the owner with 45 days to make payment in full. The HOA must provide another 45 days notice of intent to foreclose. During the 45 days, the owner may make a qualifying offer to pay all amounts of the lien prior to foreclosure. The owner must deliver the offer to the association's agent by certified mail or hand delivery. This stays the foreclosure for 60 days, to permit the owner to pay. If the owner breaches, the association can proceed with foreclosure immediately. If the HOA has followed this process, it is entitled to attorney's fees, legal and court costs. It may also purchase the unit at foreclosure.

Foreclosure is a serious action, especially if the unit is the owner's residence. Some attorneys charge substantial amounts for foreclosure actions. Generally, a fair fee for a simple foreclosure action is \$500 - \$750. If the owner challenges the foreclosure and is tried in court, the costs may be much higher.

Note that the Condominium, Cooperative, and HOA Acts provide that, when the owner pays, the payment is applied:

- 📖 first to any interest accrued by the association
- 📖 then to any administrative late fee
- 📖 then to any costs and reasonable attorney's fees incurred in collection
- 📖 then to the delinquent assessment.

The owner continues to carry a balance owed for assessments each month. The board can charge an additional late fee and interest, which if the unit owner does not pay, can eventually add up to a substantial amount.

The Condominium and Cooperative Acts also permit an association to accelerate the annual assessment of a delinquent unit owner. An HOA is guided by its documents.

We recommend that boards and managers carefully explain to owners their responsibilities for payments. Additionally, although associations can lien unit owners who owe amounts equal to late fees and interest only, we recommend against this practice.

Generally, attorneys will bill their fees for liens against the delinquent owner. While fees for such actions may vary greatly, a fair attorney's fee for a simple lien, including title research, is about \$300 - \$400.

In condominiums, cooperatives and HOAs, liens are good only for one year. Therefore, the board should take the necessary actions to collect during that period, including foreclosure, if necessary.

Collection of Fines & Other Charges

Condominiums, cooperatives, and HOAs can assess fines for rule violations only if permitted in the documents. As stated earlier, fines are limited to \$100 per incident, with a maximum of \$1,000 per violation. The association can attempt to collect the fine by going to court. Rather than attempt to collect a \$100 fine, if the owner has corrected the violation, however, the board may choose to carry the fine as a payable until the unit is sold.

⁷ If owner outside US, first class only is okay

Associations may also charge units for repairs made to units to prevent damage to the association or another unit, and for damages to association property for which the owner is responsible. The association should carefully document the cause and cost of the repair, and send a letter requesting payment by the owner. If the owner refuses to pay, the association has the right to attempt to collect through the courts. If the amount is not a large amount, the association may choose to carry the charges as an account payable until the unit is sold.

Architectural Requests

Architectural requests include, among other things, exterior painting, flags, and flagpoles, screening balconies, erection of sheds, satellite dishes, and other changes to the exterior of the building. In some associations, changes to the interior of a unit that may affect another unit, such as the installation of tile, or that may affect the structural integrity of the building, such as removing an interior wall, may also require architectural approval by the association. Some associations require architectural approval to plant flowers or trees, especially when the association is responsible for maintenance of the grounds.

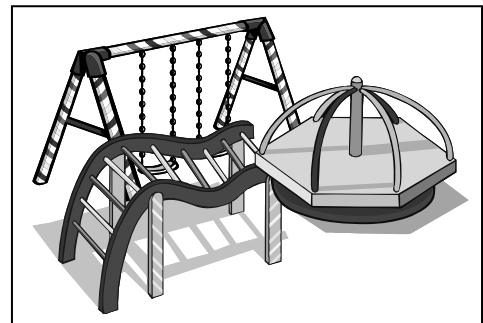


In 2007, the HOA Act was amended, to limit the control an HOA has over architectural changes by unit owners. Association control to review/approve plans & specifications for:

- ♦ Location
- ♦ Size

Appearance of a structure for external appearance is only permitted to extent as specifically stated in the documents or could be reasonable inferred as to same. Additionally, an HOA can identify only one side of a unit lot as the front, for determining setbacks. Lastly, the association cannot unreasonably restrict construction of structures or improvements that are permitted by documents. If the HOA violates these architectural control provisions, the owner may be entitled to recover reasonable attorney’s fees in preserving and/or restoring his/her rights.

The board and manager should review the statutes and documents for their association carefully to determine when approvals are required. The association should require architectural approvals to protect the association and its members, and should not unreasonably withhold approvals.



The board should develop a standardized architectural request form. It should include the name of the owner, nature, and description of the work, who will perform the work, and when the work is expected to occur. If the owner is using a contractor, the board should require proof of occupational license and any specialty licenses required. Depending on the nature of the work, the board may want to request that the owner or his contractor provide proof of insurance, or provide a certificate of insurance protecting the association. If the work will require a permit, the association should require a copy of the permit before the work is started and proof that the work met County or Municipal code once it was complete. Again, the purpose of requiring this information is to protect the association and its members.

Associations do not have the right to prohibit owners from displaying a portable, removable United States flag, nor, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, from displaying portable, removable official flags representing the United States Army, Navy, Air Force, Marine Corps, or Coast Guard. They may prohibit any other flag, if permitted in the documents.

With regard to holiday displays, the association may want to adopt rules that address the safety of a display and the timeframes for the display. For instance, having a 3-foot Santa on the front lawn may be acceptable in December and early January, but not in July. Holiday displays can brighten and enhance a sense of community, and the association should be reasonable in its approach to limiting holiday decorations.

Some associations restrict outdoor play equipment, disallowing it altogether or permitting only portable equipment. In considering rules for play equipment, the board needs to consider the demographics of the association and the availability of recreational facilities within the community. An association may not have a legal obligation to provide play equipment for its children, and may choose to not provide any play equipment. Families may choose to install portable basketball courts, or put a swing set in the back yard. In such cases, the board should develop standards that make sense to owners, while allowing the children a safe place to play. Perhaps play sets are limited to backyards where they are not visible from the road, or of a standard make or color. Perhaps the association will chose to install a play set in a common area, in lieu of allowing individual play sets.

Many associations restrict the ability of owners to modify the landscaping. This can be due to a desire to keep the community looking uniform, to protect the current landscaping, or to keep costs of landscape maintenance down. The association needs to determine the reasonableness of its guidelines: why is it restricting plantings in the limited common elements? Will the owner care for

the plantings him or herself? Does the landscaping enhance the property and community? How will the landscaping fair given the water restrictions in South Florida?

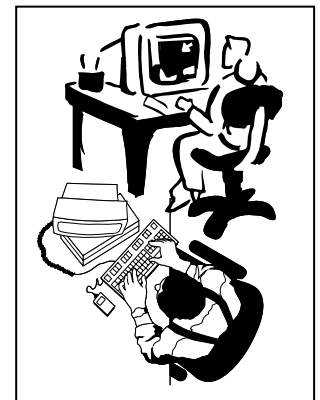
Keep in mind, architectural standards are meant to preserve, protect and enhance the association property value and assets, promote harmonious living, and ensure that residents can use and enjoy the property. If the standards do not meet that test, perhaps the board is unnecessarily burdening itself and its owners.

Home Businesses

Most association documents prohibit home businesses. However, there is a trend nationally for people to work out of their homes at least part of the time. When does a home business become unreasonable? If a business can be seen, or heard, or it increases traffic, it may become an intrusion on the community.

Additionally, it may violate local zoning ordinances for location of a business.

If a home business is not interfering with association activities or other unit owners and is permitted by local ordinance, the board should allow it to operate by either amending the documents or granting an exception. Remember, if granting an exception, the board should carefully document the circumstances and reasons for the exception.



If the board determines to allow home businesses, it should require that the owner provide an occupational license from the local government with jurisdiction, certifying that the business is properly licensed to operate from that address.

Common Elements

Boards may pass reasonable rules and regulations for the use of common elements. If the association has a pool or jacuzzi, the board must adhere to F.S. 514 and F.A.C. 64-9, which include specific rules that must be posted at poolside. The board might also wish to establish other rules for use of the pool, depending upon the needs and desires of the community.

The board can pass reasonable rules for use of rooms and facilities within the complex. The Condominium and Cooperative Act permit the association to charge a user fee if it is permitted in the documents. Generally, user fees must be related to the costs of maintaining or using the facility – such as a clean up fee for use of a party room.

Pets

Pet restrictions, typically controversial in associations, are becoming more so as individuals adopt dogs and cats, and as health professionals suggest that having a pet is good for physical and mental health. Further, many people view their pets as friends and companions – not merely “animals.” Some owners are obtaining letters from doctors, certifying that their pets are necessary for their physical or mental well-being. If not accepted by the board, these owners can and do claim discrimination under the Fair Housing and Americans with

Disabilities Act. If the board has not established standards for determining when a pet may be permitted for health reasons, it may be unable to deny residents who provide little or no proof that pet ownership is health related.

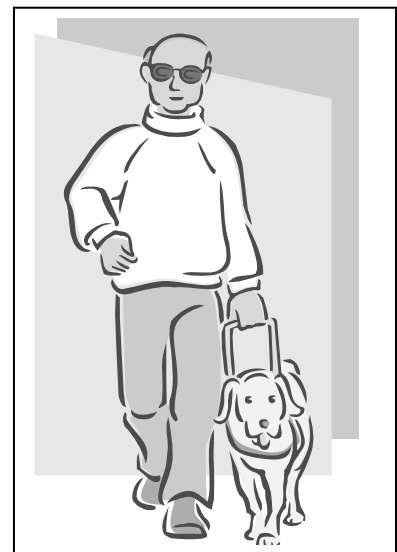
Many developers provided pet bans in the original documents, which boards have continued to enforce. With the changing nature of communities, owners may challenge boards to allow pets, and develop rules that better reflect the desires of their owners.

Some associations restrict pets based upon weight. This type of restriction is difficult to enforce. Who is going to be the “pet weigher”? Further, a weight restriction does not address typical problems with pets – barking, running loose without a leash, owners not picking up. Recent rulings suggest that the courts are sympathetic to pet owners. Boards that do not ban pets altogether need to develop reasonable rules, such as leashing dogs and use of pooper-scoopers. If the association bans pets, then the board needs to develop standards for exceptions. For instance, if a pet is needed for medical reasons, has the pet been specially trained to meet these needs?

Some recommended standards include:

Seeing eye dog: letter from appropriate agency attesting to blindness and certifying that the animal has been trained as a Seeing Eye companion

Hearing dog: letter from appropriate agency attesting to hearing deficiency and certifying that the animal has been trained as a hearing companion



Mental health: letter from a psychiatrist, neurologist or other credentialed mental health professional attesting that the pet is required, with an explanation of why

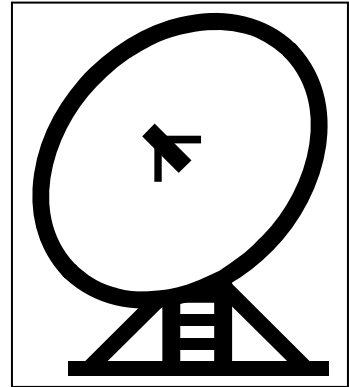
Physical health: letter from appropriately credentialed physician attesting that the pet is required and giving the reason

A common problem boards have with pet ownership is that they selectively enforce the pet rules. Because Sadie Goldberg is a sweet old lady, and her dog never makes any noise, the board lets her keep the dog. When Bruno Bigfoot moves in and brings his Great Dane, the board informs him no pets are allowed. Unfortunately, the board will be unable to enforce this rule because it allowed Sadie to keep her dog.

Boards and managers may wish to consult with the association attorney anytime there is a pet violation, to ascertain if current case law will support enforcement of the association's rules.

Satellite Dishes

The Telecommunications Act of 1996 prohibits associations from unreasonably restricting television antennas, satellite dishes less than one meter, and multipoint distribution service antenna less than one meter. Associations can provide guidelines for installation of dishes and antenna. Generally, boards can prohibit from affixing satellite dishes on common and, sometimes, limited common elements. When preparing rules regarding satellite dishes and antenna, the board should consult with an attorney specializing in telecommunications.



Parking & Vehicles

Many associations, especially those created before the 1980 SUV-boom, prohibit trucks, vans, recreational vehicles, campers, and inoperable or unlicensed vehicles. The intent appears to have been to prohibit large vehicles that take up precious spaces in limited communal parking areas, as well as commercial vehicles, that some owners see as advertisements. Some associations also ban motorcycle, due to the noise they make. Some associations also limit each unit to a single vehicle.

Florida associations were, at one time, home to a large retirement community. With our changing demographics, many communities are finding that owners have more than one vehicle – and that the association has insufficient spaces. If it allows owners to park three or four cars on the property, other owners and guests have nowhere to park. How is a board to resolve this?



Again, we recommend surveying the community, getting their input for how to resolve the parking issue. The board may also want to examine local ordinances to ascertain if visitors and owners can park on nearby right of ways and streets.

Some boards are adopting a two-car per household limit; others assign each owner one spot, designate certain other spaces for guests, and allow owners to park second (and third) cars in any remaining spots on a first come basis.

Rules restricting vehicles need to be reasonable, to preserve, protect and enhance the association property value and assets, promote harmonious living, and ensure that residents can use and enjoy the property. If prohibiting SUVs, trucks, or motorcycles or limiting parking spaces does not achieve these objectives, perhaps the rules regarding vehicles and/or parking should be changed.

We suggest that every community survey its owners periodically to determine the type of vehicles that they find acceptable, as well as their parking needs. If the owners have a say in this process, they are more likely to support the board in enforcing rules on vehicles and parking.

Grandfathering In

Suppose the Declaration of Covenants and Restrictions of an association originally allowed boats up to 25 feet to be parked in the complex. While this worked when the complex was built in 1980, the association now finds that it has insufficient spaces to accommodate both land vehicles and boats. The association members vote to no longer allow owners to park boats of any size on the property.

Florida statutes provide that this change can only apply to owners who currently do not own boats and to new owners. That is, any owner currently owning a boat is “grandfathered in” and allowed to keep his boat until he sells the unit or otherwise disposes of the boat. However, new owners must adhere to the provision. The grandfather provision applies to almost any change in use restrictions and rules. Boards and managers should check with the association attorney on grandfathering requirements whenever use restrictions and rules are substantially modified.

Transfers, Sales & Other Conveyances

The Condominium and Cooperative Acts allow associations to screen and approve individuals looking to purchase, lease, or otherwise acquire units, if permitted by the documents. Some association documents also provide criteria for screening new residents. Some documents include a minimum percentage down on the sale of units; some allow a security deposit for rentals. State statutes permit a maximum of one month’s rent for security deposits, if allowed in the documents. Some associations have established financial criteria to assure that new owners will be able to pay not only their mortgage, but maintenance as well.



The HOA Act does not provide guidance for transfers, sales, and conveyances. HOAs are governed by the criteria in their documents.

If an association does not have specific criteria in its documents, it may be challenged if it denies a transfer. We recommend that associations establish screening criteria and standards that will apply to all purchasers, lessees, and transfers. Recent court decisions suggest that, if an association fairly and equally applies criteria, including financial standards, it can turn down new purchasers and lessees for valid reasons. We suggest that association use licensed screening companies to provide background and credit checks on purchasers and new residents.

Effective October 1, 2004, the Condominium Act was amended regarding a condominium’s ability to change rules about rentals of units. The Act states: *“Any amendment restricting unit owners’ rights*

relating to the rental of units applies only to unit owners who consent to the amendment and unit owners who purchase their units after the effective date of that amendment.” Associations that had regulations prohibiting rentals before October 1st may continue to prohibit rentals by any unit owner. However, any association that changed its rules affecting rentals after October 1st can only apply those rules to owners voting in favor of the change to those unit owners who thereafter agree in writing to the amendment, and to new unit owners.

Boards and managers may want to schedule periodic orientations or open houses with local real estate firms. The board can share information regarding the requirements it has for selling or leasing units, and can learn from local agents any issues or concerns they have. Local agents are also a good source of information regarding market trends, and are often very knowledgeable about changes in local building code requirements. By creating a relationship with local realtors, the board and manager may be able to create a partnership when units are sold or rented.

Elections

The Condominium and Cooperative Act provide clear guidelines for conducting elections. Unless owners opt out, all condominiums and cooperatives must use a balloting system. The statutes governing homeowner association currently allow for proxy voting. Boards and managers should carefully review the statutes and statute administrative code as well as their documents to be certain they have followed all guidelines and requirements. HOAs are governed by the requirements of their documents.

Factors affecting Enforcement of Rules & Regulations

There are many factors that affect how an association chooses to enforce its use restrictions and rules, and when it chooses to modify use restrictions and rules.

Effect of changes in composition of unit owners & residents on rules



As the demographics of an association changes, so too must its rules. Many associations built in the 1960s and 1970s were originally populated by retirees. Rules prohibiting walking on the grass or bike riding on interior roads may have seemed logical at that time. Because some of these older complexes are more affordable than single-family homes, younger individuals and families have begun buying these units. They have different needs than the original, older population had. For instance, many want play areas for their children. A wise board will recognize that children need play areas to keep active, entertained, and out of trouble. Keep in mind that association rules and regulations should be reasonable,

preserve, protect, and enhance the association property value and assets, promote harmonious living, and ensure that residents can use and enjoy the property. Therefore, use restrictions and rules may need to be amended from time to time to reflect the needs and desires of current owners and residents.

Internal political issues

The manner in which a board enforces its rules may be affected by the politics within the association. For instance, a board may see that enforcing the rule prohibiting owners from planting flowers in limited common elements is creating hostility toward the board. The board may choose

not to enforce this rule, and instead, attempt to amend or create standards that allow planting if certain conditions are met.

Board members may be concerned with being re-elected. They may choose to ignore infractions as the election draws near. Board members may direct the manager to hold off on citing individuals until after ballots are cast. Board members may also look more closely for infractions committed by owners on the “other side.” This sometimes places managers in a difficult position; if he does as the board wishes, he is engaging in selective enforcement. If he refuses to follow the board’s directives, he may lose his job.

Depending upon the relationship with the board members, sometimes the manager can explain to key board members that the proposed approach could damage their ability to enforce use restrictions and rules in the future. Sometimes, the manager may wish to allow the association attorney to guide him and board members on use restriction enforcement.

Changes in state law or regulations

The State Legislature makes frequent changes to laws affecting community associations. This includes the Condominium, Cooperative, and Homeowners Association Acts, insurance statutes, corporate laws, swimming pool regulations, security guard regulations, etc. Boards and managers should keep current on rule and law changes by consulting with the board attorney, attending seminars and updates, and through membership with local community organizations that monitor such regulations.

Changes in local laws or regulations

Counties and municipalities also have laws and rules that affect local associations, such as building permits, pet leash laws, noise ordinances, etc. Boards and managers should keep current on these by monitoring local commission or council meetings, and attending updates provided by local governments.

Court and arbitration decisions

Court and arbitration decision provide interpretations and clarifications to current laws. Sometimes, court decision can declare that a law or regulation is unconstitutional. Although the State DBPR is required to provide condominium and cooperative associations with its arbitration decisions annually, it has not adhered to this requirement. Boards and managers should consult with the association attorney when handling difficult or controversial cases.

DFLSCMH Declaratory Statements

The DBPR sometimes issues Declaratory Statements, which clarify existing state statutes or regulations. Again, although Condominium and Cooperative Acts require the DBPR to provide these annually to associations, it has not done so. Boards and managers should check with the association attorney when handling difficult or controversial cases.

Role of the State Ombudsman

In 2004, the Legislature established a Condominium Ombudsman, to:

- Act as liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties.
- Develop policies and procedures to assist unit owners, boards of directors, board members,

community association managers, and other affected parties to understand their rights and responsibilities as set forth in this chapter and the condominium documents governing their respective association.



- Coordinate, assist and make recommendations in the preparation and adoption of educational and reference material.
- Monitor and review procedures and disputes concerning condominium elections or meetings.
- Make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers.
- Provide resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter, division rules, and the condominium documents governing the association.
- Encourage and facilitate voluntary meetings with and between unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy. It is the intent of the Legislature that the ombudsman act as a neutral resource for both the rights and responsibilities of unit owners, associations, and board members.

The Ombudsman responds to complaints and problems from associations and unit owners, and provides interpretations of laws and documents. He is an excellent resource when dealing with problems of an association.

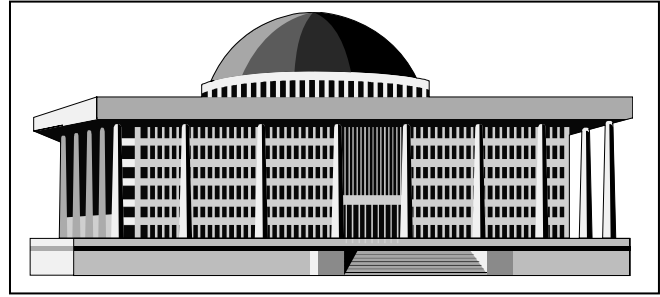
Role of Division of Land Sales, Condominiums, & Mobile Homes

The Department of Business & Professional Regulations, Division of Florida Land Sales, Condominiums, and Mobile Homes has the statutory authority to:

- Promulgate administrative rules to implement, enforce, and interpret the Condominium Act.
- Identify violations and take appropriate remedial actions in response to violations of the Condominium Act.
- Enforce penalties for failures to comply with the Condominium & Cooperative Acts.
- Issue interpretations of the Condominium & Cooperative Acts to resolve a controversy or answer a question about the applicability of a law or administrative rule (Declaratory Statement).
- Assist associations in resolving disputes through voluntary mediation and non-binding arbitration.
- Make available education to directors & unit owners.

The DFLSCMH investigates complaints made by unit owners and associations, and has the right to fine associations for failure to follow requirements in the Condominium & Cooperative Acts and the Florida Administrative Code. Investigations often take as long as six months, and the DFLSCMH rarely sends its staff out to make on site inspections. Generally, for first offenses, the DFLSCMH gives warnings. The Florida Administrative Code sets out a detailed list of fines, should a second offense occur.

The Condominium and Cooperative Acts require arbitration through the DFLSCMH for the following issues:



- o Authority of board of directors to:
 - Require owner to take, or not take, any action involving unit owner's unit
 - Alter or add to a common area or element
- o Failure of Board of Directors to:
 - Properly conduct elections
 - Give adequate notice of meetings or other actions
 - Properly conduct meetings
 - Allow inspection of books & records

Condominiums and cooperatives do not pay any fee for arbitration; the fee is paid via the \$4/unit annual fee paid to the DFLSCMH Trust Fund. The prevailing party may be entitled to attorney's fees and costs. However, while condominiums and cooperative have no requirement for mediation, the arbitrator may order the parties to mediation prior to hearing the case.

Arbitration by Division staff often takes six months or more. All DFLSCMH arbitrators are located in Tallahassee, and no onsite arbitration takes place. Generally, each side files petitions and answers, and the arbitrator makes his decision based upon the evidence provided in these written materials.

The losing party in arbitration has 30 days after the arbitrator issues the decision to appeal the matter to court. The party will pay the initial court costs and fees. If he prevails, the court may order that the losing party reimburse the fees.

In 2004, the Legislature mandated that the DFLSCMH provide binding arbitration for disputes over recalls and elections in HOAs.

The party filing the complaint (be it the HOA or owner) pays an initial fee of \$200 and arbitration, although additional fees may be charged during the process. The prevailing party is entitled to receive any fees paid back.



The DFLSCMH also issues "Declaratory Statements," in response to certain issues and problems arising at a regulated association. A declaratory statement is a formal opinion regarding the applicability of the statutes or rules to a given set of circumstances. Generally, it applies only to that association, although it may provide limited guidance to other associations with similar problems. Declaratory Statements are not generally applicable to mandatory HOAs.

You can access the information regarding arbitration decisions on line by going to: <http://www.myflorida.com/dbpr/lsc/arbitration/index.shtml>. For Declaratory Statements, the site is http://www.myflorida.com/dbpr/lsc/LSC-home-declaratory_statement_general.html. The DFLSCMH includes in the arbitration section alerts on court cases affecting associations and division opinions.

Summary

Rules and regulations governing associations come from a variety of sources: Federal, State and local laws and rules; association documents (Bylaws and Declarations), and board or unit owner promulgated rules and regulations. Community associations should periodically review their rules and regulations to ascertain if they continue to meet the needs of their communities. This is particularly important as the association has demographic changes in populations.



A specific goal of community association living is to create a harmonious living environment for its residents. Therefore, the rules and regulations should reflect the needs and requirements of the community. If the rules are outdated, or do not meet the needs of the owners and residents, it is unlikely that the association will be successful in enforcing them. Owners are often a good source to review and suggest changes to existing rules. An owner committee recommending changes often is more successful than a board recommending changes to rules.

Associations can enforce rules through letters and voluntary compliance, through fines, through court actions, and through the State Ombudsman of Division of Florida Land Sales, Condominiums, and Mobile Homes. The objective of enforcement should be voluntary compliance by the unit owner. Fines and court action, while often effective at achieving compliance, also create ill will among community members.

Court and arbitration decisions, DFLSCMH Declaratory statements, and changes in laws or rules can affect enforcement activities. Associations should consult with attorneys and other experts when enforcing controversial rules and when screening new residents.

Association should always keep in mind the ultimate objective of rules and restrictions: to preserve, protect and enhance the association property value and assets, promote harmonious living, and ensure that residents can use and enjoy the property. Board and managers should seek to continually educate unit owners and residents about use restrictions and rules, through in-house newsletter, through bulletins, through board “training sessions,” and through informal events. The more knowledgeable owners and residents are about use restrictions and rules, the better able they are to comply.

FINAL EXAM

1. Community associations are required to adhere to the following in developing rules and regulations on screening of new residents.
 - A. Federal Fair Housing Act
 - B. F.S. 254, State Lands
 - C. F.S. 608, Limited Liability Entities Act
 - D. All of the above.

2. Sally Jones has been late paying her assessments to Bluesky Villas Condominium every month for the last six months. Bluesky Villas can do the following:
 - A. Take away Sally's right to use the pool.
 - B. Take away Sally's parking space.
 - C. Advise her that the next time she is late, the board will accelerate her payments for the remainder of the year.
 - D. Nothing. The board cannot tell a unit owner when to pay assessment.

3. John Denver resides in Milehigh Plaza. He has just return to town and found that there was a leak from the unit above him, which has ruined an expensive painting. He spoke to Larry Waites, who told him the leak was now fixed, and that he would not pay for the painting. What options does John have?
 - A. Sue the association for the painting, as the association should have known about the leak and made sure Larry repaired it before any damage was done.
 - B. Take Larry to court for the value of the painting.
 - C. Make a claim to his insurance company, and let it deal with Larry.
 - D. B or C

4. The Cloudy Waters Homeowners Association has a rule prohibiting pets in the complex. Recently, Jose Garcia, an elderly man residing with his daughter, got a small dog. He always cleans up when he walks the dog. The board reminded him about the rule, and he advised that his doctor recommended he get a pet to help his depression. The board should:
 - A. Write Jose a letter, demanding he remove the dog immediately
 - B. Ask Jose to provide a note from a physician specializing in mental health confirming Jose's condition and need for the pet.
 - C. Accept Jose's explanation and let him keep the dog.
 - D. Have the Humane Society pick up the dog when Jose is not home.

5. Donald Duke wants to put up a satellite dish on the wall of his condominium. He has completed the architectural request forms and submitted them to the board. The board should:
 - A. Disapprove the satellite dish as the Federal Telecommunications Act only allows associations to install dishes.
 - B. Disapprove the satellite dish as the association can prohibit dishes from being placed on common elements.
 - C. Disapprove the request because the association already provides cable to all residents
 - D. Disapprove the request because satellite dishes are unattractive and no one else has one.

6. Bally Heights Condominium has changed dramatically over the past two years from a predominantly elderly community to one with younger residents and children. It currently has two card rooms, used exclusively by the elderly residents for playing mah jong, canasta and other games. Additionally, the rules prohibit children from using the room without the presence of a parent. Some of the parents have petitioned the board to change one of the rooms to a playroom for the children. They have volunteered to collect monies and purchase games, a pool table, and other amenities that the children might like. They have also agreed to create a schedule so that one adult is always present when the room is open – but not necessarily, the parents of the children currently at play. What should the board do?
- A. Turn down the request, as the association has always had card rooms and should not make any changes.
 - B. Survey the community to see if the majority of unit owners agree that one room should be modified to accommodate the children's play needs.
 - C. Check with its attorney and insurance carrier to determine what liability the association has if it permits the change suggested by the parents.
 - D. B & C
7. The Ridgeley Plaza documents prohibit home businesses. Maria Alonzo has lived at Ridgley Plaza for years, always pays her assessments on time, and has never been a problem. However, the board recently learned that she has a home business, repairing and altering clothes. The president sent her a letter, advising her that she must discontinue the business. She appealed to the board; she noted that she picked up and delivered the clothes, that clients never come to her place and that this has been her only source of income for ten years. The board should:
- A. Advise her that the association documents prohibit businesses, and there is nothing the board can do
 - B. Suggest she get another job somewhere else.
 - C. Turn the case over to the attorney and take her to court to comply with the rules.
 - D. Allow the exception, carefully documenting Maria's circumstances, and explaining the reasons in detail for the exception.
8. Juan Escobar wants to purchase a unit in La Tahoe Estates Condominium. La Tahoe Estates has no written screening policy. It does a background and credit check on applicants through a local screening company. When it screens Juan, the board finds that his salary will barely cover the estimated mortgage. The board is concerned that he will not be able to pay the monthly assessment. The board should:
- A. Approve Juan, as the board never has the right to turn a buyer down.
 - B. Approve Juan, but demand that he pay the year's assessment at closing, to protect the association.
 - C. Approve Juan, but require that he pay at least 20% down on his unit, so that his mortgage payments are lower.
 - D. Approve Juan because the board does not have a written screening policy, and work to establish a policy for future sales.

9. The Azure Skies Association wants to revise its Declaration of Condominium. It sends out a notice to unit owners stating the following:

The board recommends that we change the Declaration of Condominium, paragraph 12 A, from not allowing pets to allowing cats and small dogs under 20 pounds. Please indicate if you agree below.

Yes

No

The unit owners overwhelmingly vote to approve this change. Sam Sneath challenges the change, stating it is not enforceable, because the format is incorrect. The board should:

- A. Ignore Sam. He always makes trouble for the board, and format doesn't matter in a condominium
 - B. File the change with the Clerk of the Court and continue with its implementation.
 - C. Reissue the changes because the amendment did not comply with the Condominium Act.
 - D. A & B Above.
10. Lola Lessa wants to rent her unit. In December 2004, however, the Del Biscaya board changed its Declaration of Condominium, no longer allowing rentals. Lola, who has lived in Del Biscaya for ten years, was out of town and did not cast a vote. The board has informed her that, since 80% of the owners voted in favor, she cannot rent the unit.
- A. The board is correct. Since 80% of the owners approved the amendment, Lola cannot rent her unit.
 - B. The board is correct. Since Lola failed to vote on the amendment, it automatically applies to her.
 - C. The board is incorrect. The Condominium Act provides that an association cannot prohibit a unit owner can from renting her unit.
 - D. The board is incorrect. Since Lola did not vote on the issue, she is exempt from its provision.
11. Nola Garcia, an 81 year old woman, lives with her miniature poodle, Poochie, in the Windswept Seas HOA. When she walks Poochie, she does not pick up after her. The Board has cited her twice, and is now fining her...
- A. The association must give Nola the opportunity to appeal to a "Hearings Committee" composed of Board members.
 - B. The Board can lien Nola is she fails to pay the fine
 - C. The association must give Nola the opportunity to appeal to a "Hearings Committee" composed of unit owners, none of whom is a Board member.
 - D. None of the above.
12. Dom DeDevee owns 10 acres of vacant land in Ozark County Florida, and wants to construct a condominium. He has prepared the appropriate documents and received approval from the local zoning board.
- A. Dom must file the documents with the Clerk of Ozark County
 - B. Dom must file the documents with the DBPR
 - C. Both A & B
 - D. Dom can begin construction and selling units without filing the documents

13. The Doggonit Condominium prohibits pets over 30 pounds. However, a few owners, including the Secretary, have larger pets. The Board is concerned that the number of large pets is getting out of hand, and wants to begin enforcing the rule.
- A. It is too late. The Board cannot prohibit future owners from having pets over 30 lbs.
 - B. The Board can notify owners of its intent to enforce the rule, and, once voted upon, all owners will be required to comply.
 - C. The Board can notify owners of its intent to enforce the rule, and, once voted upon, owners will be unable to bring new pets weighing more than 30 lbs into the community.
 - D. The Fair Housing Act prohibits discrimination against owners based upon the weight of their pets.
14. Jean Tanua, a diplomat from Tobana to the United States, sees that owners in the association where he resides, Cancun Heights HOA, display the American flag. He installs a flagpole and puts the Tobana flag on it. The Board cites him and asks that he remove the flag.
- A. The Fair Housing Act prohibits discrimination against owners who wish to display the flag of their country of origin.
 - B. The Board may prohibit the display of flags from countries other than the United States.
 - C. Jean is a diplomat and is therefore exempt from HOA documents.
 - D. The Board must require all owners to remove their flags.
15. The State Condominium Ombudsman:
- A. Assists HOAs in resolving disputes
 - B. Respond to complaints & problems from condominium associations and unit owners
 - C. Provides recommendations for educational programs for cooperatives
 - D. All of the above.
16. Letitia Tittlecup, an owner at the Bleu Ritz Condominium, has sent a complaint to the Board regarding a recent Board vote. The Board is uncertain how to respond and will be consulting with the Association attorney. The Board must respond to Letitia within ___ days, advising her of its action. It must provide her with the attorney's opinions within ___ days.
- A. 30; 45
 - B. 30; 30
 - C. 30; 60
 - D. 10; 30
17. HOAs must seek _____ through the DBPR, DFLSCMH for _____.
- A. Nonbinding arbitration; disputes over meetings
 - B. Binding arbitration; elections and recalls
 - C. Mediation; elections & recalls
 - D. Nonbinding arbitration; special assessments
18. Cooperatives must seek non-binding arbitration for::
- A. Disputes involving the charging of a fee
 - B. Disputes over enforcement of rules regarding size of pets
 - C. Disputes over meetings
 - D. None of the above.
19. An example of some of the rules in the Condominium Act include
- A. Right to access units at any time for any reason
 - B. Right to screen potential owners and lessees
 - C. Right of owners to examine records immediately upon demand
 - D. All of the above

20. Typical use restrictions in a community association include
- A. Limitations on number and type of vehicles per unit
 - B. Restrictions on sales or leases
 - C. Specific times during which move-ins, deliveries and repairs can occur
 - D. All of the above

INSTRUCTIONS

READ CAREFULLY PRIOR TO COMPLETING ANY COURSES.

Step 1 Select the course(s) you need to take. Be sure that you select the appropriate course(s) for your specific needs. No credit is given for taking the same course more than once. (CE requirements are listed in the front of this book or you can contact the CAM Council's office.)

Step 2 Read the course materials for each course you take.

Step 3 Find the "**CAM CONTINUING EDUCATION ANSWER SHEET**", located at the back of this book. ***There is space to complete all courses on the one answer sheet.*** Fill in the "**Student Information**" section and the "**Payment Information**" section. **(Courses will not be processed until complete payment has been made.)**

Step 4 Complete your answers for each course by completely filling in one "bubble" per question. Note: A specific type of pen or pencil is not required.

Step 5 We suggest that you make a photocopy of your answer sheet for your own records.

Step 6 For "**Standard Grading**", mail your Answer Sheet to Gold Coast Professional Schools, Inc., 5600 Hiatus Road, Tamarac, FL 33321. Your Answer Sheet is graded and your course completion certificate(s) will be mailed as soon as possible, usually within 5 business days.

We also offer an optional "**NEXT DAY**" fax service. This optional service is provided for an additional \$10. Fax your completed Answer Sheet to us by 5 p.m. and we will fax your completion certificate(s) to you by 5 p.m. on the following business day. Your original completion certificate(s) will be mailed to you.

To use this service, fax your Answer Sheet to us at: **(954) 485-9865**

Note:

- To use the optional fax service, payment must be made by credit card.□
- The optional fax service is available in the continental United States only.□
- We will attempt to fax your completion certificate(s) to the number you provide up to a maximum of three times. If the third transmission does not go through, your certificate(s) will be mailed to you.□

Step 7 When you receive your certificates, ***verify that you have received certificates for each of the courses you took.*** If there are any errors or omissions, call our office at: **1-800-732-9140** as soon as possible.

Step 8 Under the new reporting procedures, Gold Coast will report your results directly to the DBPR. You should still retain your course completion certificates in case of audit.

Note: Students who do not achieve a score of at least 75% will be required to redo their examination, and pay a \$5 handling fee for the re-examination. If a student does not successfully pass the second time, they will be given a different exam. If a student is not successful on the re-examination they will have one final chance to redo the second examination. Any student who is not successful after two attempts, at two different examinations will not be allowed to attempt another through our school. The tuition paid (excluding handling fees) for the correspondence course will be credited towards the same course, offered in any of our classroom locations.

