

Adopting User-Friendly Rules

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Though boards of directors have wide authority in adopting rules, the rules are enforceable only if they are reasonable, address a legitimate interest of the association, are neither arbitrary nor discriminatory, and are consistent with the provisions contained in the declaration, bylaws and Illinois Condominium Property Act (“ICPA”). Properly drafted rules encourage residents to act in a manner that is in the best interest of all association residents and clearly provide residents with notice that they may be fined or subjected to other actions if they violate the rules.

Must, May, Should and Shall.

Rules must be friendly but firm and clear. “May” and “should” are not synonymous with “must” and “shall.” Ambiguous rules cannot be enforced. If the prohibition is not clear, the owner can act at his own discretion.

How Many Rules are Too Many Rules?

Rules should be short, simple and alphabetized. They should not reiterate provisions that are already contained in the Declaration. Rules are adopted to administer, not recite, the Declaration and Bylaws. Rules govern the day to day administration of the property and set boundaries for resident conduct. For example, rules regarding pets, use of laundry room, payment of late fees, removal of trash, quiet hours, elevator use, and other activities that apply to most owners should be drafted in an easy to read format, and listed alphabetically according to the topic.

In order to help residents focus on the rules that govern day-to-day activities without searching through pages of rules that apply to special situations, the rule booklet can include the forms that residents fill out prior to using association amenities such as pools, storage rooms, decks or party rooms or prepare prior to beginning construction.

The forms can contain the rules that govern the activity and can be adopted as part of the rules.

Is the Rule Enforceable?

Condominium rules must be adopted according to the procedure set forth in Section 18.4(h) of the ICPA. Rules for other associations must be adopted as provided in the bylaws. No matter how many owners have seen the rules or know of the rules, the rules are absolutely unenforceable if the Board has not strictly followed the required procedure. Owners do not vote to adopt or reject rules but are entitled to the proper notice and an opportunity to voice their opinions. If the notice is not proper, the rules are not enforceable.

Firm but Flexible Enforcement of Rules.

An enforcement procedure which is clear and easy to follow should be adopted as part of the rules. With the exception of violations that threaten the safety of residents or the structural integrity of the property, residents should receive a warning letter after a first offense. If the violation continues, the board can then issue a formal notice of violation that complies with the specific provisions of the declaration. The notice of violation must also include a notice of a hearing or a fine cannot be assessed.

Often boards find it is difficult to determine the amount of a fine for a violation. Boards will have more flexibility and a more objective standard if the rules contain a range of fines that relate to the severity and frequency of violations. With a stated range, residents receive notice that the board can assess a fine and, if applicable, damages and attorneys fees that reflects the nature of the violation. For example, if a rule prohibits throwing items out of the windows, the board is not locked into a flat fee which may not reflect the seriousness of the violation. Fee schedules provide boards with an objective standard to use in determining the amount of the fine.

The enforcement section of the rules must clearly state that owners will receive notice and opportunity to attend a hearing prior to assessment of a fine as required by Section 18.4(1) of the ICPA. Fines cannot be assessed and enforced without notice and a hearing. Notably, whether or not it is specifically provided in the rules, associations must adhere to due process requirements and allow the alleged offender to confront the complainant. The association's legal counsel can assist in drafting these procedures.

Avoiding the Pitfalls in Rule Enforcement.

Rules that will not be enforced or cannot be enforced should not be adopted. If a violation is reported and the board fails to cite the violator, it may be precluded from enforcing the rule against other violators. Unit owners can successfully challenge a fine if the rule was enforced in an arbitrary or discriminatory manner.

The minutes of a meeting of the board must reflect that rules were properly adopted or the rules cannot be enforced. Frequently, we find association rules that were drafted many years ago and amended from time to time. Often there is no documentation regarding the adoption of the original set of rules. Unless the adoption can be verified, the association must formally adopt the rules even if the rules have been in place for several years.

In exercising their fiduciary duty, directors are responsible for knowing the law that governs their associations. Boards are frequently frustrated when they begin enforcement proceedings and then find that the rule cannot be enforced. Prior to adoption, all rules should be submitted to the review of the association's attorney.