

Drafting Reasonable Rules That Enhance Your Community

March 7, 2014
Stephen Guerra, Esq.
Makower Abbate PLLC

**MAKOWER
ABBATE** PLLC
ATTORNEYS & COUNSELORS AT LAW

I. Purpose of Rules

Associations are organized & established to:

- Administer community
- Maintain common property,
- Regulate use of common property and individual property to protect the common property and community

Rules clarify & provide specificity to these broad grants of authority & discretion contained in governing documents

- Impractical to include all day-to-day living & administrative aspects
- Rules cannot add/change restrictions contained in governing documents unless specific authority exists (e.g. nothing stored except as set forth in rules; no signs except as allowed by rules)

II. Authority to Make Rules

Only enforceable if there is a source authorizing rule enactment

A. Condominiums: Act does not provide much specificity regarding purpose, enactment or enforcement of rules, but it does specifically recognize need for and use of rules & regulations

- Section 65: owners must comply with “master deed, bylaws, *and rules and regulations* of the condominium project...”
- Section 106: Association may levy fines for restriction violations and late charges for nonpayment of assessments

B. Subdivisions: not regulated by statute, and any rule making authority should be explicitly set forth in Declaration

III. Scope – Types of Conduct that Rules & Regulations can Control

Must be based on & consistent with authority set forth in governing documents

Board's authority to make rules is often written to apply to "use of the common elements [or areas]." While limited in appearance, provision inherently covers more by virtue of Condominium Act and Common Law

- Protect Common Property: may govern use of units/lots to protect common property (e.g. periodic equipment inspections; winterization)
- Protect Members from Unreasonable Interference: may govern use of units/lots or behavior to protect against unreasonable interference in others' enjoyment of units/lots and common elements (e.g. signs, inoperable vehicles, pet care)

IV. Association Rules are Subject to Federal, State & Local Laws

- **Federal Laws**
 - Fair Housing Laws (e.g. support animals)
 - Telecommunications Laws
 - Freedom to Display the American Flag Act of 2005
- **State Laws**
 - Fair Housing Laws
 - Modifications to Accommodate the Disabled (Section 47a of Act)
 - Right to fly a 3' x 5' American Flag (Section 56a of Act)
- **Local Ordinances**
 - Building Restrictions (e.g. fence/deck heights & locations, setbacks)

V. Drafting Rules

A. Identification and Extent of Problem

- Have any residents complained about a problem?
- Is the problem isolated to one or few owners?
- Is problem continuing and numerous?

B. Is the Rule or Regulation Necessary?

- Review documents to ensure recorded restrictions or previously adopted rules don't already address issue
- Do not repeat restrictions contained in Master Deed or Declaration

V. Drafting Rules (continued)

C. Is the Rule Reasonable?

- Must be reasonable, not arbitrary, & have some rational basis related to the harm to be prevented
 - For instance, when enacting pet rules, avoid rules based on size & weight; instead focus on undesirable behavior of the animal (attacking, jumping, noise) and owner (cleaning up, control)
 - Conversely, if there is no parking shortage, do not pass rule to restrict number of vehicles a party may have because one owner has 6 cars. Instead, focus on where excess vehicles may be parked

V. Drafting Rules (continued)

D. Drafting of Proposed Rule

1. Include reason : residents are more likely to appreciate & follow it
 - Example: Association is adopting rules regarding use of community roadways to ensure safe, orderly, and unimpeded flow of traffic and the safety of individuals in the Community
2. When possible, state in positive terms: obtaining compliance is easier if rules specify correct behavior as opposed to prohibited behavior
 - Negative : Trash receptacles are *not* to be placed outside of garages
 - Positive : Trash receptacles are to be placed in garages
3. Explain consequences of non-compliance
 - Example: Association will have cars parked in community roadways towed at owner's expense after violating vehicle is tagged at least 24 hours in advance of removal.
4. Reader-Friendly
 - Make documents uniform – same type face, font and margins
 - Each page should contain Association name
 - Utilize table of contents when multiple rules packaged together

VI. Enacting

A. Board Approval

- Most documents permit Board to adopt without vote of owners, although owners often have right to vote to repeal

B. Publish

- Before effective date
- Effective date should be conspicuously stated

VII. Keeping Owners up to Date & Informed

Residents must know the rules if they are to abide by them

- Resident Handbooks
- Newsletters
- Web site
- Post at appropriate on-site locations if applicable

VIII. Enforcement

A. Imposition of Fines

- Designed as a penalty meant to deter violations
- Association must follow due process requirements
 1. Notice: owner is entitled to notice of the following:
 - Conduct giving rise to violation (be specific)
 - Rule or regulation that has been violated
 - Consequences if found in violation
 - Owner may provide evidence in defense
 - Date of hearing

VIII. Enforcement (continued)

2. Hearing

- Condominium: Sec 106(c) mandates hearing before fine can be levied
- Subdivision: common law, which requires *opportunity* for a hearing (owner can *request* a hearing)
- Purpose: determine whether violation took place
 - Require testimony or review of documentation describing violation and specific dates/times
 - Require complaints to be in writing – don't act on anonymous, unverified or unsubstantiated complaints
 - If possible, verify facts with personal visit or independent inquiry
- Notice of Determination: send notice after hearing indicating whether violation was established and, if so, fine levied and when payment due
- Enforce: consistently and uniformly

VIII. Enforcement (continued)

B. Legal Action

1. Alternative Dispute Resolution (mediation; arbitration)
2. Judicial System

IX. Common Rules & Regulations

A. Use of Common Elements

1. Vehicles/Parking
2. Pets
3. Community Facilities

B. Exterior Modifications

1. Signs, Paint, Siding, Landscape, Patios, Decks, Balconies
2. Doors & Windows, Hardware
3. Temporary Structures (Sheds, Tents, Kid Pools)
4. Process for Submitting Modification/Alteration Requests

C. Exterior Maintenance

IX. Common Types of Rules & Regulations (continued)

D. Use of Unit

1. Maintenance of HVAC, Electrical, and Plumbing Systems
2. Pets
3. Winterization
4. Insect Extermination, Prevention & Treatment (e.g. bedbugs)
5. Smoking in Units or on Common Elements
6. Smoke Detectors
7. Radon
8. Garage/Estate Sales
9. Seasonal Decorations
10. Renting

IX. Common Types of Rules & Regulations (continued)

E. Administration

1. Inspection of Association Records Copying
2. Emergency Contact Information
3. Rules of Conduct at Member Meetings

Questions & Answers

**MAKOWER
ABBATE** PLLC

ATTORNEYS & COUNSELORS AT LAW

