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HOA Rules Development & Enforcement Best Practices (per ECHO)

The creation and enforcement of effective rules is something every association faces. The Board is charged with the responsibility to maintain and protect the value of the property and promote the enjoyment by the members. To do this, the governing documents will generally give the Board the authority to adopt rules to assist them in this task, and the Civil Code will require that certain rules and procedures be adopted.

Legal Basis

The legal basis for rules adoption and enforcement comes from the same hierarchy of authority; CA Civil law and the Davis Sterling Act. However, the authority relied on most heavily will be the Declaration of Covenants, Conditions and Restrictions and the Bylaws.

For now, know that ***all rules must be lawful, reasonable and enforceable***. It will do the association no good to have rules that can not be enforced or that inconvenience a majority of the members.

Rules Creation

The rules of an association can cover a wide variety of the association's operations. They may include anything from architectural controls to the behavior of the members and their guests. The authority to create rules is generally vested, by the governing documents, in the Board. However, the Board may take suggestions from committees, the manager or other sources for guidance when adopting rules.

In rules creation, as in other aspects of association operations, it is a foolish Board that operates in a vacuum. It is often wise to consult association members, the association's attorney and the manager before actually adopting any rule.

The rules exist for the benefit of the members and their feedback is a valuable tool in determining what rules should be adopted. Communication will be a key factor in the success or failure of the rule. Every year the Board must publish the rules and enforcement procedures to the members including *potential fines and penalties*.

There are several steps that can be followed to create an effective rule:

1. Determine the Board's authority to make the rule by checking the governing documents and the law.
2. Determine the need for the rule. Is the behavior or activity you are attempting to control an aberration or a constant? Is there a different method that can be employed to handle the situation? Are the current rules sufficient to deal with the problem?
3. Set the scope of the rule by determining exactly who and what will be covered.
4. Set the parameters and penalties for violations. Use simple clear language to state the rule. Determine reasonable enforcement procedures and penalties. A good method is to ask the manager, the association's attorney or consult ECHO materials to determine how other associations handle the same situation.

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5. Test the rule for legal compliance by having it reviewed by the association's attorney.
6. Notify the members that the Board is considering the rule and solicit feedback to try to build support and consensus for the rule.
7. Pass the rule by resolution of the Board.
8. Notify the members of the rule's adoption, cite the Board's authority to make the rule and what the Board is trying to accomplish by its adoption. Detail the enforcement provisions and procedures so members know what the Board's expectations are involving violations and enforcement (CC1357.100 1357.150).

Enforcement

Enforcement of the rules can be one of the most uncomfortable aspects of Board service. It is difficult for many people to become confrontational with neighbors, and yet, the Board may be required to do just that when it comes to rules enforcement. There are many pitfalls to avoid and many challenges to overcome.

However, focusing on a clearly stated, fair process can smooth the way and help the Board avoid charges of unfairness or arbitrary enforcement. Consistency in enforcement is extremely important.

Due process is an important element of successfully enforcing the rules and covenants. Adopting a "due process" approach to enforcement can help the Board be assured that they are applying the rules fairly and consistently. The elements of due process are simple but can be complex. Generally the aspects of due process include:

1. A written **notice of the violation** including the rule being violated, the Board's authority to make and enforce the rule, (*citing the covenants, bylaw or statute from which the authority is derived*), and the anticipated penalties for noncompliance.
2. The notice should also give the violator a **"reasonable time to cure"** the violation or cease the offending behavior.
3. The **"right to be heard"** should also be included in the written notice. The "right to be heard" should give the alleged offender an opportunity to appear before the Board to present a case for why the rule should not apply or why he/she should not be charged with the violation. The notice should include a date, time and place for the meeting and may offer to reschedule within a reasonable time frame that would be more convenient for the recipient.
4. **Fines and penalties must be reasonable.** Unreasonable rules and penalties may damage the associations' right to enforce the rule. "Reasonable" can be different for every association and/or every rule or violation. It is best to consult with the association's attorney regarding a reasonable fines and penalties prior to the adoption of a rule.

Focusing on the process above rather than the individuals involved should serve to make the enforcement of the rules as fair and consistent as possible. The Civil Code mandates procedures and alternative dispute resolution as a way to resolve disputes (CC1363.810 - 1363.850, 1369.510 -1369.590).