

2020 was an unprecedented year. Raise your hand if you are happy to see it come to a close! On behalf of all of us at Keough & Moody, we would like to thank you for your continued support. We are grateful for the relationships that we have with all of you. We look forward to continuing to work with our clients in 2021 and addressing the issues and challenges which face their communities. We wish you and your family a very blessed and safe holiday season.

As we look forward to 2021, please enjoy our article this month – New Year, New Rules!

New Year, New Rules!

As we leave what many perceive to be a difficult year behind us, it is a great time for associations to look ahead and to consider ways to improve and streamline their operations going forward. Updating the association's Rules is a great place to start!

Why Rules?

Every association is bound by its Declaration, and Bylaws or Operating Agreement. Most residential associations are also governed by the Illinois Not for Profit Corporation Act, and many must also comply with either the Illinois Condominium Property Act, or the Common Interest Community Interest Act. One might think that all of this authority would cover all aspects of association living; however, these recorded documents and statutes do not address all aspects of day-to-day living that a Board may want to address. That is where rules and regulations come in.

What are Rules, and what are the rules for Rules?

In just about all cases, an association's governing documents grant it the specific authority to adopt rules and regulations governing the use and enjoyment of association property. This authority is also contained in the Condo Act and in CICAA. While this authority is fairly broad, it is not unlimited. First, rules must be adopted pursuant to the particular procedures set forth in the governing documents and applicable law. This often requires that draft proposed rules and amendments thereto be sent to owners before they are adopted, and that owners have the opportunity to comment on the proposed rules. Further, a Board may not amend its governing documents by rule; rather, the rules are intended to supplement and explain the Declaration and Bylaws. Practically speaking, this means that if your Declaration specifically allows owners to engage in some activity – say renting their unit, or keeping a pet – the Board is may not prohibit such conduct altogether with a rule. (That would require an amendment to the Declaration and/or Bylaws.) The Board could, however, adopt rules setting forth certain administrative and other requirements for the target activities – such as requiring that leases include certain riders or that pets be registered with management.

Best Practices.

When drafting and adopting rules, Boards must keep in mind that they must be enforceable, consistent with other law, and easy to navigate by management and owners. This means that:

- Rules must be clear. The Board has an obligation to enforce rules it adopts, and vague rules are difficult to enforce.
- Rules should not be too lengthy. Keep in mind that rules are worthless if owners will not bother to read them. Overly lengthy rules are discouraged. Rules can often be streamlined by eliminating or scaling back provisions that are already included in the Declaration, and avoiding duplication.

- Rules must be routinely, and consistently enforced. Not only is a Board obligated to enforce its own rules, but it must do so fairly, consistently, and even-handedly. (To do otherwise could lead to claims of unfair treatment or discrimination by owners who feel that they are being targeted with rule violation notices when their neighbor is engaging in the same conduct without consequence.)
- Rules should have a standard procedure for enforcement. This ties in to the immediately preceding bullet point. If the rules include a clear procedure for how alleged violations of the rules will be handled, it is much easier for the Board to address complaints in a consistent manner.
- Rules should be reviewed by counsel. As noted above, Rules cannot contradict the association's governing documents, or other law. Rules also must not – even inadvertently – set the Board up for a situation where certain owners are treated differently than others.

If your association's rules have not been updated in some time, if they have not been reviewed by counsel, or if your association is simply looking for a fresh start in the new year by adopting new and better rules and regulations, contact us.

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