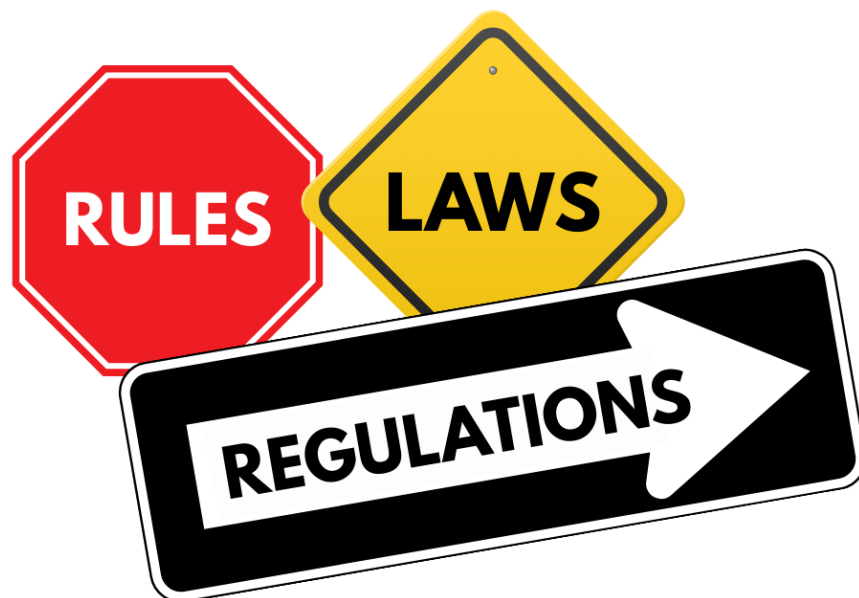




NEXT WEBINAR (AND LAST ONE FOR 2025) WILL BE

Wednesday, November 5, 2025, at 12:00 p.m.

Stay tuned for more information!



RULES AND REGULATIONS: BE CAREFUL NOT TO CONFLICT WITH THE ASSOCIATION'S DECLARATION

Rules and regulations are a great tool for any community association. Rules and regulations often elaborate on the restrictions within the declaration. They provide clarity on the do's and don'ts within a community. Yet a common mistake we see (besides adopting rules that are way too long, that no one will read) is the adoption of rules that conflict with the association's declaration. A recent case decided by an Illinois appellate court, *Kubik v. Darien Club Owners Association, et al.*, 2025 IL App (3d) 240546, reminds us that rules that conflict with a declaration are not enforceable.

Summary of *Kubik v. Darien Club Owners Association, et al.*:

The Darien Club Owners Association's ("Association") declaration contained language about the architectural aspects of the community and states that the intent is to preserve the natural setting and beauty of the community and to establish and preserve a harmonious and aesthetically pleasing design for all. It also provided that it is the intent of the architectural controls within the declaration to protect and promote the value of the lots, the homes, and the community area. The Association's declaration also created a committee that had the right and power to promulgate and amend from time to time written architectural standards, policies, and procedures related to the construction, location, landscaping, and design of improvements. These standards were outlined in the Association's manual.

The Association's declaration further provided a list of basic standards that applied to all lots in the community. These standards included a prohibition on several types of antennas; those that would impair the structural integrity of a building; and certain items affecting exterior appearances, including reflective materials or air conditioning units in windows. The Association's declaration also required owners to obtain the prior written approval of the committee before the construction of improvements, including but not limited to the construction of homes, driveways, walkways, decks, antennae, mailboxes, satellite dishes, outbuildings, fences, or sheds. The Association's declaration also stated that the committee may refuse to approve plans based upon purely aesthetic considerations or noncompliance with the standards created by the committee.

According to the Association's manual, the standards for property improvements were to create as open an environment as possible and to maintain and enhance views. The manual also prohibited fences of any type, except those required for in-ground pools. Perimeter fencing on any lot, per the manual, was prohibited.

Unit owners (not the Kubiks) submitted a request for approval to install a pool with an accompanying fence that did not surround the pool, but instead ran along the perimeter of their lot. The request was denied, and the owners were told they could have the permitted pool fencing. The unit owners sought a variance, which was also denied. The unit owner then ran for the board and was elected. Once elected, the new board member made it clear he wanted to examine the provisions within the manual.

Thereafter, the manual was amended to provide that fences are discouraged on lots except as required for in-ground pools. The manual still stated it wanted to create as open an environment as possible and maintain and enhance the views. It also stated that fencing for safety reasons would be considered, and approval would not be unreasonably withheld. The committee also adopted aesthetic rules related to newly constructed fences.

Because of these changes to the manual, the Kubiks filed a suit against the Association and certain members of the board (including the one who requested a fence along the perimeter of his lot, which was denied). They alleged that by changing the manual, the board improperly authorized fencing, and the members of the board acted with disregard of their duties and obligations for their personal benefits. The Association filed a counterclaim against the Kubiks seeking a court order which declared that the Association could permit the perimeter fencing and that a prohibition on fencing, as contained in the original manual, was in conflict with the declaration. That is, the Association argued that since the declaration allowed perimeter fencing approved by the committee, the original language in the manual that prohibited fencing conflicted with the declaration.

The trial court ruled that the declaration allowed all fencing so long as an owner received the committee's approval. Thus, the court ruled that neither the Association nor the committee could create rules prohibiting fencing that would otherwise comply with the aesthetic standards and goals of the Association. The court noted that the declaration created a design review committee that would otherwise not be needed if fences were prohibited in their entirety. Instead, the declaration included language that the intent of the parties was to establish an architectural review committee that had the power to approve and disapprove all architectural construction or alterations. The unit owners appealed the trial court's ruling on this issue.

The appellate court agreed that the declaration did not contain an outright prohibition against most improvements on a lot. In fact, the appellate court noted that the Association's declaration provisions indicated that improvements were permitted if owners obtained approval prior to commencing construction. The appellate court noted that if fences were banned, the declaration would have stated that they are banned, just as it contained language banning antennas, reflective windows, and exterior projections. The appellate court noted that the original manual for the Association prohibited all fencing other than those surrounding a pool, which did not comply with the declaration's stated intent (and the committee did not have the authority to impose a fencing prohibition). The appellate court also noted that boards and committees must operate in a manner that does not conflict with the terms of the declaration. The appellate court concluded that the trial court acted properly.

The ruling in *Kubik* was not surprising, and it is consistent with other rulings in Illinois, including *Stobe v. 842-848 West Bradley Place Condominium Association*, 2016 IL App (1st) 141427, which was decided in 2016. The owners within the condominium association in *Stobe* were concerned about low owner-occupancy within the community and the effect

it would have on the sales and owners' ability to refinance. For this reason, the board adopted a rule stating that no more than 30% of the units could be rented at any one time. The association's declaration contained language that allowed leasing so long as it was not for hotel or transient purposes and no lease was for a term of less than six (6) months. The declaration also included limitations on leasing or subleasing of parking spaces.

The plaintiffs in *Stobe* leased their unit. Once the new rule was adopted, it was enforced against them, and they were fined. Hence, the unit owners filed suit against the association, arguing that the board did not have the authority to adopt such a rule since the rule conflicted with the provisions of the association's declaration. The trial court initially agreed with the association and held that the rule did *not* conflict with the declaration. However, the unit owners filed a motion to reconsider, arguing to the trial court that the judge made a mistake. Upon review, the trial court determined that when it considered the declaration as a whole, the association was **not** authorized to modify the leasing restrictions by rule only.

The appellate court agreed with the trial court. It stated that to resolve a controversy involving a condominium unit owners' rights, the court must look at the declaration, bylaws, and any relevant provisions of the Illinois Condominium Property Act as a whole. When it did this, the appellate court concluded the association lacked the authority to restrict leasing through the use of a rule as the rule adopted by the association conflicted with the declaration. The appellate court noted the declaration was not silent on leasing, but instead included limitations. Also, the declaration did not state that leasing was subject to further rules and regulations adopted by the board. While the owners may have been subject to further restrictions related to leasing, any changes required an amendment to the declaration, not just an amendment to the rules and regulations. Hence, the appellate court concluded that since the declaration addressed one's right to lease, any change or diminution of this right had to be through an amendment to the declaration, not through a rule adopted by the board.

Amending a community association's declaration can be an overwhelming challenge. While it takes work, it is not impossible, and with proper planning, it can be done. However, as explained by the above cases, amending the rules and regulations may not be the solution (and it could be a costly mistake). The following is a checklist of what to consider when adopting rules and regulations:

1. What restriction do we want in place?
2. Why do we want this restriction?
3. What, if anything, does the declaration say on this topic?
4. Does the declaration say that the terms on this topic are also subject to the rules and regulations of the association?
5. Does the proposed new rule conflict with the declaration?
6. What does legal counsel say about the new rule? (It is often less expensive to get this opinion BEFORE a rule is adopted than to wait until an owner challenges the terms of the rule.)

Please let us know if you have any questions about your association's rules and regulations.

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