

## The New Rules...On Rules

By: Kelly G. Richardson

In 2005, the Legislature enacted a set of new statutes, now found at Civil Code §§1357.100-1357.150, regulating how common interest development boards pass or change association rules. Many immediately complained of this as one more example of the Legislature micromanaging common interest development governance. However, this time the complaint was too quick, and undeserved, because the new law should help homeowner associations in several ways.

### THE NEW RULES ON RULES

1. Before the Board can pass, delete or change a rule, it must give the members at least thirty days advance written notice, with a copy of the actual rule change and a statement as the purpose and effect of the change.
2. At the hearing considering the rule change, the Board must receive member comments.
3. If the rule change is adopted, written notice must be given to members within 15 days after the change is adopted.
4. Objecting members, if 5% or more of the membership, they may, within 30 days of the notification of the rule change, demand a membership meeting to vote upon its reversal.
5. The membership vote may be in person or may be a balloting without a meeting, at the board's election. If a majority of a quorum votes to overturn the rule change, the rule change may not be reinstated by the board for one year.

### Emergency Rules

If immediate action is necessary to avoid imminent threat to health, safety or to substantial economic loss, the board may

pass an emergency rule for up to 120 days. Emergency rules may not be renewed.

### Rules Included

The procedure applies to rules regulating use of the separate interests (translate--the homes), common area, or exclusive use common areas, and to rules regarding member discipline and assessments collection payment plan or assessment dispute resolution policies.

### Rules Excluded

The procedure does not apply to maintenance decisions; decisions affecting less than all of the members; the amount of special or regular assessments; or rules simply restating the law or the governing documents.

### A PRACTICAL GUIDE TO COMPLIANCE WITH THE NEW RULES ON RULES

During a board meeting, a director comes up with an idea for a rule change. Now what? Here are five basic considerations.

1. Discuss, then draft. Discuss the rule, and see if it is simple enough that the proposed text of the change can be written into a motion. If the rule change is too complicated to draft on the spot, then delegate one or two directors to draft language conforming to the rule change proposed. The exact text of the rule change needs to be sent out to the members at least 30 days prior to the meeting in which it will be voted upon. Don't forget to include a statement as to the purpose and effect of the rule change.
2. Plan on a longer open forum. Plan on extra time in the open forum part of the meeting to make sure people have reasonable opportunity to comment.

3. Listen... LISTEN TO YOUR NEIGHBORS! If you start seeing leaflets circulating around the complex, if you see at least 10% of your neighbors show up at the board meeting to oppose the rule, perhaps you may want to slow down. Can there be improvements to the rule which accommodate the objections? Is the board disturbing a bee hive with the proposed rule change, such that an overturn vote is all but certain? That rule change may not be in the best interests of neighborhood relations, even though it may have seemed like a good idea at the time.
4. Revise. Don't be an "all or nothing" type. Does it have to be passed right away? If the rule change appears to need further study, discussion, or modification, discuss what will be needed to make the rule less controversial. It may need to be tabled, revised and re-sent to the members for a vote later.
5. Publish. If the rule is passed as proposed, make sure it is sent out in writing to the membership right away. Don't wait for your secretary to get the draft minutes out, the secretary has 30 days, while this rule only has 15.

#### **TAKE OFF THE HOBNAILED BOOTS**

Too often rules are drafted as commandments, as "do's and don'ts." However, these rules do not just govern a corporation, they govern a neighborhood. It will help to take some extra time in drafting rules to actually explain them. Some associations have rules which are actually very positive statements, and yet still contain very concrete standards of behavior. In trying to make the "do's and don'ts" less dictatorial, it will help to add some "whys." Remember how you hated as a child to hear "because I said so"? It isn't any easier to hear someone say that later either, so add the purpose behind the rule.

Instead of: "Jogging is not allowed in the hallways", why not: "As neighbors, we all want to avoid potentially unsafe conditions. Our hallways are narrow, and running in the

halls could result in injury. Therefore, jogging is not permitted in the hallways."

#### **WHY IS THIS A GOOD THING?**

The new law forces association boards to slow down before passing rule changes. Members now have an important new voice in this process. Boards now have a better chance to avoid divisive rule changes. The result hopefully will be less conflict in common interest developments, less board recalls, and better rules.

© All Rights Reserved