

HOA Homefront

We Forgot The Rules!

By: Kelly G. Richardson

Reader's Question

Dear Mr. Richardson:

I read your column every week it is in the newspaper. It is excellent and very helpful.

I have been on the Board for several years, more than I care to remember. Every Board does things differently. My question is this — In 1991 the Board wrote some rules and regulations on "DISH" installations; the regulations went out by mail to every home owner at the time. Years passed and they were forgotten. Now out of the blue the President of the current Board posted these rules on the bulletin Board. Can they be revived? Anyone getting the whole package of R&R, and CC&Rs from the County Recorder will not receive these instructions or anything else that was agreed upon previously.

I am going to thank you in advance for your response.

K.M, Sun Valley

Dear K.M.:

Association rules (often called "house rules," "operating rules" or "rules and regulations") are the lowest in the hierarchy of association governing documents, because they are not approved by the members, but only the Board.

The association's operating rules are one of the important documents required by Civil Code Section 1368(a)(1) to be provided by common interest development owners to prospective buyers. This is important because a member has no other way to know if there are rules, since they are not filed with any public agency. If the rules are not written and distributed to all members, they are not enforceable. Therefore, if your association has not distributed its rules on satellite dishes in seventeen years, it is unlikely that the association would be able to enforce them.

The best approach now would be for the Board to take a fresh look at the rules, and possibly re-

adopt them. In order to do so, you may want to make sure your association rules do not violate Federal Communication Commission protections for Over The Air Reception Devices ("OTARD") rules.

Find information on this at:

www.fcc.gov/mb/facts/otard.html.

The FCC protects homeowner rights to have personal antennae, by placing limits on what a CID can do to restrict them. Also, state law at Civil Code Section 1376 has similar protections. You can read this by accessing the law through www.leginfo.ca.gov and clicking on "California Law".

If the Board is going to try to reinstate or change rules, and they do not run afoul of Civil Code 1376 or the OTARD rule, certain process must be followed to make sure the rules are enforceable. The proposed rules must be first sent as "proposed" to the membership, at least 30 days prior to the Board meeting at which the rule change is to be voted upon. This means the Board actually discusses the rule change twice — first to develop the draft which will be proposed, and second to formally adopt the rule change.

After the draft of proposed rule change is approved for submittal to the members, it must be sent verbatim to the members.

At the Board meeting in which the formal approval of the rule change is to occur, the Board must allow an open forum time for members to comment upon the rule change prior to the Board vote. This is a very important opportunity for the Board to determine whether the rule change is controversial and may require modification. If the rule is modified due to membership input at the meeting, the revised draft rule must be sent out, and the voted deferred until the members have seen the new proposed language for 30 days.

For more specifics on the process, check Civil Code sections 1357.100 through 1357.150.

Thanks for your question, K.M., and thanks for reading HOA Homefront.

Kelly G. Richardson, Esq.

WEEKLY LEGAL TIP:

Associations are required to have rules that contain the following:

Fine Schedule (Civil Code 1363(g));

Assessment collection policies (Civil Code 1365(e));

Architectural application policies (Civil Code 1378);

Election rules (Civil Code 1363.03); and

Internal dispute resolution procedures (Civil Code 1363.810)

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