

Rulemaking Procedures, Step by Step

*Follow the Rules for Making the Rules*

By Adam J. Cohen, Esq.

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The declaration is what legally creates a community, while the bylaws are what organize the corporation which runs it. Rules, however, are the primary tool for controlling what people actually do in the community on a day-to-day basis. According to the Common Interest Ownership Act (CIOA), the “rules” are whatever the association adopts to “govern the conduct of persons or the use or appearance of property,” even if they are something else like a “policy” or “regulation.” If a condominium was a government, the declaration would be its constitution and the rules would be its laws.

Like laws, rules must be enacted by following a specific process in order to make them valid and enforceable. CIOA says that this process need not be followed for an association’s internal business operating procedures” or for clauses in the declaration or bylaws themselves. But otherwise, whenever the Executive Board wishes to require or prohibit a particular kind of behavior among the people within its boundaries, enforcement might be impossible unless the proper rulemaking procedure is followed. Simply proclaiming a new requirement at a meeting or circulating a memo from the property manager is not adequate. Instead, making a rule that the association will be able to legally enforce boils down to four specific steps.

The first step is writing the rule down. A verbal or written summary of the proposal is never enough; the full text as it would actually be enacted must be created and finalized before it is approved. Obviously, the board must take care when it puts together the precise wording of the proposed rule so to avoid ambiguities, loopholes, and conflicts with the declaration, bylaws, or any local, state, or federal law.

The second step is circulating the proposed rule to the community. Under CIOA, “at least ten days before adopting, amending or repealing any rule, the executive board shall give all unit owners notice of ... [t]he executive board’s intention to adopt, amend or repeal a rule and shall include with such notice the text of the proposed rule or amendment, or the text of the rule proposed to be repealed.” It must be sent to each unit owner individually, not merely posted on a website or bulletin board. The notice must also identify “the date on which the executive board will act on the proposed rule, amendment or repeal after considering comments from unit owners.”

The third step is for the board to consider comments from the owners and then vote on the proposal. This is usually done during the regular or special meeting. The notice with the text of the rule sent to the unit owners can double as a meeting notice as long as it states the time and location so that the unit owners are invited to comment on the proposal verbally or in writing. Remember that the ten-day minimum for proposing a rule change is an exception to the usual five day notice requirement for a board meeting. During the meeting, the board members can modify the proposal as they deem appropriate to resolve any concerns that are raised during the discussion. Then the board votes. The proposal with any modifications will pass if a simple majority of the board members vote in favor. The declaration or bylaws of some older associations may vary this procedure slightly, or even require the unit owners themselves to approve new rules.

The fourth and final step is for the board to circulate the rule to the community again – this time in its final, as approved form. Under CIOA, “[f]ollowing adoption, amendment or repeal of a rule, the association shall give all unit owners notice of its action and include with such notice a copy of any new or amended rule.” This should be done as promptly as possible, because the rule cannot go into effect until this notice goes out. From then on, the new rule should be incorporated into all sets of the community’s rules which are used by board members and managers, distributed to owners and tenants, and included in resale packets. Importantly, if the new rule is a restriction on leasing a residential unit, then a copy of it must also be filed in the land records maintained by the Town Clerk of every town in which the community is located.

The third and fourth steps can be simplified if, consistent with the community’s declaration and bylaws, the board chooses to act by unanimous consent. Instead of holding a live meeting, the board can simply consider the comments it receives after circulating the proposed rule to the community and then adopt it with any appropriate modifications by consensus. If every member of the board agrees to the final language after the action date on the notice, the board can send out a second notice to each unit owner announcing the final text of the new rule and that it has been adopted by unanimous consent. The rule will be in effect from that moment on.

Following these steps will mean the board is following the rules for making the rules – which will make them enforceable when necessary to protect everyone’s right to enjoy their community.

*Adam J. Cohen is an attorney with the Law Firm of Pullman & Comley LLC headquartered in Bridgeport, Connecticut. As the Chair of its Community Associations Section, he represents and gives seminars to condominiums, tax districts, and other communities in matters ranging from amendments of governing documents to revenue collection strategies and commercial disputes*