

Maidstone HOA Documents & Forms

Rules are a Necessary Component of HOA Living

by [Lawrence Szabo, Esq.](#)

A significant portion of disputes between homeowners and homeowners associations relates to the enforcement of rules and regulations that have been adopted by an association's board of directors ("rules"). Such disputes frequently result from the fact that many people purchase properties that are part of a common interest development without reading the association's governing documents, which include the rules that apply to the homeowners. As a result, they first learn about rules that they are opposed to and resist complying with after the association commences some action against them for violating the rules (i.e. rules concerning the color a house can be painted). They then become embroiled in adversarial proceedings with their homeowners association and the individual directors and management personnel who seek to enforce the rules. The proceedings, which tend to become very divisive and costly to both sides, could possibly have been avoided if the homeowner(s) understood the content of the association's rules before they purchased their property.

Authority for Adopting and Enforcing Rules:

The authority for adopting rules is found in state and federal laws and the governing documents that are created for a homeowners association by the original developers such as the Articles of Incorporation, Bylaws, and/or the Declaration of CC&Rs. The authorization grants a homeowners association the power, acting through its board of directors to enact rules. In some instances, an association's board of directors is required to adopt certain types of rules such as election rules, or rules relating to the resolution of disputes. The process of adopting rules includes procedures for enforcing the rules through the imposition of fines and/or discipline on violators of the rules. Associations that have governing documents that do not include the authority to adopt rules will typically take action to amend their governing documents to incorporate the necessary language that authorizes the association's board of directors to adopt rules.

Procedure for Adopting Rules:

Once vested with the authority to adopt rules, the applicable statutes and/or the association's governing documents will set forth the required procedures or the process that must be followed by the directors in order to adopt the rules. Any rules that are adopted by an association's board of directors cannot be in conflict with the provisions contained in the association's Articles of Incorporation, Bylaws, or CC&Rs.

An Association's Rules Must be Reasonable

Rules that are adopted by an association's board of directors must be reasonable (fair, proper, just, moderate, and suitable under the circumstances). The determination of reasonableness is made by reference to the common interest development as a whole, and not by reference to facts that are specific to any one particular homeowner. Court decisions have established that properly adopted rules are enforceable unless they are found to be arbitrary, violate public policy, or impose an undue burden on a property owner that outweighs any benefit to be derived from the rule. Enforceable rules typically meet the following criteria:

- The rule is in writing.
- The rule is within the authority of the board of directors.
- The rule does not conflict with provisions in statutes or the association's governing documents.
- The rule is adopted in good faith.
- The rule is reasonable.

Members' Rights Relative to Rules:

The authority to adopt rules is typically exclusive to an association's board of directors. While association members may be granted the power to veto a rule that has been adopted by the board of directors per procedures specified in state statutes, absent provisions in the association's governing documents that empower the members to vote on rules, the members have no power to make or change rules that have been properly adopted by the association's board of directors.

Homeowners should become involved in the management of their homeowners association in order to have a voice in the decisions being made by the association's board of directors. Association members can request a rule change or an individual waiver, but whether or not it's granted is left to the discretion of the board of directors. Association members can however, indirectly have an influence on the adoption of rules by actively participating in their association and electing future board members who have similar interests concerning rules, and/or serving as a member of their association's board of directors.

Please become familiar with these documents, as they are the ones that cover your rights as homeowners and the "dos and don'ts "of your HOA living