

Going Overboard

Crazy Co-op, Condo or HOA Rules

BY DEBRA A. ESTOCK

Condos and homeowner associations have made headlines over the years for passing all kinds of overreaching and downright silly rules and regulations—everything from forbidding the flying of the American flag to having prohibitions about hanging laundry outdoors, to discriminating against their own residents—even stopping kids from playing ball or riding their bikes in their own yards. It might sound like something out of a political satire, or items from a humorous 'News of the Weird' newspaper column, but these stories of some boards going too far are true, and we've collected some of the silliest, most unusual or most outrageous HOA rules ever passed.

The Ugly Truth

Did you hear the one about the Florida family that was about to be kicked out of their HOA because the wife had just had twins? The family already had one child,

and the arrival of the twins would put them over the two-kids-per-unit allowed by their North Palm Beach condo. The condo was not an 'active adult' 55-and-over community, but nevertheless it had a rule on the books limiting occupancy to two children. A bit Machiavellian to be sure, but true.

Or how about the Fort Myers condo that fined a man suffering from ALS \$100 a day because he was using a shopping cart instead of a walker to get around his unit, the parking area and the grounds? Apparently the community had a rule forbidding the use of any 'storage item' in a common area like a walkway.

Another Sunshine State condo passed a rule preventing two unmarried people from living together, aimed at stopping gay couples from living in the development. After an uproar about the ban, the

rule was reversed earlier this year.

Or take the case of a Long Beach, California woman who needed to use a cane, and kept a cocker spaniel as a companion animal. Her HOA banned her from walking the dog through the lobby, because they had a rule that all pets had to be CARRIED so their little paws wouldn't touch the floor. (Good thing she didn't have an English sheepdog.) She was fined \$25 a day and racked up hundreds of dollars in fines before she finally gave up and moved from the building.

It's Perfectly Legal ...

Yes, a co-op, condo or HOA board is legally allowed to administer their own rules and regulations—all for the unique privilege of living in such a community. Under the business judgment rule, courts have given boards of directors wide discretion in passing rules that they feel are

in the best interest of everyone in the community—as long as it's done in good faith.

Many HOAs routinely have a list of approved exterior paint colors: they can tell you what color to paint your fence or your deck, what type of plants or landscaping you can have, what type of trees and shrubs are permissible. They can limit commercial vehicles parked in your own driveway, or require that cars and other machinery not be visible from the street if it's an eyesore. They can restrict certain types of signage, even real estate signs.

What's a Well-Meaning Board to Do?

"The single best thing board members can do is to speak with their association attorney first before spending time drafting or adopting rules," advises Donna DiMaggio Berger, a shareholder attorney

Thou Shall Not:

Plant too many Rosebushes

Have too many kids

Hang your dirty laundry outside

Use Different kinds of Shingles

Paint Your House a Different Color

Walk Your Dog Through the Lobby

Use Different Color Lightbulbs or Wattage

Thou Shall Not:

Keep Holiday Decorations Up Too Long

Let Domestic Staff use the Passenger Elevators

Transport Bikes in or out of the Building

Smoke in Your Own Home

Put Up a For Sale Sign

Let Kids Play on the Grass

with the law firm of Becker & Poliakoff in Fort Lauderdale. "It is important to understand that certain restrictions simply cannot be passed by board rule alone. Other times, there is a provision in the governing documents which requires membership approval for some or all board rules," she says.

Attorney Steven Goldman of the Manhattan-based law firm of Kurzman Eisenberg Corbin & Lever, LLP concurs. "I would say you have two great resources available to you, one is the managing agent and the other is your attorney. Talk to them. They might not have the answer in all cases but many, many different co-op and condominium boards have come across many different problems and during the discussion new ideas may come up on how to deal with the problem."

Many condos/HOAs around the country have in their governing documents provisions requiring anywhere from a simple majority to 75 percent approval before any bylaws, rules, or house rule provisions can be amended.

Berger also states that you should do your due diligence in researching the issue to make sure the rule you're passing is warranted and does not cause any problems down the road.

"Lastly, you want to make sure that a contemplated rule does not contradict another provision in the governing documents or in the pertinent statutes, that it is properly passed and that the members are properly notified of its existence. Boards should spend 95% of their time identifying the problem and 5% crafting the solution via rule. Unfortunately, most approach the issue in the reverse order," Berger says.

Attorney Jeffrey Reich, a partner in the Manhattan-based law firm of Wolf Haldenstein Adler Freeman & Herz, LLP, cautions boards to think twice before passing rules that might be unenforceable and even suggests asking the residents for help. "Before establishing po-

tentially controversial rules, a board would be well served by sending around a carefully crafted questionnaire and obtaining the resident's thoughts on the issue that the rule is being created to address," he says.

Bad Moon Rising

In counseling hundreds of condominium, cooperative, timeshare, mobile home and homeowner associations throughout Florida since 1992, Berger has seen her share of unusual rules. Here's one that she particularly remembers. "One of the craziest rules I ever came across was one which made me wonder what prompted its passage in the first place. It was a rule in a rather placid HOA which prohibited nudity in their common areas."

It's not surprising that many of the more controversial rules emanate from Florida associations. When asked about that, Berger says that it is due to the Sunshine State's large number of community associations and HOAs. The problem, however, exists, no matter what region of the country or municipality you are located in, she notes.

"The sheer number of associations in Florida lends itself to our state making news and case law when it comes to the enforcement of rules and regulations," Berger says. "The issues you mention above are tackled in every state where shared ownership communities exist—we just have more of them down here. We also have a community association population that is highly educated on their rights thanks, in large part, to all the free resources and information available."

Goldman points out that what some might consider an unreasonable rule might have reasonable intent behind it. "Sometimes they really do have a purpose, and it's just a matter of understanding. It doesn't mean whether it's a co-op board or condo board — you have to look at what were they trying to achieve and how did they go about it."

Take carrying a pet through the lobby, for example. A co-op or condo board might have just spent \$600,000 on redoing the lobby, putting in carpeting and other improvements—therefore the rule might have merit, he says. The board may require taking the pet through the basement or the back entrance instead of the lobby, and that is not all that crazy.

"It's two-fold," says Goldman. "Number one there's a lot of traffic in the lobby and you never know how a pet's going to react, and but more so they don't want the pet to relieve itself. It may seem silly but there is some intent."

Same thing with boards forbidding pets in public elevators. If you live on the 20th floor, that might seem unfair. If you're allowed to use an elevator, though, you might have rules about requiring the pet to be leashed, prohibition against more than one pet, rules against barking and biting. They're trying to control behavior, Goldman says. "Again it makes sense."

War of the Roses

Here are some more actual condo/HOA rules from around the country:

An HOA in Texas has two garage sales a year, and they've passed a dress code for certain neighborhood activities. So at garage sales, community gatherings, swim parties, etc., residents and guests have to be attired appropriately. For garage sales, they must wear polos and khakis (with a \$30 fine for non-compliance); members cannot share towels at the swimming pool, even if you bring your own for your family (\$25 fine); you must remove holiday decorations within three days of the end of the holiday (\$50 fine); and, you cannot use a different color light bulb unless approved by the HOA (\$25 fine).

A Rancho Sante Fe, California man was hit with a lawsuit by his condominium because he exceeded the number of rose bushes he was allowed to plant on his

four-acre property. The HOA levied multiple fines, took the resident to court and ultimately won. The man had to pay the HOA's \$70,000 legal bill, and lost his home to the bank in a foreclosure action.

A sad story is that of a Sanford, Florida homeowner who lost his wife and infant son when a plane crashed into their home. The HOA fined him during the reconstruction for using shingles that didn't perfectly match that of his neighbor's homes.

A New York City condo in the hip SoHo neighborhood that caters to artists and creative types wanted to be sure that their residents were sufficiently talented before being allowed to buy into the building. It was their policy to screen who was living there by vetting and approving the quality of their creative work beforehand, in a twist on the juried MFA exhibit.

Consider Mediation and Enforcement

Little things can escalate, as any attorney will tell you. Before making matters worse and having your community's dirty laundry displayed on the local and national news, community association and HOA boards should try and defuse a headline-grabbing story before it becomes news. Seeking mediation, imposing reasonable fines, and compromising with the parties involved are all avenues to consider, the experts say.

Above all, rules should be fair and fairly applied, says Berger. "Boards should first ensure that the rules they wish to enforce pass the reasonableness test and that they are being applied consistently and uniformly. If they can honestly say that is the case, the next step is to give the rule breaker an opportunity for a hearing prior to a fine being levied," she says. "Many times the violator will show up but sometimes they will not. In those cases where the rule is reasonable and the violator is not interested in correcting the situation the board should proceed with enforcement. It is not punitive to enforce a reasonable rule that others are readily following."

Goldman says to always remember to reach out to the violators. Besides sending a letter, have the manager talk to the person and explain the intent of the rule, whether it be noise, pets, maintaining the terrace or the common areas, whatever. Then if you don't get a corrective action, then you put the violator or the homeowner on notice, Goldman says. Fines should be a last resort, he adds.

Generally, legal pros agree that boards should try to pass what's called in the law as "bright line" rules, which are rules which leave little room for discretion and/or interpretation. These types of rules provide clarity for both management and the building residents, and reduce the chance that anyone is being treated differently. Boards should always give each side of a dispute an opportunity to be heard and should engage the management team and the building attorney before a situation has a chance to explode.

Don't be swayed by any threats or show favoritism to one homeowner or shareholder over another. Boards have a fiduciary duty to act in the best interests of the co-op, condo or homeowners association that they represent. "And don't forget it's a community," says Goldman, "and as such, you're really trying to maintain a level of appearance, a level of aesthetics. The best way to describe it is that people live in a suburban development and people on either side have gorgeous lawns and one in the middle has weeds all over the place. No matter what, that affects the value of the properties going on next door."

Berger puts it quite succinctly. "One of the main reasons most purchasers buy in a private residential community governed by a mandatory association is that they expect the covenants and restrictions to be enforced much more quickly and consistently than would happen in a neighborhood subject only to county and city codes and ordinances," says Berger. "There is a general expectation in private communities that one will not find unkempt lawns, cars on cement blocks, high crime rates and a myriad of other negative factors that can be controlled by reasonable rules, which are properly enforced." ■

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