

Adopting, Amending and Repealing “Operating Rules” in Homeowners Associations

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In homeowners’ associations, general regulations that pertain to the conduct of members and/or the operations of the association are described by such names as regulations, procedures, policies, standards, guidelines, and rules. Regardless of the descriptive name that is used, such general regulations are all considered “operating rules” and such rules must meet applicable state statutory requirements and be adopted in accordance with the provisions relative to rules that are contained in the association’s governing documents.

Operating rules apply to the management and operation of a common interest development or the conduct of its business and affairs and include such things as:

- The use of common area or exclusive use common area.
- The use of a separate interest, including aesthetic or architectural standards that govern the alteration of a separate interest.
- Member discipline, including any schedule of monetary penalties for violating an association’s governing documents and any procedure for the imposition of penalties.
- Delinquent assessment payment plans.
- Resolution of assessment disputes.
- Reviewing and approving or disapproving a proposed physical change to a member’s separate interest or to the common area.
- Election rules.

Requirements for Operating Rules.

To be enforceable, operating rules must meet certain criteria and must be “reasonable.” A determination of whether a rule is reasonable is made by reference to the common interest development as a whole, and not by reference to facts that are specific to one association member. In general, rules will be enforced unless they are found to be wholly arbitrary, violate a fundamental public policy, or impose a burden that outweighs the benefits of the rule. In general, enforceable operating rules must meet the following criteria:

- The rule is in writing.
- The rule is within the authority of the association’s board of directors conferred by state statutes or the association’s governing documents.
- The rule is not in conflict with applicable laws or the association’s declaration, articles of incorporation, or bylaws.
- The rule has been adopted, amended, or repealed in good faith and in substantial compliance with the applicable requirements for same.
- The rule is reasonable.

Procedure for Adopting of Operating Rules.

In general, all operating rules must be adopted, amended, or repealed by an association's board of directors acting at a duly noticed meeting that is open to the members. Members should be afforded an opportunity to make comments on the matter under consideration before the director's vote. While many operating rules may be adopted, amended, or repealed simply by action of an association's board of directors by putting the matter on the agenda for a board meeting and then acting on the item at the meeting, other operating rules may require member review and afford members rights that could impact the adoption, amendment, or repeal of the rule. Notice of the board's action relative to the adoption, amendment, or repeal of an operating rule should be provided to the association members within the time periods that are mandated by the applicable state statutes and/or the association's governing documents.

Emergency Operating Rules.

State statutes and/or governing documents may allow for the adoption of certain rules in an accelerated manner when there are circumstances that involve an imminent threat to public health or safety, or an imminent risk of substantial economic damage. Such "emergency rules" takes effect upon notice to the membership and typically have a limited period in which they are effective.

Judicial Deference Relative to Operating Rules.

The principle of "judicial deference" means that courts will defer to the business judgment and decisions of an association's board of directors concerning the business of the association so long as the directors do not have a conflict of interest and their decisions are made in good faith and in what the director believes to be the best interests of the association. Operating rules that are properly adopted by an association are generally afforded judicial deference when they are challenged in court proceedings.

To ascertain the required procedures for the adoption, amendment, or repeal of operating rules within a given association, one must be familiar with both the statutory requirements for the adoption of rules that are contained in the state statutes that apply to the association, and the provisions contained in the association's governing documents (CC&Rs / Declaration, Articles of Incorporation, and Bylaws) relative to rules. While it is important for individual board members to understand the process of adopting, amending, and repealing rules, such action should only be undertaken with the guidance or assistance of legal counsel who is familiar with the applicable state statutes and provisions contained in the association's governing documents.