

Should Your Association Eliminate Some of Your Outdated Rules?

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Many of my conversations with my association clients involve an evaluation of their rules and regulations and their available enforcement tools. We regularly discuss how previously overlooked rules can be revived through a process known as republication so the Board can once again enforce them prospectively. We also discuss how rules must complement rather than contradict the provisions in the recorded Declaration or Bylaws. There are times, however,

when I raise a question that some of my clients have never considered: ***are there current rules that need to be updated or eliminated altogether?***

Some of the following restrictions may need to be updated to be more relevant to your residents' lifestyles these days and, an added bonus to doings so, is that it is much easier to secure voluntary membership compliance with relevant, reasonable rules.

1. Almost every set of governing documents I've read over the last two decades restricts the use of the unit or the home to "single family use". Many of these restrictions were drafted decades ago when a single family resembled the family in "Leave it to Beaver". These days a single family unit can be comprised quite differently and your documents should be revised to reflect that reality by defining a family in more contemporary terms. Since federal and state law is subject to further change in this area, I prefer to amend this section to ensure that the unit or home is used for residential purposes. Defining the term family is also important if you wish to impose and enforce meaningful restrictions on guest occupancy.
2. The opposite of a residential purpose is a commercial purpose which most association documents seek to prohibit. However, in the strictest sense of the words, many of your owners are already violating this provision if your documents have a broad prohibition against "commercial use". Many people these days telecommute which means they are earning a paycheck out of their unit by conducting their company's business from home; this would constitute a commercial use of the property. Others may be tutoring, counseling or advising paying customers online which would also fall within a commercial use description. The restriction against commercial usage was drafted, in many cases, by developers' counsel many years or decades ago before the advent of the personal computer, tablet or the ubiquitous cell phone, all of which are frequently used for business purposes. The typical prohibition on

commercial use was designed to prohibit business activities which would detract from the residential character of the community or create a nuisance for neighboring owners; a typical example would be an owners operating a hair salon out of his or her unit or home which would bring both customer traffic as well as noxious odors and noise to the property. Clearly, the use of typical digital devices rarely impacts the residential character of the community nor does it create an actionable nuisance; attempting to enforce an archaic commercial use prohibition under those circumstances is likely impossible. Associations should revise older commercial use restrictions to define the types of commercial activity which are prohibited and which are not.

3. Once upon a time, trucks were a bugaboo in community associations; seen as something that vendors and contractors drove but certainly not residents. These vehicles were seen as eyesores which detracted from the overall aesthetic of the community. These days, many trucks are coveted, expensive vehicles which are driven by a wide cross section of the population. If your community's documents have a blanket restriction against "trucks" or "commercial vehicles" without proper specificity, it may be time to rethink why these vehicles are being prohibited. If your parking spaces cannot accommodate these larger vehicles that is a legitimate reason for the restriction to remain in place or to impose size limitations or designate appropriate parking areas for larger vehicles but if the restriction is borne out of aesthetic concerns alone this may be a restriction that is unnecessarily narrowing your pool of eligible purchasers as well as creating dissension in your community.
4. Nothing stirs the blood as much these days in community associations as the topic of pets. Some communities believe that they are "no pet" communities. They rely on older restrictions which impose a blanket prohibition on any and all pets but, when asked, many of these boards cannot confirm with any degree of confidence that there is not a goldfish in a bowl or a hamster running on a wheel inside one of their units. Overly broad pet restrictions may be one of the factors fueling the proliferation of fraudulent assistance animal requests in community associations. Revising those blanket restrictions to impose moderate, reasonable boundaries, prohibiting only those pets or animals your board would be prepared to pursue legal action to remove might stave off certain unintended consequences, particularly assertions of selective enforcement without negatively impacting the quality of lifestyle in the community.
5. Rules that pertain strictly to children expose an association to potential liability. Families with children are a protected class under both Federal and Florida law and rules which single out families with children by making their experience in the community more restrictive than families without children are often seen by the courts as driving a discriminatory agenda. Your board has to strike the right balance between protecting your residents and your common areas and not creating and enforcing rules which have a disproportionately negative impact on one set of residents. For example, rules which permit the pool to be used only during the typical hours when children are in school might be viewed by a trier of fact to be a transparent attempt to keep children out of the pool altogether. Rules which use words like "toys", "running" and "playing" similarly expose a preconceived notion of which segment of the association's population engages in those activities. It is important to remember that some adults cannot accurately assess the risks associated with the use of the pool or

weight equipment, are incontinent, and like to engage in horseplay in the pool so age alone is not the best barometer for drafting rules related to conduct.

The foregoing list is by no means all-inclusive. Your community might have old rules which are no longer legally enforceable regarding satellite dishes and religious objects affixed to the door frames of condominium units or rules which impose fees triggered by the transfer of a unit which are not permitted by the applicable statute or your governing documents.

I recommend to my clients that they engage in a regular rules audit with me to confirm which rules are effective, which can be improved or updated and which are well past their expiration date.