

# Adopting & Implementing HOA Rules

-A Short Overview



# Welcome!

This brief presentation will give an overview of rule adoption and implementation in Homeowners Associations under the Davis Stirling Common Interest Development Act. There are any number of different scenarios that require the application of the Association's rules; each are unique and may require the use of rules from several different sources.

This presentation will attempt to give you the basics about rules and their enforcement.

# Rules in General

## (CC&Rs vs Standing Rules/Pool Rules)

# CC&Rs

- Usually adopted by the developer and designed to be applicable for the life of the development.
- Source of all authority in the development.
- Requires a vote of the members to amend or change.
- Not quickly adaptable to emergencies or changed circumstances.
- Given wide deference by courts.



# Standing/Pool Rules

- Check for rule making authority in CC&Rs
- Most usually used for control of specific activities or uses of the common areas  
(What time does the pool open)
- May not require vote of members.
- §4355(a) defines “Operating Rules”
- Can be implemented quickly to adapt to emergencies or changed circumstances.
- Given less deference by courts



# Process for Adoption

- Drafting
- Review/Public Comment
- Board Vote
- Notice of New Rule Adopted
- 30 Day Period §4365(b)

- Attorney drafting helpful

Be sure of need for the rule

→ bad facts make bad rules

→ Be sure it is allowed by docs

- Show the rule to everyone;
  - if it is something that is being hidden then it is likely a bad idea
- 30 Days for owners to petition to repeal  
5% of owners to call vote
- Be sure to add to annual disclosure packet

# Implementing Rules

# ADR vs IDR



- Technically, it's all ADR  
Alternative Dispute Resolution
- Anything that isn't a court case
  - ★ Meet & Confer
  - ★ Internal Dispute Resolution
  - ★ Mediation
  - ★ Arbitration
  - ★ 3rd Party Neutral Evaluation



# Hearing Process - IDR

- ❖ Notice of Violation
- ❖ Notice of Hearing
  - Min. 10 days - Civ Code §5855
  - CC&Rs may require more
- ❖ Attendance at Hearing
  - Lawyers
  - Other witnesses
- ❖ Fair Process
- ❖ Notice of Determination
  - 15 days after ACTION, not meeting-§5855
  - Board time to deliberate

*Owners can refuse offer to meet, Association can't*

*Be sure all participants understand the purpose of the meeting.*

- *Just meeting to “talk”, without some formality can lead to trouble.*

# Mediation - Arbitration

## Mediation

- More Formal process than IDR
- Mediation – in control of parties, lower costs
- Should complete within 90 days
- Need to try before going to court

## Arbitration

- Even More Formal
- Attorneys used
- Higher costs
- Organizations to help
- Often takes longer than 90 days
- Need to try before going to Court

# Sanctions and Liens

## ❖ Levy of Sanctions

- Notice
- Hearing
- Determination and Levy
- Lien if necessary
  - Not precluded under Civil Code
  - Check for Authority

! Occasionally, CC&Rs will actually prohibit liens for sanctions- be sure to check

! Refer to “Special Individual Assessments” rather than “fines”.

☞ Purpose is to gain compliance not fill budget.

# What Happens With Deceased Owners?

- Emergency contact info on file?
  - Secure the property?
- Info from neighbors and community friends
  - Be considerate but consistent
- Notice to last address of record
- Filing a lien
  - PC §9391 - Banks\* and HOAs
- Probate Representative
  - Small Estate proceedings PC §13101
- Claim against estate

\*Properties that revert to the bank through foreclosure need to be closely monitored. Stick strictly to delinquency policy.

# When is Self Help Necessary

Taking Action on Behalf of the Association

- Maintenance obligation under the CC&Rs
- Proper Notice to Owner
- Threat to the asset
- Protecting Adjacent Units
- Owner Failure to Act
- Authority to Enter
  - Depends on Gov Docs

The rules are there to  
keep things running  
smoothly.

# Thanks!

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