

Cleaning Out Your RULES Wardrobe

Outdated, Wrong Fit, New Trends

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Spring is the time to open up our closets, assess our wardrobe, and start making changes. Outdated clothes finally get donated, clothes that do not fit quite right get altered, and the latest trends are added to keep us current. Community association rules are no different, and as we approach spring, we can take this time to examine our closet (file) of rules to get rid of the old, alter the poor fitting, and create new rules to stay consistent with new laws.

1. Outdated - Time for the Donate Pile

Many rules are inherited, and some were adopted with the best of intentions but they may have been misguided, or laws have changed in a manner that invalidates them.

Age Based Rules: With very few exceptions, age should never be the basis for a rule. Stated and Federal fair housing laws prohibit discrimination on the basis of age or familial status. Rules that require adult supervision for persons under 18 when using the pool, fitness center, clubhouse, etc. are generally discriminatory and could lead to a lawsuit. There are very few narrow instances when age can be the basis for a rule. A rule may also be discriminatory if it impacts one class of persons more than others, such as young people or families with young children. For example, prohibiting skateboarding, bike riding, ball playing, roller skating, etc., in the common area would restrict activities commonly engaged in by children and may be impermissible discrimination. Now is the time to assess that old closet of rules to find out if you have such provisions and to ask your attorney if they need to be revised or removed.

Prohibiting Non-Commercial Signs and Flags: Civil Code Section 4710 (formerly known as 1353.6) has been around for nearly 15 years, but it is not uncommon to find a set of rules that prohibits political signs, front-yard banners that proclaim "Spring!", or flags for a team or school. Civil Code Section 4710 prevents associations from prohibiting non-commercial signs, posters, flags, or banners unless for the protection of public health or safety, or would violate local, state or federal law. Signs can be up to 9 square feet in size, and flags or banners can be up to 15 square feet in size. Make sure to check rules to ensure they comply with this section.

Election Rules – It's only Been 12 Years but Some Are Outdated: Election rules were adopted in mass in 2006 and 2007, and some may have been done in the period when there were questions about whether election rules can adjust quorums and when there was a question about the period to retain ballots (9 months vs. 1 year). Many associations have also updated their CC&Rs and Bylaws to make changes to voting rights, or director qualifications, or other areas that might now conflict with the election rules. SB 407 (Civil Code Section 4515) may also impact election rules with respect to access to the common area. Make sure you check to ensure they are current and still applicable.

2. Wrong Fit - Time for the Tailor

Many rules may have made sense at one time, but circumstances change and they may need to be tailored to better fit the times and your needs.

Pets Restrictions: New styles of housing are also bringing us closer together, and insurance carriers are more regularly excluding certain breeds from coverage. Many associations may find that breed restrictions make sense for their community, and others may find that old size restrictions are not being enforced and can be removed. Many communities are also seeing an increase in chickens as a result of new laws promoting personal agricultural and cultural trends to have urban farms. It is time to review your pet restrictions to see if they need any tailoring to better fit your community.

Schedule of Fines: Fines are meant as a deterrent and are used as a tool to gain owner compliance. However, if your fine policy was written in 2003, the dollar amount may not have as big of an impact today, or it may be a recent policy that was too low to begin with. If fines are not getting owner's attention, it is time to consider tailoring that policy to have a more effective amount.

Parking Rules – Do they still make sense? Are They Being Enforced? While some communities are required to restrict parking on narrow streets for safety reasons, communities that restrict parking on streets for aesthetic purposes may need to consider revisiting this rule. Typically, as communities grow and age so do resident needs. Is limiting parking for two cars sufficient for a family in a five-bedroom home or those requiring in-home health services? Is it reasonable to expect residents to jockey their and their guest's cars in and out of the driveway or not allow over-night guests to park on the street? Safety should always be our first priority. However, when enforcing (or not enforcing) outdated parking rules becomes a vacuum of time and resources and causes unnecessary contentiousness in the community, Associations should adopt new parking rules that are considerate to community member needs and reasonable.

Design Guidelines – Has the Community Changed? Are Paint Schemes Outdated? “Ring” Doorbells and Security Devices? Light Fixtures? Security Doors? Updating architectural standards and guidelines and freshening up your Communities' palette every few years is important for aesthetics and for property values. Many community association service providers can assist in providing updated paint schemes and design guidelines that will help to keep your community beautiful with an updated and consistent look, such as introducing new colors and standards that blend well with current colors and standards.



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3. New Trends - In with the New

New trends come each year, and generate a lot of buzz and conversation, so this portion of the article will just hit the highlights to know what to look for.

Free Speech Laws - SB 407 – Civil Code Section 4735: In a nutshell, owners, residents and guests have an increased ability to use the common area at no cost if it is available, and for potentially large gatherings. Is your common area suitable for this without restraint; do you have a system to manage this; are there any reasonable restrictions you want to enact? This new law will impact associations differently, and some may have considerable impacts they need to be prepared for.

Water Restrictions: 2018 was looking like a dry year but that could change. Either way, water officials are suggesting drought restrictions are here to stay, so associations need to consider adopting rules for drought tolerant landscape and artificial turf if they have not done so already.

Emotional Support Animals – Do You Have a System and Criteria for Handling These Requests? Do You Have a Simple Method for the Board and Requesting Resident to Engage in the Interactive Process? Recently the owner of an emotional support peacock was refused entry onto a plane because the peacock did not conform to their emotional support animal policy. Can you imagine sitting next to a peacock on a plane? What about living next door to one? As the growing trend of emotional support animals impacts our communities, being proactive in establishing rules and guidelines is important, especially in avoiding potential lawsuits. Boards should establish reasonable rules that identify the process and information requirements for reviewing these requests so that once a request is made the Board can address it with confidence and transparency, avoid unnecessary conflict, and ensure that residents have a simple informative process to follow when making a request.

Airbnb – Do You Regulate Short-Term Rentals? How Are They Monitored? How Are They Defined? In recent years we've seen a significant increase in homes being used for transient or hotel purposes, aka short-term rentals. Identifying short-term rentals is not an easy task (unless neighbors are watchful), and monitoring use and frequency can be difficult. Therefore, Boards should consider adopting rules that assist in identifying homes being used for short-term rentals, such as restricting advertising for short-term rentals, and be required to identify the community name of the any advertised rental property. Rules should also clearly define “short-term” (30 days or less, for example), and outline the amount of fines that will ensue for violations of the rule.



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