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Covenant & Rule Enforcement in HOAs:

What Boards and Homeowners Need to Know

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Directors Have Fiduciary Duty To:

- Enforce Covenants
- Enforce Rules and Regulations



Homeowners Have Duty To:

- Be Familiar with Covenants and Rules & Regulations
- Comply with Covenants and Rules & Regulations



Covenant

“A formal agreement or promise, usually in a contract or deed, to do or not do a particular act.”

Source: *Black's Law Dictionary*

In HOA's - Covenants affect the use and enjoyment of the property.



“Covenants” are found in:

- APCHA’s Deed Restriction
- Condominium Declaration
- Declaration of Covenants, Conditions & Restrictions
- Plat

For our purposes, we will focus on Covenants found in your HOA’s Declaration. These covenants “run with the land” and are binding on all present and future owners of the property.



Covenants Commonly Found in HOA Declarations:

- Requirement to Pay Assessments
- Requirement to Maintain, Repair, Replace Specified Portions of Your Unit/Lot
- Requirement to Maintain Specified Insurance Coverage
- Requirement To Do *OR* Not To Do Certain Things in the Community (“Use Restrictions”)



Commonly Found Use Restrictions:

- Prohibitions/Restrictions on Pets
- Restrictions on Leasing
- Restrictions on Parking Recreational Vehicles and Trailers in Community
- Restrictions on Improvements Without Architectural Approval



“Rule”

Directive adopted by the Board which requires specified behavior, action or inaction.

Architectural Guidelines or Design Guidelines are rules that regulate the “improvements” that can be made on an Owner’s Lot or to the exterior of the individual’s Unit.



Rulemaking Authority

- Check your Declaration and Bylaws for Rulemaking Authority
- If your Declaration doesn't address or prohibit the Association from making Rules, CCIOA provides the Association with the authority to "adopt and amend . . . rules and regulations."

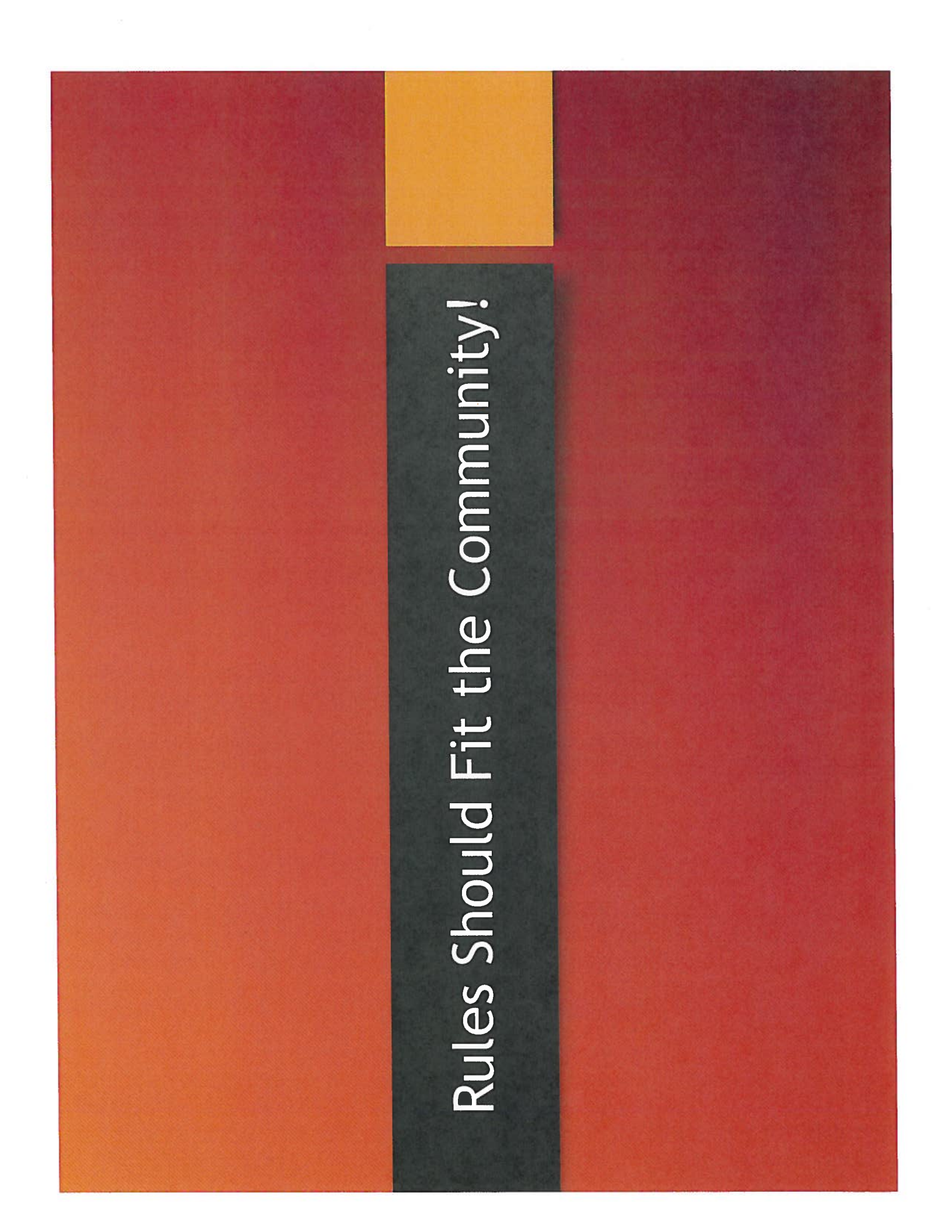
Tips on Rule Making Authority

- Rules cannot be used to trump your Declaration
- Rules must be stated in a clear manner
- Rules must be reasonable and should not be excessive
- Rules must reasonably relate to a legitimate purpose
- Rules must be enforceable

Parameters for Rules

- Unless limited by the governing documents or Colorado law, HOAs have an **implied power** to adopt reasonable rules to:
 - Govern the use of common elements; and
 - Govern the use of units to protect the common elements.
- If the Declaration or Bylaws grants a general power to adopt rules, HOAs have the power to adopt rules that:
 - Protect residents from unreasonable interference with the use and enjoyment of their units and common elements caused by conduct in other units or on the common elements; and
 - Restrict leasing of units to meet valid underwriting requirements of institutional lenders.





Rules Should Fit the Community!

Successful Enforcement of Covenants and Rules

- Voluntary Compliance is always your best bet.
- Consistency in enforcement is critical.



Options Available for Enforcement

- Assess Fines
- Suspend Membership Privileges: Authority Must be in the Declaration
- Damage to Association Property: Require Repair/Replacement
- Seek Injunctive Relief

CCLOA Requirements Relating to Fines

- Must adopt an Enforcement Policy
 - Notice and Hearing Procedures
 - Schedule of Fines (Fines must be reasonable)
- Notice and Opportunity for Hearing *Prior* to Levying Fines
- Hearing must be before an Impartial Decision Maker
 - No direct personal or financial interest in the outcome
 - Board or Committee appointed by the Board

Fines can be enforced as Assessments



Unique Enforcement Circumstance

- Habitual Offenders and Continuing Violation;
- Willful and Wanton Violation;
- Responsibility for Actions of Tenant or Guest;
- Violations or Offenses that Constitute a Present Danger



Defenses to Enforcement

- Failure to comply with Enforcement Policy
- Selective Enforcement: Association elects to pursue the same violation against *only one owner*.
- Waiver: Association relinquishes right to enforce by permitting the violation.
- Laches: Unreasonable delay by the association in taking action to enforce.
- Detrimental Reliance: Association makes a statement relied upon by the homeowner to his or her detriment.
- Rule is Unreasonable or Unclear
- Sanction is Not Reasonable or Excessive
- Statute of Limitations: 1 year on select violations



Marijuana

- Prohibition on use and growing in Units must be in the Declaration
- Applying use restriction in Declaration relating to Nuisance
- Association may adopt Rules prohibiting use, growing or sale of marijuana on the common elements and limited common elements



Dogs and the Fair Housing Act



What can my HOA do when a resident requests an assistance animal under the Fair Housing Act?

When a resident's disability and need for an assistance animal *is readily apparent*

- No further inquiries permitted by HOA
- HOA must permit the resident to keep the assistance animal

When a resident's disability and/or need for an assistance animal *is not readily apparent*, the HOA can make the following inquiries:

1. Does the person requesting the assistance animal have a disability?
Disability: a physical or mental impairment that substantially limits one or more of major life activities.
2. Does the person making the request have a disability-related need for an assistance animal?
Does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, *or* provide emotional support that alleviates one or more of the identified symptoms or effects of a person's disability?

What documentation can my HOA require for an assistance animal?

If the disability and need for an assistance animal is readily apparent:

No documentation can be required.

If the disability is not readily apparent:

May ask the resident to submit reliable documentation of a disability and need for an assistance animal.

If the need for an assistance animal is not readily apparent:

May ask the resident to submit documentation of the disability-related need for the assistance animal.



Requests for Assistance Animals Can be Denied if:

1. The specific assistance animal in question poses a direct threat to the health and safety of others that cannot be eliminated by another reasonable accommodation; or
2. The specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.

Note: Breed, size and weight limitations cannot be applied to assistance animals.



Requests for an Assistance Animal May Not:

1. Be unreasonably denied;
2. Conditioned on payment of a fee or deposit



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Questions?



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THANK YOU APCHA!!