



Community Association  
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Massingham and Associates Management, Inc.  
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## **Zen and the Art of Rule Making**

When a new community is being developed, the developer believes they create a vision of what that community is supposed to be both now and in the future. As the community ages and owners come and go, that vision of the community changes to fit the current owners. Rules are one mechanism that allows a community to create and/or maintain their vision of the place in which they live.

Therein lies the rub for most community associations...what is the vision, and how do we create rules to maintain that vision? For a moment let's wander off course and talk a little bit about vision before we get back to rules.

Normally, those in power (in this case the Board of Directors) set the vision. If the Board is doing its job well, it sets a vision according to the views of the community and not just the few members on the Board. The vision must also adapt to the changing views of the community. For example, you might have a community whose population is undergoing a change from a mostly-older demographic to mostly young families with children. The older demographic might have been content with the "No Playing in the Common Area" rule, but the younger demographic will not. There are no right or wrong answers to setting the vision but it is an important discussion to have before you get into the finer details of the rules.

The authority to make rules is usually granted by the association's CC&Rs but subject to the hierarchy of the governing documents and law. This means a rule first must comply with the association's governing documents and all local, state, and federal laws for it to be valid. Beyond complying with governing documents, rules also need to be reasonable to be enforceable.

It is usually not the legality of the rule that trips up Boards, it's usually an unreasonable rule that does. This is where rule making gets a little tricky. What exactly do we mean by being reasonable? Again, there is no exact answer, but if your association wanted to tear down all the units because they need to be painted, would you think that's reasonable? Of course not, but how would you feel about a rule that prohibited kids from playing in the common area?



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There are several things to consider when trying to evaluate your rule-making and whether you are being reasonable. First, is a rule even necessary? You don't want a lot of rules that aren't ever needed or that aren't enforced. Secondly, does the rule target a particular group? A rule that has a disproportionate effect on a particular group can appear to be discriminatory in nature. For example, in some of our diverse communities associations have considered a 'no shoe by the front' door rule. On the face the rule seems pretty reasonable, but considering the community make-up, the association might instead create a rule that is more sensitive to cultural differences such as "shoes by the front door must be stacked neatly on a rack". Third, the rule must have a uniform mechanism of enforcement. Don't create a parking policy that is only enforced in one corner of the association because that's where the Board members live. Lastly, rules are meant to be broken. The Board needs to be flexible to accommodate the needs of the residents. In many cases not only should you be flexible, but you are required to be, for example when dealing with architectural issues relating to the American with Disabilities Act.

As Board Members you are not just fiduciaries of the association's finances, but fiduciaries of the association's vision as well. Use your rule making power to enhance that vision, not destroy it. Communicate with the membership about your interpretation of the association's vision and rules as frequently as possible.



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## ABC Homowners Association

### Violation and Enforcement Policy and Process

#### Reporting Process:

1. Complaints must be submitted in writing from an Association homeowner to the Board of Directors c/o the management company providing the address of the unit in violation, the nature of the violation against the CC&Rs or rules, and specific incident details when applicable.
  - a. The initial suggestion is neighbor-to-neighbor communication to give the resident in violation an opportunity to be informed that that behavior or activity is causing a disturbance or is in violation of the rules.
2. The owner filing the complaint must be willing to discuss the matter before the Board of Directors if requested.

#### Notification to Owner of Violation:

1. A notice to the member in violation will be sent. Such written notice will specify the violation of the CC&R's and/or policies and advise the owner that subsequent violations or failure to correct this violation will result in a second notice of a hearing before the Board of Directors and potential fines.

#### Notice of Hearing:

1. Any violation, which is not rectified to the satisfaction of the Board will be considered an ongoing offense.
2. An owner will be sent a request to attend a hearing before the Board of Directors to discuss the violation.
3. When a hearing is to be scheduled for the Board to discuss the violation, the member shall be notified writing, by either personal deliver or first-class mail, at least 10 days prior to the meeting. The notification shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which a member may be disciplined, and a statement that the member has the right to attend the hearing and may address the Board personally at the meeting.
4. The Board of Directors of the Association shall meet in executive session to conduct this hearing. The hearing will be held with or without the member in attendance.

#### Schedule of Fines or Penalty: The schedule for fines is as follows:

1. Initial Fine \$50
2. Second Fine for Same Offense/Ongoing Offense \$100
3. Third and any subsequent fine for the Same Offense \$150
4. The Board may also reserve the right to revoke use of the recreational facilities or the right for the owner to vote at an Annual Meeting.

#### Notice of Penalty:

1. If the board imposes discipline on a member, the board shall provide the member a written notification of the disciplinary action, by either personal delivery or first-class mail, within 15 days following the action. If the non-compliance continues after 15 days, the Board of Directors may impose the next level of the fine schedule and may revoke privileges.



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## ABC Homowners Association Enforcement Policy

**1. Notice and Hearing Procedures.** The following notice and hearing procedures will be used whenever the Board meets to consider an alleged violation which could result in disciplinary action against a Member.

a. **Notification.** Notice of the hearing will be sent at least ten (10) days prior to the hearing by prepaid first-class mail to the most recent address shown in the Association's records. The notice shall contain, at a minimum, the date, time, and place of the meeting, the nature of the alleged violation for which a Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting. Within fifteen (15) days of the Board's decision, the Member will be given written notice of the decision.

b. **Due Process.** Members have the right to send a letter, send a representative, or appear in person to present evidence as to why they should not be disciplined. Members also have the right to bring an attorney with them to advise them or to speak on their behalf. The hearing will be held in executive session unless the member requests otherwise.

**2. Remedies for Enforcement.** To enforce the governing documents, the Board may impose one or more of the remedies described below as it deems appropriate to be effective. The selection of one remedy does not preclude the Association's right to pursue others.

- a. Warning letters
- b. Monetary penalties
- c. Suspension of membership privileges
- d. Alternative dispute resolution (arbitration or mediation)
- e. Litigation

Failure to pay fines within thirty (30) days may result in legal action to collect the fines. If the Association is forced to retain an attorney to ensure compliance, collect fines, etc., the owner shall be liable for those attorney fees and all related expenses in addition to the fines.



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**3. Fine Schedule.** Violation of the association's governing documents may result in a warning letter, fine, suspension of privileges and/or continuing fines as the Board may determine to be appropriate to the situation and as provided for in the fine schedule below. In addition to fines, the Board may file a lawsuit seeking judicial relief. The imposition of penalties and suspension of privileges will be subject to notice and hearing procedures.

**1st violation,** warning or fine up to \$100

**2nd violation,** same offense: \$100 to \$300

**3rd violation,** same offense: \$100 to \$500

**Additional violations,** same offense: up to \$500

Safety violations may receive a warning or a fine up to \$1,000.00, depending on the violation

**Continuing violations:** fines up to \$500 per day may accrue until the violation is cured

The Association may pursue one or more remedies simultaneously. The selection of one remedy does not preclude the Association's right to pursue others.

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## DISPUTE RESOLUTION IN COMMON INTEREST DEVELOPMENTS (CID's)

A common interest development (CID) is a modern day equivalent of tribal or village living. In order to live together peacefully, there must be a set of rules (governing documents) and a method for resolving disputes. Over time, the set of rules have become laws, codes, and ordinances. The resolution of disputes has evolved into the form of the judicial system. The California legislature has mandated that disputes within CID's be resolved using a three-tiered system:

- 1) with a dispute resolution procedure (also known as meet and confer or IDR);
- 2) alternative dispute resolution (ADR), and
- 3) a lawsuit.

The custom and practice in CID's has been, however, to begin the process in a more amicable manner in an attempt to avoid the necessity of the other three. (Check your governing documents to ascertain whether your association provides for this first.) Usually the first step is that a letter is sent to the homeowner notifying him or her of a violation. A deadline is given to either correct the violation or to cease and desist. If this does not resolve the problem, then the violating homeowner is invited to a board meeting (which should be held in executive session). If the situation is not resolved at this stage, then the association must proceed to the State-mandated process.<sup>1</sup>

### 1. Dispute Resolution Procedure.

This process is mandated by Civil Code §§1363.810 -1363.850. A dispute resolution procedure is adopted by the board (see sample procedure, Exhibit "A"). It must then be distributed to all owners. The objective of the meet and confer is to resolve a dispute in a fair, reasonable and expeditious manner. There is to be no charge to a homeowner. The board must delegate one of its members to be the Designated Board Member (DSM), who will attempt to resolve the dispute, pursuant to the guidelines given to him or her by the Board (see sample Meet and Confer Policy, Exhibit "B").

If at this first meeting, the dispute is not resolved, then both parties meet with a neutral. If this does not resolve the dispute, then an appeal is taken to the board.

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<sup>1</sup> Disputes concerning assessments will not be discussed here as this is the subject of another seminar.

If the appeal and subsequent action do not resolve the dispute or the homeowner does not participate, move to step 2, ADR.

2. ADR.

This procedure utilizes an arbitrator and involves a letter to the homeowner, a Request for Resolution and a Response. This procedure is set forth in Civil Code §1369.520 (see sample, Exhibit "C").

3. LAWSUIT.

As a last alternative, the association files a lawsuit to achieve resolution of the problem.

### ARCHITECTURAL CHANGES

All CID's have a common thread that makes them similar to other CID's. They are all planned communities, are planned architecturally in design and they all have governing documents.

All CID's have, or should have, a process for altering or modifying units or lots. Consult your governing documents. The legislature now requires that all CID's have a procedure (Civil Code §1378. (see sample, Exhibit "D").

The key to all of these procedures is to follow the law, adhere to the governing documents, and to be fair in the process. All of these procedures should be distributed to homeowners and tenants.

**DISPUTE RESOLUTION PROCEDURE  
OF  
ABC ASSOCIATION**

1. WHO MAY START:

This procedure may be invoked by the Association or a homeowner. Either may make a written request to meet and confer to resolve a dispute. The Board shall designate a member of the Board to meet and confer (Designated Board Member "DBM").

2. WHO PARTICIPATES:

- A. When a written request for Dispute Resolution is received from a homeowner, the Association shall participate.
- B. If the Association makes a written request for a homeowner to participate, the homeowner may elect not to participate.

3. NON-PARTICIPATION BY THE HOMEOWNER:

If the homeowner declines to participate, the Association shall begin Alternative Dispute Resolution, pursuant to Civil Code §1369.520.

4. IF THE HOMEOWNER PARTICIPATES, THEN THE MEET AND CONFER TAKES PLACE:

- A. Both parties shall meet and confer to resolve the dispute within forty-five (45) days of receipt of the written request by the other party.
- B. The meeting shall take place promptly at a mutually convenient time and place. Each party shall explain his or her position and shall confer in good faith to resolve the dispute.
- C. A written decision shall be made by the DBM and delivered or received by the homeowner within ten (10) days after the meet and confer.
- D. A resolution of the dispute agreed to by the parties shall be made in writing and dated and signed by the parties, including the Board designee on behalf of the Association.
- E. If the homeowner participates, but the dispute is resolved other than by agreement of the homeowner, the homeowner shall have the right to appeal to the Association's Board of Directors.

5. APPEAL:

- A. If the homeowner disputes the resolution, an appeal must be taken to the Board of Directors within thirty (30) days of the date of the decision by the DBM.
- B. If there is an appeal, the Board must hear the Appeal at its next regularly scheduled meeting in executive session, then issue a written decision within ten (10) days.

6. NO CONFLICT:

- A. The resolution must not be in conflict with the law or the governing documents.
- B. The agreement must be consistent with the authority granted to the Board of Directors or the agreement must be ratified by the Board.
- C. The written agreement, which is dated and signed by the parties, will bind both parties and be judicially enforceable.

7. NO FEE:

No fee will be charged to the homeowner during this process.

8. EXCEPTIONS:

- A. Reasonable exceptions may be made to the time deadlines, in the discretion of the Board.
- B. Any exceptions will be made on a case-by-case basis.

9. TIME:

- A. The maximum time to act on a request by a homeowner is forty-five (45) days.
- B. Initiation to termination of the dispute will take no more than one-hundred fifty (150) days.

Adopted by the Board of Directors on: \_\_\_\_\_.

Distributed to members on: \_\_\_\_\_.



**MEET AND CONFER aka INTERNAL DISPUTE RESOLUTION POLICY  
of  
ABC ASSOCIATION**

1. OBJECTIVE OF THE MEETING:

The Board of Directors shall designate a member of the Board to meet and confer ("DBM"). The meet and confer meeting with the owner needs to be fair, reasonable and expeditious. The objective of the meeting is to discuss and resolve the dispute within the authority granted to the DBM by the law, the governing documents and the Board of Directors. At the conclusion of the meeting, the resolution must be in writing, dated and signed by the DBM and the owner. The written agreement binds both parties judicially and is enforceable. If the owner participates, but the dispute is resolved other than by agreement of owner, the owner has the right to appeal the decision to the association's Board of Directors. The owner cannot be charged to participate in the process.

2. TIME, DATE AND LOCATION:

The meeting must be held at a mutually convenient time, date and location.

3. PREPARATION BEFORE THE MEETING:

Before meeting with the owner, the DBM should:

- A. Read the attached Meet and Confer Policy to familiarize himself/herself with the policy is to be enforced;
- B. Read the owner's written dispute;
- C. Review any supporting documentation provided (i.e. current account history provided by the association reflecting all charges that may be in dispute).

4. AUTHORITY GRANTED BY THE BOARD OF DIRECTORS:

In an effort to resolve and settle disputes expeditiously, all owners will be offered the following guidelines that have been approved by the Board of Directors and are considered fair and reasonable. The Board of Directors authorizes the DBM to offer the owner the following on its behalf:

- A. \_\_\_\_\_
- B. \_\_\_\_\_
- C. \_\_\_\_\_

5. WRITTEN RESOLUTION:

At the conclusion of the meet and confer, a written resolution must be prepared, which is dated and signed by all parties. If the owner is not in agreement with the resolution, the owner has the right to appeal the decision to the association's Board of Directors and must be informed of that right.

6. OWNERS RIGHT TO APPEAL:

If the owner disputes the resolution, an appeal must be taken to the Board within 30 days of the date of the decision of the DBM. The Board must hear the appeal at its next regularly scheduled meeting in executive session and issue a written decision within 10 days.

Adopted by the Board of Directors on: \_\_\_\_\_  
Distributed to members on: \_\_\_\_\_

**SUMMARY OF CIVIL CODE §1369.520**

1. If an association, owner or member of an association seeks either:
  - A. Declaratory or injunctive relief; or
  - B. Declaratory or injunctive relief and a claim for \$5,000.00 or less, other than for association assessments, concerning the enforcement of the governing documents; the parties shall submit their dispute to Alternative Dispute Resolution (ADR), such as mediation or arbitration. A Request for Resolution ("Request") begins the process and it shall include:
    - 1) a description of the dispute;
    - 2) a request for ADR; and
    - 3) notice that the party receiving the Request is required to respond within thirty (30) days or the Request will be deemed rejected.
  - C. This does not apply to a small claims action.
  - D. Except as required by law, this does not apply to an assessment dispute.
2. A party on whom a Request for Resolution is served has 30 days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party.
3. If the Request is accepted, ADR shall be completed within ninety (90) days from the date of acceptance, or it can be extended by a written stipulation signed by both parties.

**FAILURE OF A MEMBER OF THE ASSOCIATION TO COMPLY WITH THE ALTERNATIVE DISPUTE RESOLUTION REQUIREMENTS OF SECTION 1369.520 OF THE CIVIL CODE MAY RESULT IN THE LOSS OF YOUR RIGHT TO SUE THE ASSOCIATION OR ANOTHER MEMBER OF THE ASSOCIATION REGARDING ENFORCEMENT OF THE GOVERNING DOCUMENTS OR THE APPLICABLE LAW.**

4. Attached to this document is a copy of the Association's Dispute Resolution Procedure.

**PROCEDURE FOR ALTERATIONS OR MODIFICATIONS**  
(PHYSICAL CHANGES)  
**to**  
**ABC ASSOCIATION**

1. WHO MAY START:

This procedure is initiated by any homeowner seeking to make a physical change, alteration, modification, repair, and/or structural change to the owner's separate interest or to the common area, if written approval is required by the Association.

2. DESIGN HARMONY:

Keep in mind that this is a common interest development that has been planned with harmony in design and location of structures and topography.

3. REQUIREMENTS:

A. Prior to construction, submit to the Association the following:

- 1) An approved architectural change form; and
- 2) Plans and specifications of the proposed change showing the nature, kind, shape, height, materials, colors, location(s) and other relevant information.

B. Upon receipt by the Association, the Association shall make a written decision within sixty (60) days. The decision shall be approved, disapproved or approved with conditions.

- 1) If the change is approved, the homeowner may proceed.
- 2) If the change is disapproved, the written decision shall include an explanation of why the proposed change was disapproved.
  - a) If a proposed change is disapproved, the homeowner is entitled to reconsideration by the Board or governing body at an open meeting.
  - b) The homeowner has thirty (30) days from receipt of the decision to apply for reconsideration.
    - 1. Once received by the Board or governing body, it has forty-five (45) days to schedule a reconsideration meeting.
    - 2. After the reconsideration meeting, the Board must issue a written decision within ten (10) days.

4. EXCEPTIONS:

- A. Reasonable exceptions may be made to the time deadlines in the discretion of the Board.
- B. Any exceptions will be made on a case-by-case basis.

5. TIME:

Initiation to termination of this process should take no more than one hundred fifty (150) days.

6. NO CONFLICT:

The adopted change(s) shall not be in conflict with the governing documents, current law and/or local ordinances, rules, or procedures.

7. CHANGES/MODIFICATIONS THAT REQUIRE APPROVAL:

- A. \_\_\_\_\_
- B. \_\_\_\_\_
- C. \_\_\_\_\_
- D. \_\_\_\_\_
- E. \_\_\_\_\_

Adopted by the Board of Directors on: \_\_\_\_\_  
Distributed to members on: \_\_\_\_\_

