

DRAFTING RULES:

HOW COMMUNITY ASSOCIATIONS MAINTAIN PEACE & HARMONY

A Guide for Association Practitioners

By Gurdon H. Buck



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Drafting Rules: How Community Associations Maintain Peace & Harmony

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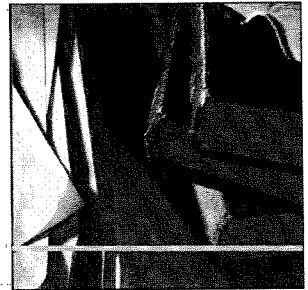
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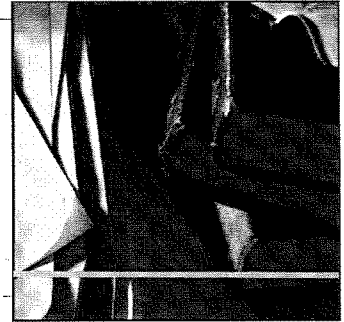
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INTRODUCTION:

BACKGROUND AND KEY POINTS



RULES AND REGULATIONS ARE REGULATORY IMPERATIVES THAT ARE derived from the authority of the association, and usually govern activities that occur in a community's common areas and elements. Rules can be enacted by the executive board or board of directors. With the passage of the 1994 amendment to the Uniform Common Interest Act, rules may also be imposed, if the declaration permits, on use or occupancy within the units if the rules (i) prevent a use that violates the declaration, (ii) adversely affect the use and enjoyment of other units, or (iii) restrict the leasing to conform to institutional lender requirements. Since rules protect owner's property and peace of mind, they are one of the most important aspects of a well-run community.

To write rules that accomplish their goals and that are enforceable, developers, association managers, boards of directors, and attorneys should remember that the rule must be accepted by the community, obeyed and enforced easily, and efficient. This guide will help these individuals to write rules that are both acceptable to the board and to the community.

PUT COMMUNITY FIRST

Bearing in mind what is acceptable to the community is an essential component in making and enforcing rules. Putting the community first should always be the board's priority. Indeed, rules are necessary only to the extent that people are contributing to, sharing in, and benefiting from use of the resources owned in common on an equitable basis in a community.

BE REASONABLE

Making and enforcing rules is a process best approached by simply being reasonable. Boards should be flexible enough to allow rules to be changed and even rescinded as the needs and interests of the community evolve.

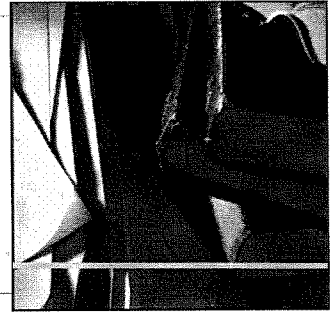
KEY POINTS

Rules get their authority from the association's enabling statutes and governing documents.

- Only enact rules when they are necessary. Regulate as few activities as possible.
- The association should be fair and reasonable and act in the best interests of the community when enacting and amending rules.
- The process of drafting rules requires (1) identification of the problem, (2) a need for the rule, (3) research of enabling laws, association documents, existing association rules, and previous association actions, and (4) preparation of the proposed rule.
- When developing a rule, a board should (1) circulate the proposal to owners and residents and allow them to comment, (2) discuss the rule at an open meeting, (3) publish the final rule before its effective date, and (4) regularly review and consolidate amendments.
- Include an effective date, a table of contents, and a subject index with the compilation of the rules.
- When publishing rules, clearly distinguish information that is intended to guide and help members from rules that carry a sanction for violation.
- Write rules that residents can obey without drastically changing their life-style.
- State rules in positive terms.
- Rules should be easy to understand.
- Rules should be brief.

CHAPTER ONE:

LEGAL BASIS FOR RULE-MAKING POWERS



COMMUNITY ASSOCIATIONS, LIKE SOCIETY IN GENERAL, DEPEND ON rules to provide certainty, order, and safety. But, community associations also have a responsibility to protect commonly owned resources. Therefore, rules are by-products of the need in a community to share these resources.

Association rules protect both the freedom and safety of community residents. Generally, rules apply to issues that fall directly into the association's realm of responsibility. Use and occupancy restrictions, which affect the privately- and exclusively-owned areas in a common interest community, are found in the declaration of the covenants, conditions, and restrictions. This fundamental title document establishes the common interest community, and describes the limitations, rights, and responsibilities of ownership, and it's referred to as a "declaration" in this guide (See figure 1).

The term "declaration" is used in the Uniform Condominium Act (UCA) and its progeny the Uniform Planned Community Act (UPCA), the Model Real Estate Cooperative Act (MRECA) and the combination of all three, the Uniform Common Interest Ownership Act (UCIOA)—collectively referred to as the Uniform Acts—and the *Restatement*. If you're from California, it is referred to as the CC&Rs. Other states refer to it as the "master deed."

Community associations in almost half of the states base their rule-making authority on one or another version of the Uniform Acts. The Uniform Acts give associations the power to regulate common elements. It also specifies the powers of the association board. According to the Uniform Act, association boards of directors may:

- adopt and amend bylaws, rules, and regulations (See figure 2);

FIGURE 1. THE FUNDAMENTAL TITLE DOCUMENT

- The Declaration
- Declaration of the Covenants, Conditions, and Restrictions
- CC&Rs
- Master Deed

- regulate the use, maintenance, repair, replacement and modification, of common elements;
- impose charges for late payments of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association;
- exercise any other powers necessary and proper for the governance and operation of the association.

IN-UNIT REGULATION

According to most of the Uniform Act, rules can only be applied to regulating the common elements. But an amendment to the Uniform Act, adopted in 1994, permits associations to enact rules that affect unit interiors and restrict leasing to conform to institutional lender requirements. Under the amendment, in-unit rules may only be enacted if they protect the health and safety of the common elements and other units. Following is the relevant language:

- (C) Unless otherwise permitted by the declaration or this [Act], an association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to:*
- (1) prevent the use of a unit which violates the declaration;*
 - (2) regulate any behavior in or occupancy of a unit which violates the declaration or adversely affects the use and enjoyment of other units or the common elements by other unit owners; or*
 - (3) restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in common interest communities or regularly purchase those mortgages. Otherwise, the association may not regulate any use of behavior in units.*

FIGURE 2. SAMPLE DECLARATION OR BYLAW LANGUAGE

The board of directors shall have power:

- (d) to adopt and publish rules and regulations governing the use of the common properties and facilities and the personal conduct of the members and their guests thereon.
- (e) to exercise for the association all powers, duties, and authority vested in or delegated to this association, except those reserved to the meeting or to members in.

Associations aren't normally given the regulatory powers described in subparagraphs (2) and (3) without authority found in the basic enabling statute and the declaration. For condominiums formed under FHA Model Act and the earlier versions of the UCA/UCIOA, rules could only affect the common property.

CONDOMINIUM LAW

Condominium law is based on the Uniform Condominium Act (UCA) in over 15 states. Seven other states base their condominium law on the UCIOA. And several other states are proposing UCIOA statutes based on existing UCA coverage. (See figure 3.) However, only a few states have adopted the mid-1990's amendment to the Uniform Acts that permit, on a limited basis, passage of certain rules that affect the interior of the units.

A state's enabling law often limits condominium boards. Many states, which do not have the Uniform Act, base their condominium laws on the Federal Housing Administration's (FHA) model enabling act. The Act states:

The bylaws may provide for:

- (i) *Method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities. Such restrictions on and requirements respecting the use and maintenance of the apartments and the use of the common areas and facilities, not set forth in the Declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities by the several apartment owners.*

COMMON LAW

Community associations located in non-UCIOA states rely on common law for their legal foundation. Although most states without UCIOA do not have enabling laws for homeowners associations, California is a notable exception. According to the Regulations of the California Real Estate Commissioner, the governing instruments of “common interest subdivisions” must provide for:

Enumeration of the powers and duties of the governing body and the officers and of the limitations upon the authority of the governing body to act without the prior approval of members representing a majority of the voting power of the [association].

The powers and duties of the governing body of the [association] shall normally include, but shall not be limited to, formulation of rules of operation of the common areas and facilities owned or controlled by the association.

When a declaration is not based on statute, the board relies on the common law of “servitudes” or covenants running with the land to establish the association regime. If the board wants to make a rule that affects unit interiors, it must have authorization from the declaration. It must also have the specific authorization to make rules spelled out in the documents in sufficient detail to give a person notice of the scope and extent of rule-making authority. The Statute of Frauds requires the property title to specifically convey such rights and to accurately describe them.

In 1962 the Urban Land Institute published *Technical Bulletin 50, the Homes Association Handbook*, the forms from which were adopted by the FHA and the VA. The FHA suggested document forms for planned unit developments formed under the common law were the FHA 1400 series, and for the VA, the similar VA 26-8200 series of 1965. The documents provided the bases for the Declarations of Covenants, Conditions, and Restrictions for most of the planned unit developments (PUD) or cluster subdivisions with association-owned common properties that are found throughout the country. The model bylaws provided that the board of directors of the association had the power, “To adopt and publish rules and regulations governing the use of the common properties and facilities and the personal conduct of the members and their guests thereon.”

Under the Model Declaration of Covenants and Restrictions, the property rights of the owners in the easement of enjoyment over the common properties were subject to, “...the right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid and for any period not to exceed thirty days for any infraction of its published rules and regulations.”

A general right to make rules over property affecting the ownership of land not owned by the association (the land within the lots) would be part of the “servitude.” The right would require a specific reference in the title document. Thus, restrictions on the use and occupancy of the interior of lots should be included solely in the declaration, running with title, rather than changing from time to time and residing in the minutes of the executive board as a regulation. Since the Statute of Frauds is a common-law concept that varies between jurisdictions, the board must consult legal counsel regarding its application.

The *Restatement of the Law Third—Property—Servitudes*, approved and published by the American Law Institute in 2000, which we will call the *Restatement*, purports to reflect the best thinking in the common law. Although it changes many of the old, sometimes confusing, rules in the enforcement of covenants affecting title to land, it tries to arrange them all so that they’re consistent with each other and the current actions of the courts. State courts accept a Restatement of the Law persuasive precedent from another jurisdiction. Thus, although it is persuasive, it can modify the common law rules as they’re interpreted in court.

In the new *Restatement*, Section 6.7, a community association has the implied power to adopt rules, to govern the use of the common property, and to govern the use of individually owned property to protect the common property. If the declaration specifically grants the power to adopt rules, it can additionally protect members from unreasonable interference in the enjoyment of the common interest community caused by individual actions of other unit owners, and it can restrict leasing to meet valid institutional lender requirements.

What the *Restatement* is saying, is that the common law should permit the Association to adopt essential rules to protect the community even if the documents that formed the community do not specifically provide for such rule making power. The *Restatement* extends this power to areas within the unit—a radical change in the older thinking. It grants the governing body of the association the powers to do what is necessary to preserve and protect the community and enhance the reach of the declaration covenants to that effect. This power is extended to govern the use of property within the units, if that power is necessary to preserve the community. However, the rules cannot govern the actions of individuals unless they are enabled by the declaration.

Even without specific enabling legislation, the *Restatement* also indicates that the association has the inherent power to levy fines. This too is a change in the common law, which prohibited private contracts to impose a penalty. The power of

FIGURE 3. THE HIERARCHY OF AUTHORITY FOR ASSOCIATION LAWS

1. Statutory and common law foundation
2. Declaration
3. Articles of Incorporation
4. Bylaws
5. Rules
6. Procedural resolutions and guidelines
7. Other resolutions of the board of directors
8. Contractual obligations imposed by the board of directors
9. Actions and decisions by officers and employees

punishment is usually limited to the government, and it must be delegated by the legislature.

Although the *Restatement* increases an association's authority to make rules, particularly within units, boards shouldn't necessarily feel compelled to do so. A minimalist approach that includes community involvement and strives to be reasonable is best.

CHAPTER TWO:

RULE DEVELOPMENT



RULE DEVELOPMENT BEGINS WHEN THE DEVELOPER, DEVELOPER'S attorney, or the manager drafts an initial set of rules for the association. Some developers hire consultants to help anticipate problems that might arise in operating a community association. The developer, working with the consultants, forms a team to discuss problems the association may eventually face. If possible, these problems should be resolved in the design process. Problem areas may include pets, trash removal, leasing, storage, common areas, and open space.

For example, if the development team predicts a shortage of parking spaces it should attempt to resolve the problem through design. A typical design solution for this type of problem would be to create special parking places for motorcycles and compact cars. If a design solution is not possible, the developer may be forced to accept a regulatory solution that would institute a procedure for fair allocation and use of the spaces.

The development team will also adopt a set of model rules that is specific to the community (See Appendix). The developer-controlled board should formally adopt the initial set of rules at its first meeting. Unusual rules should be highlighted with an explanation. The UCA and UCIOA require the developer to include the initial rules with its disclosure documents and to distribute them to purchasers.

Florida, California, and New York require the developer to give purchasers fundamental documents. The UCIOA and UCA also require the developer to distribute copies of the declaration and rules to purchasers in resales from other unit owners. This information should be contained in a resale disclosure package that includes the bylaws and other financial information about the association.

Sales, closings, and welcoming activities like an open house provide the developer with an opportunity to disseminate and explain the initial set of rules. Such distribution can protect the developer from liability and start the association out on a solid basis.

During the transition from developer control, the board and the developer should reevaluate the rules and make recommendations for change that are based on actual experiences. In the parking example discussed above, the practitioner's anticipation of a problem may have been based on a marketing study projecting a high number of two-car families as purchasers. Yet, actual sales reports for the project may show a considerable number of single owners with only one car. If the problem doesn't materialize, the parking rule could be modified or abolished.

WRITING AND AMENDING RULES

When the board reviews and revises the initial rules or adds rules of its own, it should consider problems that could arise with their application and enforcement. To get a comprehensive perspective, enlist the help of several individuals who have experience in association governance, operations, and practice. Rules are never written perfectly, but by defining board authority and by devising potential solutions the association can minimize future problems. These steps will help the board write appropriate rules.

1. Identify the problem and consider alternative solutions. Sometimes, personality conflicts, design defects, and miscommunication create problems. Sometimes inconsistent enforcement, unreasonable rules, or uninformed residents create problems. Designate a board member, staff member, committee, or resident task force to investigate, research, and identify the underlying problem. Determine whether the problem can be resolved without a rule.

New rules are not always the best way to solve problems. Rule implementation should be one of the last solutions the board considers since new rules may present communication and enforcement problems.

2. Research the legal base. If the board can't find an alternative solution, it should research the association's enabling laws and documents to determine the scope of its rule-making authority. Enforceable rules are based on a specific function assigned or delegated to the board by these documents. Referring to this function will help the board justify the rule. Unless a specific board function is authorized, the board might not have the power to pass the rule. As mentioned above, some statutes and

declarations permit rules to govern only the common property. In such instance, a restriction on the occupancy of a unit should be adopted as an amendment to the declaration, rather than as a rule, if the statute or the common law in your jurisdiction permits it.

3. Research previous resolutions. Make sure the board doesn't duplicate or contradict an existing rule when creating a new one. Consult the association's Book of Resolutions. Also, review minutes of board meetings around the time of any relevant resolutions, for insight into how similar situations were addressed previously.

4. Seek assistance. Consult the association's attorney to confirm the board's authority, the wording of the proposed rule, and its enforceability. The association's manager and other associations may have helpful suggestions, and the local Community Associations Institute (CAI) chapter may offer related programs, workshops, newsletter articles, or publications.

5. Draft a resolution. Describe the problem, the legal foundation for the board's authority, and the proposed rule in the resolution. Future boards may need to know why the board took certain actions.

6. Publish the proposed resolution and conduct a hearing. Circulate the proposal to the residents and offer them the opportunity to comment. The community newsletter is a good vehicle for this type of information. (See figure 4.)

If the proposed rule is controversial, the board should schedule a public hearing on the subject. Some boards conduct hearings during board meetings. The board may also ask a committee or task force to conduct the hearing and report to the board. A hearing can prevent later problems if the testimony brings out legitimate reasons for implementing approaches other than those proposed in the draft resolution.

For example, the board of ABC Association passed a rule prohibiting scalloped edges on screen doorframes without a hearing. The board reacted to the complaint of one member, when in fact over half of the houses in the development had scalloped doorframes. Members with scalloped doorframes reacted angrily, and the board rescinded the rule. If the board had held a hearing, the situation could have been avoided.

If the proposed rule isn't controversial, the board may ask owners to submit written comments.

7. Act. Adopt, modify, or reject the proposed rule. Meeting minutes should recite the steps involved in rule development. They reflect the board's official action. They should not include individual statements and views that are not recorded as dissenting opinions.

FIGURE 4. SAMPLE PARKING RULES

Background: A number of residents have requested that the association designate a parking area for vans and other recreational vehicles. Section 5.1 of the association rules currently prohibits residents from parking anything but their cars in the regular parking spaces.

Article IV, Section 3 of the bylaws allows the board of directors of the association to pass rules to regulate common property use. The board considered the request, conducted a survey to determine the need for the parking spaces, and decided to amend the rule.

Therefore, the board intends to establish Lot D-2 in Forest Circle as a van parking lot. Section 5.1 of the association rules will be amended to read:

"Parking areas shall not be used for any purposes other than to park passenger cars, except that vans, trailers, campers, and two-axle recreational trucks owned by residents may be parked in Lot D-2 in Forest Circle."

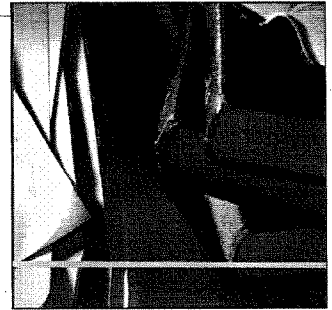
8. Announce the resolution. After the board passes the final rule, publicize it and tell members when it is effective. Make the effective date easy to remember, such as the first day of the month following publication. Allow ample time for any necessary resident adjustments. Though posting the new rule on a bulletin board or publishing it in the newsletter may provide sufficient legal notice, the board should deliver a separate copy of the rule to each resident for maximum awareness and compliance. Owners may want to file the rule with other association papers.

Circulate a complete set of rules when the number of amendments becomes cumbersome. This will provide a good opportunity for the board to review the rules, to evaluate their consistency and validity, and to circulate them again to residents. The consolidated rules should note each rule's adopted and effective date.

NOTE—The association must give resale disclosures to all new purchasers in states with the UCA or UCIOA regulations. These disclosures must include "a copy of the rules and regulations of the association." Boards in these states must maintain a current copy of consolidated rules at all times.

CHAPTER THREE:

THE COMPONENTS OF A GOOD RULE



WHEN WRITING RULES, THE BOARD SHOULD USE SIMPLE CONCEPTS and words. If residents understand rules, they're more likely to comply with them. For example, board members may attempt to lend authority to their writing by inserting multi-syllabic legal words. Though rules should have a solid legal basis, those who read them must be able to understand them. Few residents would understand the meaning of "Section 35.641 of the Code of the Chartered Municipality of Pleasantville is hereby incorporated by reference."

The following characteristics of good rules will help board members avoid the traps of complexity and misunderstanding.

1. Good rules are transparent. Rules should require people to do what they would have done naturally without the rule, after merely thinking about it. When Dwight Eisenhower was president of Columbia University, there was a great deal of study as to where to place paved paths through the huge quadrangle of grass within the campus. He suggested that they merely pave where the grass was worn. Thus, if rules require what reasonable and decent people would do anyway, then rules only have to be enforced against the small minority who aren't reasonable and decent.

2. Good rules are few rules. Good rules are the minimum necessary to provide for the comfort and safety of the residents, the equitable use and enjoyment of facilities, and the equitable burden of responsibility in a community.

3. Good rules are easy to obey. Residents must understand the need for the rule and comply with it voluntarily. Neither the board nor the manager is in a position to police the community.

4. Good rules are efficient. Good rules accomplish exactly what the board intended them to accomplish. Unfortunately, many associations try to solve a

problem by passing rules that are either too harsh or too broad. Such rules may set off a number of chain reactions, including situations in which

- Residents ignore the rule and call the board autocratic or dictatorial.
- The board complains that residents are apathetic and ungrateful.
- Residents ignore other rules.
- The newsletter adopts a scolding tone.
- Residents complain about the board to the manager.
- Residents complain that rules aren't uniformly enforced.

5. Efficient rules accomplish their goal without undue side effects. Good rules resolve—rather than create—problems. For example, the board of the ABC Association is concerned about teenagers damaging lawn areas when they play ball. In an attempt to resolve the problem, the board prohibits groups of three or more people over the age of 10 from playing on the lawn. The teens react by playing in the street or on the lawns of adjacent associations, resulting in complaints from motorists and other association boards. Prevent this type of situation by considering the likely side effects of a rule when drafting it.

6. Good rules are enforceable. Make sure the board has the authority to enforce a rule before drafting it—then make the rule specific. Vague statements, such as “Loud and boisterous activity should be avoided” leave unanswered the questions “By whom?” “Where?” “When?” “What does avoid mean?” Both mini-bikes and lawn mowers are loud. Should they both be restricted? Does noise from late Saturday night parties create the same problems as noise from a Sunday afternoon wedding reception or barbecue?

Overly specific rules can also create enforcement problems. For example, the ABC Association institutes a rule that states: “Between the hours of 10 p.m. and 7 a.m. no noise shall be permitted in a unit that measures 30 decibels or greater for more than 10 seconds in the nearest adjacent unit or public area.” Though specific rules may be easy to enforce in court, the board may find it difficult to obtain voluntary compliance.

To write an effective rule, the board must balance specificity with simplicity and compliance. No rule will meet each criterion equally. (See Figure 5.)

7. Good rules are flexible. Good rules allow flexibility, and the use of reasonable judgment and mediation in enforcement.

8. Good rules must be communicated to the residents. Associations don't always publicize rules as effectively or as often as they need to. The board should distribute resident handbooks—including the current rules—to all purchasers when they first

move into the community. Since these documents may get filed away with other settlement papers, and since purchasers may lease to others, redistribute copies of the rules periodically. Also consider putting up signs in pool and playground areas, listing rules in the newsletter, or putting them on the association's web site.

If the board tapes rules in elevators or near mailboxes it may catch residents' attention, but the anonymity of the process will reduce its effectiveness. Indicate that the board adopted the rules, not that they are from "the management." Such a signature may remind residents of impersonal rental experiences and cause negative reactions.

FIGURE 5. SAMPLE COMMON AREA RULES

Rules for Using the Common Areas

Background: The common lands are a great natural asset for association members and their families. These lands are permanently set aside to maintain a natural buffer between residential and commercial areas. They also provide an educational area for those interested in plants and wildlife. The common lands are an essential part of the PUD concept. They were established to benefit current and future residents of the community.

The preservation of these lands depends primarily on the cooperation of association residents. Preservation is only partially assured through the official activities of the association and the developer.

These lands are owned by the association and maintained with dues paid to the association.

The association is responsible for all development of natural or created features on the common lands. The association is also responsible for hiring professionals to develop landscape plans and to design common-land facilities.

The association urges residents to make suggestions for the development of the common lands; to donate, through the maintenance committee, plants or facilities for the common lands; and to help maintain the lands by removing litter or rubbish.

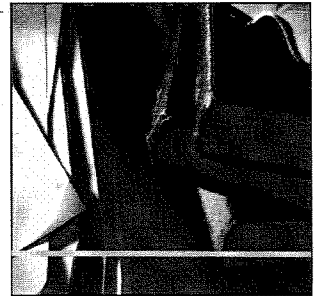
Our investment in the common land can be enhanced and maintenance costs kept at a reasonable level if certain rules are followed.

The association has set the following rules for common area use:

- Do not disturb plants and topsoil.
- Do not hunt or trap wildlife.
- Property owners adjacent to common lands must confine personal development of facilities to their own property.
- Do not discard refuse on common lands.
- Do not use any motor-driven vehicles on walkways or common lands.
- Only start fires in designated areas.
- Keep tot lots and playgrounds clean. Do not use glass or metal containers other than nursing bottles in the tot lots.
- Respect private property bordering the common lands. Children and pets who stray onto private property without permission of the owner are trespassing.
- Confine bicycle riding to the pathways. Do not race bicycles or use them recklessly.
- Refrain from loud and boisterous activity when using pathways at night.

CHAPTER FOUR:

GUIDELINES, EDICTS, AND DECREES



THOUGH BOARDS ENACT RULES TO IMPROVE THE QUALITY OF LIFE and the protection of property within the community, over-regulation can create dissention and noncompliance among residents. Many associations try to limit the number of rules the board approves by establishing guidelines and policy statements.

GUIDELINES

Guidelines set standards for preferred behavior. They are advisory in nature and don't carry specific sanctions for violations. Effective guidelines follow the same development process as rules. The board begins this process by identifying a need, referencing the authority, and allowing for community input. This process builds broad community consensus that results in stronger peer pressure for voluntary compliance.

The guidelines in Figure 6 were adopted in a small luxury townhouse community that had no initial rules. When the board began the rule-making process, opposition arose from owners who, as business executives and former single-family homeowners, weren't accustomed to rules. Guidelines were a well-accepted compromise between strict rules and no rules at all. If the guidelines were violated, the board could only remonstrate with the violator. The community relied on peer pressure for widespread compliance.

EDICTS AND DECREES

The board president, committee chair, manager, or head lifeguard may issue edicts and decrees when he or she wants something done immediately, but doesn't want to consider authority, participation, or procedure. Edicts and decrees are seen most often in associations with strong, but somewhat autocratic, leaders—creating one of the most serious violations of an association's governing system.

Associations notify members of edicts and decrees in a variety of ways. Many

times they are tacked onto bulletin boards, slipped into the assessment bill envelope, posted on the doorway to the clubhouse, shrieked around a whistle in the swimming pool area, or announced over the public address system.

Edicts and decrees are often issued in an impulsive, arbitrary manner. If association leaders issue an excessive number of edicts and decrees, residents may react by ignoring established rules. Where enabling authority is eroded by practice, legitimate policy requirements may become unenforceable.

Often an edict or decree reflects a legitimate need. However, when the board takes the time to get resident input and to go through the proper procedures, residents will more readily accept the restriction.

As guidelines, these restrictions can be enforced solely by peer pressure and remonstrance. If the association wished more enforceable restrictions, it would have to use more absolute prohibitions and limitations.

FIGURE 6. SAMPLE POOL GUIDELINES

The primary concern of the Autumn Chace Association is the safety and enjoyment of the residents. If residents show courtesy to others when using the pool and cooperate with the lifeguards, the association will only need to implement a few guidelines.

General Information

- The pool is for the use of Autumn Chace residents and their guests.
- The pool opens at 10 a.m. and closes at 10 p.m., except on Mondays when it will be closed for cleaning and maintenance. A lifeguard will be on duty and in charge of the pool area when it is open.

Guidelines

- Please cooperate with the lifeguard's requests regarding the safety and enjoyment of the pool.
- If a lifeguard is not on duty, do not swim alone. Individuals who have not passed the Red Cross Intermediate level of swimming or demonstrated an equivalent level of skill to the lifeguard or management should be accompanied by an individual who has such skills.
- Avoid running, rough play, in or out of the pool, excessive splashing, and improper diving.
- Do not bring food, glass, breakable items, or pets into the pool area. Please use ashtrays, and place all trash in the containers provided

Though pool chemicals and filters usually keep the pool clean, chemical imbalance and filter problems can be caused by improper use of the pool. To keep the pool clean, Autumn Chace suggests that swimmers:

- Use colorfast swimming attire. Dye adversely affects the pool chemical balance.
- Wipe off suntan lotion and oil before entering the pool. These products adhere to the tiles and dilute the chemicals.
- Confine hair that is longer than shoulder length in a braid, ponytail, bun, or bathing cap. Loose hair clogs the filter and reduces its efficiency.
- Do not swim if you have a cold, infection, etc.

Please register with the lifeguard when arriving at the pool and sign out when leaving. This register will inform the association of when the pool is used most. This information will help prevent congestion problems as the community grows. As conditions change and as pool use increases, it may be necessary for the Pool Committee to recommend guest charges and limitations, etc.

—*These guidelines were developed by members of the Autumn Chace Swimming Pool Committee.*

APPENDIX:

SAMPLE RULES

THESE RULES WERE DEVELOPED FOR A MEDIUM-SIZED, GARDEN APARTMENT community with limited common element balconies. Unit boundaries are the interior apartment surfaces. The building structure, corridors, balconies, and exterior of the buildings are a part of the common elements. Thus, the executive board could pass rules about exterior repairs and improvements.

If the unit boundaries are outside of those surfaces, such as in a separate lot, planned unit development, specific authorization for rules *within* the units would have to be found in the Declaration, except in the states which have adopted the 1994 version of the Uniform Common Interest Ownership Act, where the association has the power to adopt rules for limited purposes *within* the units. In those states, the rules would be quite different. However, these sample rules cover most of the issues that come up. These are the initial rules adopted by a declarant when an association is formed. They should be accompanied by a resolution passed by the declarant's board adopting these rules. Merely publishing them and giving them to purchasers is insufficient. There should be related resolutions authorizing enforcement and setting the level of fines. The Uniform Act states that resolutions should set up notice and hearing procedures for enforcement actions.

These rules do not deal with architectural restrictions. For comments on architectural restrictions, see the companion guide, *Design Review: How Community Associations Maintain Peace & Harmony*. Architectural restrictions should be adopted as rules by the board, not the architectural control committee, which usually does not have the authority to act for the association. If there are no architectural restrictions, which often occurs, as the association has absolute control over the exteriors in many condominiums, these model rules cover antennas, outside displays, and some exterior restrictions.

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES

(Note: Definitions of initially capitalized terms are as found in Article II of the Declaration.)

The following rules apply to the common elements and use of units affecting common elements. Units and common elements are also subject to use, occupancy, and alienation restrictions as contained in Sections ____ of the Declaration.

Comment: The regulation of the activities within a unit is discussed in the text. These rules assume that the authority for such regulation exists in the statute, or is in the declaration and is not prohibited by the statute or common law.

ARTICLE I: USE OF UNITS AFFECTING COMMON ELEMENTS

Section 1.1—Occupancy Restrictions. Residential units are limited to occupancy by single families, and garages are limited to the storage of vehicles and accessory storage, both as defined in the declaration.

Single families shall be defined as a group of individuals living together as a single, noncommercial, nonprofit household, cooking and eating together with a common kitchen and dining area. No more than two persons in number per bedroom as designated on the building plans filed with the [county or municipal name] building official may occupy a Unit. The following forms of occupancy are prohibited: single family residences containing three or more individuals who may or may not be unrelated, who are: (a) supervised under an institutional or governmental program related to a mental illness, handicap, or mental retardation that, by its character or activities, would impose additional supervision, security, administration, or insurance burdens on the Association; or (b) persons in transition from incarceration. Nothing shall prohibit the unsupervised ownership, occupancy, or other accommodation of persons by virtue of their mental retardation, handicap, or familial status as defined by the federal Fair Housing Act.

Comment: This repeats the restrictions found in the declaration. Without that underpinning this restriction would not be allowed in the rules. It thus may be redundant. The second paragraph is my interpretation of the most restrictive provision that can be made with respect to "family" definition under the three Fair Housing Act cases. It is still aggressive, and your counsel should be consulted.

Section 1.2—Commercial Use. Except as listed below, industries, businesses, trade or commercial activities may not be conducted on the premises.

The following are permitted:

- (a) Home professional pursuits without (i) employees, (ii) public visits, (iii) nonresidential storage, (iv) nonresidential levels of mail, trash, or deliveries.

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES (CONTINUED)

- (b) Following application to the Executive Board, tag sales and estate auctions not exceeding two weekend days per year for each unit, with a single temporary sign at the entrance to the community and at the site of the sale or auction, each not exceeding five square feet in area and such direction signs, parking restrictions, and other restrictions imposed by the Executive Board in approving the applications.
- (c) Activities conducted by the Declarant as a part of its marketing and development program.
- (d) Open houses and marketing activities conducted as a part of the resale of units, with no more than a single temporary sign at the entrance to the community and at the site of the unit, during the period that the unit is being offered for sale, each not exceeding five square feet in area in accordance with sign design restrictions established by the Executive Board.

Section 1.3—Access by Executive Board and Secured Space. The executive board and the manager or its designated agent may retain a passkey to all premises for use in emergency situations only. No unit owner will alter any lock or install a new lock on any door of any premises without immediately providing the executive board and the manager or its agent, with a key thereto. At the unit owner's option, he or she may provide the key enclosed in a sealed envelope with instructions that it only be used in emergencies with a report as to each use and the reason. Each unit may have locked closets, safes, or vaults not exceeding 50-cubic feet in secured storage capacity.

Comment: Storing, securing, and supervising keys to units or a master key may be necessary in a mid- or high-rise building. Water leaking from an upper flat may cause extreme damage to lower flats, and entry is necessary for these types of emergencies. However, it's a serious responsibility, requiring a system of secure storage, accountability for use, record keeping, and insurance coverage for theft, damage, criminal behavior, or harassment. Even in those instances, where management is on a volunteer basis, I would suggest reserving the right to break and enter a unit where an emergency situation exists, and immediate entry is not possible, rather than being responsible for keys.

Section 1.4—Electrical Devices or Fixtures. No electrical device creating electrical overloading of standard circuits may be used without permission from the executive board and adjustments of circuits. Misuse or abuse of appliances or fixtures within a unit which affects other units or the common elements is prohibited; any damage resulting from such misuse will be the responsibility of the unit owner in whose unit it will have been caused. Total electrical usage in any unit will not exceed the capacity of the circuits as labeled on the circuit breaker boxes.

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES (CONTINUED)

Section 1.5—Decorative Displays At Units. Unit owners will not cause or permit anything other than curtains and conventional draperies, the U. S. national flag not exceeding 10 square feet in area on a pole, securely fastened to the building, or holiday decorations to be hung, displayed, or exposed at or on the outside of windows or outside the unit without the prior consent of the executive board or such committee established by the executive board having jurisdiction over such matter, if any. Displays shall not be internally nor separately, externally lit, nor include sound or mechanical movement.

Comment: If there is an architectural control system, this and the next rule should be under the architectural standards. Given the latest national attitude, the flag exception will avoid much controversy. The display location of the flag will depend on the geometry of the structure of the units.

Section 1.6—Painting Exteriors. Owners will not paint, stain, or otherwise change the color of any exterior portion of any building without the prior consent of the executive board or such committee then established having jurisdiction over such matters, if any.

Section 1.7—Cleanliness. Unit owners will keep their units in a good state of preservation and cleanliness and will prevent the accumulation of materials that will constitute a danger or promote the spread of vermin, odors or conditions constituting a danger or nuisance to the common elements or the other units.

Section 1.8—Signs. Privately installed signs are prohibited except as follows:

- (a) Temporary signs as permitted above under Section 1.2 Commercial Use.
- (b) Name and house number signs not exceeding one square foot in area and conforming to sample sign standards and locations established by the Executive Board.
- (c) Signs maintained by the declarant as a part of its development and marketing activities.

Comment: This provision would have to be drafted in accordance with certain safety requirements established by the municipality, which may require certain house numbers of a size and location on every unit for identification by fire and security personnel. There may also be directory signs at the entrance to buildings, clusters, or the community.

ARTICLE II: GENERAL USE OF COMMON ELEMENTS

Section 2.1—Obstructions. There will be no obstruction of the common elements, nor will anything be stored outside the units without the prior consent of the executive board except as hereinafter expressly provided.

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES (CONTINUED)

Section 2.2—Storage. Storage of materials in common elements or other areas designated by the executive board, including storage lockers, will be at the risk of the person storing the materials.

Comment: *See the more extensive rules for Storage Bin Areas below.*

Section 2.3—Proper Use. Common elements will be used only for the purposes for which they were designed. No person will undertake activities which permanently destroy or damage the physical improvements on the premises, or interfere with their proper use by others, or commit any vandalism, boisterous or improper behavior on the common elements, which interferes with or limits the enjoyment of the common elements by all others.

Section 2.4—Additions to, Appurtenances to, and Appearance of Buildings. No appurtenant alterations, additions, or improvements may be made to the common elements without prior consent of the executive board or such committee established by the executive board pursuant to the declaration. Without such consent, no clothes, sheets, blankets, laundry or any other kind of articles other than holiday decorations (on doors only) can be hung out of a building, exposed or placed on the outside walls or doors of a building or on trees. No sign (except as permitted above), awning, canopy, shutter, antenna, or satellite dish will be affixed to or placed upon the exterior walls, doors, roof, or any part thereof or exposed on or at any window. (Draperies will be beige or white where seen from outside the unit.)

Comment: *These too, are architectural standards that might be shifted to the architectural control system. As to prohibition against hanging laundry, green communities would permit this to avoid using energy with dryers.*

Section 2.5—Stacks of Firewood. Firewood shall be neatly stacked at or on patios and decks no closer than one foot from any wall of the building. Firewood on wooden decks shall be stacked on raised racks or timbers at least 4" from the floor to provide for air circulation under the stack. Rotten or insect infested firewood should not be stacked and shall be removed upon discovery.

Comment: *Obviously, these rules are to be used where there are fireplaces. This is a sample of the rules that must be carefully considered and created in projects with unique and different amenities and functions.*

Section 2.6—Antennas. Exterior antennas for radio, CB, or ham radio that are visible from the common elements and antennas that are under one meter in diameter may be attached to limited common element balconies and balcony walls under the standards of these restrictions. External satellite dishes in excess of one meter measured diagonally at their widest dimension are prohibited. All television and other antennas shall be located within the interior of a building unless such location would impair

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES (CONTINUED)

the reception of an acceptable signal and make it necessary to use another location. Any such alternative location, and the installation of any satellite dish one meter in diameter or less for direct broadcast satellite service, multi-channel multipoint distribution service, and television broadcast service are permitted on limited common elements pursuant to notice in writing to the executive board (or the architectural committee) to review such installations. Approval for such alternative external location will be granted only in the event of circumstances such as where, because of the unique location of the Home Site or other factors shielding the signal, the antenna cannot be located within the interior of the building on the home site in a manner that would provide an acceptable quality signal. Such alternate external location may not be within common element areas. In any event, external antennas for direct broadcast satellite service and multi-channel multipoint distribution service may not exceed one meter in diameter, and for reception of television broadcast service may not exceed 12 feet in height.

All external antennas shall be painted or otherwise camouflaged and be located so as to minimize the visual impact on the community.

Pruning of trees or shrubbery on the common elements for the installation, maintenance, or operation of an antenna shall not be permitted. Such pruning shall require association approval and shall be done only by the association's maintenance staff or by contractors authorized by the association at the home site owner's sole expense. An additional maintenance fee may be charged to cover the cost of any unusual maintenance or increased costs incurred by the association because of the installation of the antenna pursuant to these rules. Such pruning or trimming shall not be permitted if it will have any visual impact on the roads or common elements.

Each notice of intent to install an antenna must be submitted to the association, together with:

1. a description of the size and shape of the antenna;
2. a 1/4-inch to a foot or larger scaled drawing, or one or more photos with dimensions indicated showing the proposed location and size of the antenna (including all related cabling and equipment). The drawing or pictures must show all sides from which the antenna will be visible.
3. a description of whether the antenna will be visible from any street or walk, the landscaped open space, any pool, or any other unit within community association village.

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES (CONTINUED)

There can be no waiting period for permission to install an antenna. However, if the installation is contrary to these rules, removal may be required.

Comment: The antenna restrictions proposed above are those that appear to follow the latest interpretation of the OTARD (Over The Air Radio Devices) rules of the FCC, and are the most restrictive that would be permitted. However, readers must remain aware of all current OTARD rules and limitations. CAI is the best source for this information. The Franklin II case which appeared to prohibit any waiting period for approval of an antenna is not violated by these restrictions. Antenna restrictions must be drawn with advice from counsel. Even these may be too restrictive under later cases.

Section 2.7—Use of Balcony Limited Common Elements. The unit owner will keep the limited common element balcony clean and swept. The association is responsible only for painting and structural maintenance. There shall be no storage of personal property on the balcony, other than weather resistant outdoor furniture and accessories. Balconies shall not be enclosed, and the executive board, or a committee established for such purposes, must approve any other structural addition. There shall be neither fires nor charcoal grilling on the balcony. Balcony furniture will be removed in periods of high winds and during the winter.

ARTICLE III: ACTIONS OF OWNERS AND OCCUPANTS

Section 3.1—Annoyance or Nuisance. No noxious, offensive, dangerous, or unsafe activity will be carried on in any unit, the common elements, or the limited common elements, nor will anything be done therein either willfully or negligently, which may be or become an unreasonable annoyance to the other unit owners or occupants. No unit owner or occupant will make or permit any disturbing noises by himself, his family, servants, employees, agents, visitors, and licensees, nor do or permit anything to be done by such persons that will interfere with the rights, comforts, or convenience of other unit owners or occupants. No unit owner or occupant will play, or allow to be played, any musical instrument, or operate or allow to be operated any electronic entertainment device at such high volume or in such other manner that it will cause unreasonable disturbances to other unit owners or occupants. If such sound can be heard and understood by persons of normal sensitivity within other units with doors and windows closed, and air handling systems on, it will be considered too loud.

Section 3.2—Compliance With Law. No immoral, improper, offensive, or unlawful use may be made of the common interest community. Unit owners will comply with and conform to all applicable laws and regulations of the United States and state and local ordinances, rules, and regulations. Unit owners will save the association or other unit owners harmless from all fines, penalties, costs, and prosecutions for the

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES (CONTINUED)

violation thereof or noncompliance therewith. Any use of the property which constitutes waste will not be permitted.

Comment: Although this may seem to go without saying, this will make a violation of law also a violation of the rules, and the assistance of the state prosecutor's office will be unnecessary to pursue minor violations of law.

Section 3.3—Pets. All pets must be in compliance with local ordinances regarding inoculations, licensing, and leashing. Animals that have demonstrated vicious or aggressive behavior must be covered by a pet liability policy or removed from the premises. No animal of any kind that has venomous or poisonous defense or capture mechanisms will be allowed in the premises. Pets may not be kept, bred, or maintained for any commercial purposes. Any pet causing or creating an unreasonable disturbance or noise will be permanently removed from the property upon three (3) days' written notice and hearing from the executive board. In no event will any animal be left unattended whether tethered or not, in any portion of the common elements. Residents, or their designees who have responsibility for their dogs, will pick up and remove to appropriate receptacles any droppings left on the common elements. Residents will compensate any person hurt or bitten by their pet whether while in their immediate care or the care of a designee, and will hold the association harmless from any claim resulting from any action of their pet whatsoever.

Comment: Pet rules are an area of the greatest passion. The above are relatively short and simple. Pet rules should be permissive enough to permit most of the pets brought in by the market, but restrictive enough to be assuring to non-pet owners. For more extensive treatment of pet rules, see the companion guide, Pet Policies: How Community Associations Maintain Peace & Harmony.

Section 3.4—Lint Filters on Dryers; Grease Screens on Stove Hoods. All dryers will have lint filters, which will remain installed and prevent lint from accumulating in the vent duct. All stove hoods will have grease screens installed to prevent grease from accumulating in the vent duct. All such filters and screens will at all times be used and kept in clean, good order and repair by the unit owner. Residents must periodically inspect and properly maintain washing machines hoses.

Comment: In this community the dryer vent stacks and the stove vent pipes were part of the common elements. If they were not, such a rule should be a part of the declaration. On the other hand, because build up of lint and grease could be a fire hazard, a rule in a jurisdiction that permitted regulation of the stacks, could prohibit the build up of grease and lint, and require that the unit owner do whatever is required to prevent that build up.

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES (CONTINUED)

Section 3.5—Indemnification for Actions of Others. Unit owners will hold the association and other occupants harmless for the actions of their children, tenants, guests, pets, servants, employees, agents, invitees, or licensees.

Section 3.6—Employees of Management. No unit owner will send any employee of the manager out of the property on any private business of the unit owner, nor will any employee be used for the individual benefit of the unit owner, unless in the pursuit of the mutual benefit of all unit owners, or pursuant to the provision of special services for a fee to be paid to the association.

ARTICLE IV: INSURANCE

Section 4.1—Increase in Rating. Nothing will be done or kept that may increase the rate of insurance of any of the buildings, or the contents thereof, without the prior consent of the executive board. No unit owner will permit anything to be done or kept in the common interest community which may result in the cancellation of insurance coverage on any of the buildings, or the contents thereof, or which would be in violation of any law.

Section 4.2—Rules of Insurance. Unit owners and occupants will comply with the rules and regulations of the local fire rating association and with the rules and regulations contained in any fire and liability insurance policy on the property.

Section 4.3—Reports of Damage. In the event of damage by fire or accident affecting the common interest community, persons injured by or responsible for the damage and any person having knowledge of the damages must promptly report the fire or accident to the manager or board member of the common interest community.

ARTICLE V: RUBBISH

Section 5.1—Trash Containment. Trash may not be stored in or outside any unit in such manner as to permit the spread or encouragement of fire or vermin.

Section 5.2—Trash Pickup Areas; Trash Accumulation. No garbage cans or trash barrels will be placed outside the units except at designated pickup areas. Accumulating rubbish, debris, or unsightly materials in common elements is not permitted, except in designated trash storage containers. Rugs or mops may not be shaken or hung from or on any of the windows, doors, balconies, patios, or terraces.

Section 5.3—Trash Container Location. The manager will designate trash container locations. Pickup will be from those locations only. Residents will be responsible for transporting trash from their units to the pickup locations. All trash is to be deposited inside the barrels within that location and bulky items that will not fit in the barrels will

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES (CONTINUED)

not be deposited outside of the containers. The area is to be kept neat, clean, and free of debris. Long-term storage of rubbish in the units is forbidden. Trash containers will not be left in the pickup areas more than 12 hours before scheduled pickup, nor more than 12 hours after pickup. If the law requires separation of trash for recycling, directions for recycling will be posted at the trash container area, and these must be followed.

Comment: this is a "one size fits all" rule, and it assumes a particular trash removal situation. The drafter of the rules should inquire as to the rubbish removal system: chutes and compactors; Dumpsters®; trash barrels at the garage; trash barrels at the curb; private contractor; municipal system; treatment of recyclables; or transport to pick up locations by staff or owners.

ARTICLE VI: MOTOR VEHICLES

Section 6.1—Compliance with Law. All persons will comply with state laws and Department of Motor Vehicle regulations on the association roads, drives, and properties.

Section 6.2—Registration. All vehicles of employees, agents, owners, and occupants regularly using the premises must be registered with the manager and all vehicles parking for more than four hours must either display a vehicle sticker or a guest pass. A special pass card will identify construction and management vehicles not registered.

Comment: A registration system above and the following four provisions would be used where there is a formal vehicular registration and tag system. It is useful where parking is severely limited. However, a parking registration system is a significant management burden. If parking can be laid out in such a manner as to have adequate reserved and unreserved spaces, with, perhaps vehicle license numbers painted on reserved spaces, then the administration is much easier. However, even reserved spaces without registration are an enforcement duty, which can become quite onerous. Usually local police will not enforce private parking restrictions. In some jurisdictions "Fire Lanes" can be designated in no-parking areas in consultation with the fire authorities, and then local police will tag, and sometimes tow scofflaws. Towing and other self-help procedures such as boots or windshield stickers must be carefully considered in light of liability and legal power issues, which change from jurisdiction to jurisdiction. The association's counsel must be consulted before any self-help remedies are undertaken. If you can avoid parking administration and enforcement, do it.

Section 6.3—Registration Application. The manager will register vehicles on a special application form. The form will provide that registered vehicles that are improperly parked in "no parking" areas, on the pavement, blocking access, in fire lanes, or otherwise may be towed at the owner's expense.

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES (CONTINUED)

Section 6.4—Reserved Spaces. From time to time, the executive board may designate certain spaces as reserved, at one space per unit, for all units. The unit number and the word “reserved” will be painted on the curb or pavement. Each unit owner will be responsible for policing his or her own reserved space.

Section 6.5—Illegal Use of Reserved Spaces. In the event a person other than a designated unit owner or his or her invitee parks in a reserved space, the affected unit owner (or a tenant as designated to the association in writing) may complain to the executive board in writing, describing the date, time, license number, and description of the offending vehicle. The association may have the vehicle towed away as a trespasser, and the association may fine the unit owner of the offending vehicle or his or her invitee.

Section 6.6—Guest Pass. Vehicles parked on the property for more than eight hours without a guest pass (or sticker) will be deemed trespassers and will be removed. Guest passes will be issued to residents upon request. They will be registered in the name of the resident who will assume responsibility for the actions and towing charges of vehicles displaying such passes, as a common expense assessment.

Comment: The ability of private parties to contract for and have trespassing vehicles towed at the trespasser's expense is varies by jurisdiction, and it may require special signs and guarantees of payment to the towing company.

Section 6.7—Limitations on Use. There is space for two vehicles per residential unit. Vehicles must be registered in order to permanently park on the premises. Residents must park one vehicle overnight in the garage and not in an outside space. Parking areas will be used for no purpose other than to park passenger motor vehicles, loading, or unloading. Trucks, commercial vehicles, trailers, and boats may not be parked on common elements, and they are prohibited in the general parking areas and drives, except for temporary loading and unloading. Special permission may be obtained from the executive board for small types of such vehicles to be parked in a designated area. Construction equipment used in the actual repair, construction, or maintenance of the common interest community will not be so restricted.

Section 6.8—Visitor Parking. Except where special arrangements are made, vehicles displaying visitor cards are limited to three days of parking.

Section 6.9—Speed Limit. The speed limit on the entrance road is 25 miles per hour. The speed limit on curves and on other drives is 15 miles per hour.

Section 6.10—Snowmobiles, Off-Road, and Unlicensed or Immobile Vehicles. Snowmobiles, off-road vehicles including trail bikes, jeeps, and other four-wheel drive

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES (CONTINUED)

vehicles, not used in maintenance, are prohibited, except where licensed and equipped for passage on public highways, and actually used by licensed drivers on the paved portions of the property. Except for other motor assisted bicycles and wheel chairs as permitted by state law, all highway vehicles used or parked on the property will be licensed and properly equipped and in operating condition for safe travel on the public highways of the state. Except for temporary repairs not involving immobility in excess of 10 hours, highway vehicles will not be disassembled, repaired, rebuilt, painted, or constructed outside of garages on the premises. No vehicles, other than maintenance vehicles, may travel on the property except on paved roadways and parking areas.

Section 6.11—No Parking Areas. Vehicles may not be parked in such a manner as to block access to garages, fire hydrants, sidewalks running perpendicular to drives, pedestrian crossing areas, designated fire lanes, or clear two-lane passage by vehicles on roads and drives. Violating vehicles will be towed, after reasonable efforts to contact the person or host to whom the vehicle is registered. In addition, the unit owner to whom, or to whose invitee, the vehicle is registered, following notice and hearing may be levied a \$25 per day fine for the period that the vehicle violated these rules, unless at such hearing good and valid reasons are given for such violation. Costs of towing and enforcement may be collected as a common expense.

Section 6.12—Trucks, Vans, Trailers, and Commercial Vehicles Limited. The following types of vehicles are prohibited in the parking areas or drives, except for temporary loading or unloading, for a period in excess of eight hours, following which the vehicle must be removed from the property for at least 16 hours: commercial vehicles (carrying a sign advertising a business); trucks, vans, motor homes; vehicles having capacity of over one ton or having more than four wheels; trailers of any kind; and vehicles with more than four single-tired wheels. Construction equipment used in the actual repair, construction, or maintenance of the property will not be so restricted during such use.

[For a more detailed treatment of parking rules, see *The Pursuit of Parking* published by Community Associations Press.]

ARTICLE VII: RIGHTS OF DECLARANT

The declarant may make such use of the unsold units and common elements as are permitted under the special declarant rights reserved under Article VIII of the declaration as may facilitate completion and sale of the common interest community including, but not limited to, maintenance of a sales office, showing the common elements, displaying signs, using vehicles, and storing materials. Interference with workmen or with buildings under construction is prohibited. Entrance into construc-

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES (CONTINUED)

tion areas of declarant's restricted areas will only be allowed with representatives of the declarant.

ARTICLE VIII: GENERAL ADMINISTRATIVE RULES

Section 8.1—Consent in Writing. Any consent or approval required by these rules must be obtained in writing prior to undertaking the action to which it refers.

Section 8.2—Complaint. Any formal complaint regarding the management of the property or regarding actions of other residents will be made in writing to the executive board or an appropriate committee.

ARTICLE IX: GENERAL RECREATION RULES

Comment: These are general "one-size-fits all" rules for recreational areas. Specific rules may be required for specific areas. In particular, swimming pools may need special rules and the guidelines in Figure 3 can be used as a base. Many health codes require that specific rules be enacted for the safety and health of the pool users. The association should specifically adopt these rules as its own rules, as well as additional safety and use rules.

In adopting recreational rules, be sure to avoid age restrictions. These may be in violation of the Fair Housing Act Amendments of 1988, which prohibited restrictions based on age. Restricting the use of the pool during certain hours to adults may be illegal. Rules as to safety must be in terms of accomplishment and skill level rather than age. Note that the restrictions in Figure 3 and Article X below, limited use of the pool without accompaniment, to persons who have demonstrated swimming ability, where older restrictions would have been in terms of age.

Section 9.1—Limited to Occupants and Guests. Passive recreational facilities, open space, and woodland within the common elements are limited to the use of unit owners, their tenants, and invited guests. All facilities are used at the risk and responsibility of the user, and the user shall hold the association harmless from damage or claims by virtue of such use.

Section 9.2—Boisterous Behavior Prohibited. Boisterous, rough, or dangerous activities or behavior, or behavior that interferes with the permitted use of facilities by others, is prohibited.

Section 9.3—Reserved Areas. Specific portions of woodland, open-space facilities, or recreational facilities may be reserved or scheduled for various purposes. Reservations and schedules will be developed by management personnel, and will be published in the association newsletter.

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES (CONTINUED)

Section 9.4—Owners, Family, Tenants, and Guests. Residents will direct and control the activities of themselves, their family members, and guests in order to conform to the regulations. Residents will be responsible for violations or damage caused by themselves, their family members, or guests whether or not they are present.

Section 9.5—Ejection for Violation. Unit owners, guests, and tenants may be summarily ejected from a recreational facility by management personnel in the event of violation of these regulations and suspended from using the facility until notice and hearing concerning the violation can be carried out. Offenders may be suspended for additional periods following the hearing.

Section 9.6—Proper Use. Recreational facilities will be used only for their designated purposes. Picnic areas, equipment, and surrounding areas will be properly used, and may not be abused, overcrowded, vandalized, or operated in such a way as to prevent or interfere with permitted play or use by others. Rules of safety promulgated by nationally recognized organizations regulating play of a game or sport for which a facility is designed will be followed, and where appropriate, customary safety equipment will be worn and used.

Comment: The following rules are for specific recreational areas if they are included.

ARTICLE X: SWIMMING POOL

A. State or Municipal Regulations

[Insert the specific regulations required by the applicable health authority, if any.]

Section 10.A1—Regulation of Department of Health. Additional regulations required by the [STATE] [MUNICIPAL] Department of Health will be included by reference.

B. Association Regulations

Section 10.B1—Limitation on Number of Guests. Except by prior arrangement with the manager, residents of any one unit may be accompanied by no more than four guests at one time. All guests will carry a guest card. All guests who have not passed the American Red Cross® certified swimmers test or its equivalent, or who have not been approved by the manager as to swimming competency must be accompanied by a resident who is responsible for the non-swimmer's safety and comfort at all times.

Section 10.B2—Use of Pool. Persons who have not passed and retained the skills from a American Red Cross® certified intermediate swimmers course or equivalent or whose skills have not otherwise been approved by the manager or executive board will not be allowed in the pool area unless accompanied by a responsible person

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES (CONTINUED)

capable of assistance in the event of injury or incapacity. Persons who are not toilet trained, who are incontinent, or ill may not use the pool.

Comment: This is the modern version of the old "persons under 12" prohibition, which would violate the Fair Housing Act.

Section 10.B3—Hours. Swimming pool hours will be from 9 a.m. to 10 p.m. during the season. The executive board will determine the season depending on weather and the readiness and condition of the pool. The executive board or managing agent may close the pool at their discretion for any reason including weather, mechanical failure, pool water quality, etc.

Section 10.B4—Prohibitions. Pets, glassware, underwater breathing apparatus, knives, dangerous equipment, potentially dangerous items, alcohol, smoking, and illegal chemical substances are prohibited in the pool area.

Section 10.B5—Supervisor's Authority. All pool users will obey the requirements as to the enforcement of the regulations, maintenance of order, and enhancement of safety of the pool supervisor, if any, and the staff.

Comment: The preceding rules were designed to be age neutral. Age restrictions may be in violation of the Fair Housing Act Amendments of 1988. Those federal laws prohibit discrimination against families with children under the age of 18. Thus a rule that was to say that persons under the age of 12 could not use the pool between the periods of 6 p.m. to 8 p.m. to permit adult swimming without the boisterousness of children would be discriminating against those families with children under the age of 12. Even requiring that an adult accompany persons under 12 or limiting babies in diapers to the toddler pool, may fall afoul of that Act.

ARTICLE XI: TENNIS COURT

Section 11.1—Policy Rules for Play Procedures. In the event of overcrowding, limitations on times of play and sign-up procedures may be adopted by resolution of the executive board and posted at the court. Players will use the courts in accordance with the policy resolutions posted.

Section 11.2—Surface Protection. Players must wear smooth sole tennis shoes on the courts and are prohibited from mistreating the playing surface by placing, throwing, or striking hard objects on the court.

Section 11.3—Manners. Conduct will be such as to minimize interference with play. Only tennis play is permitted. Proper tennis attire and shirts are required.

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES (CONTINUED)

Section 11.4—Court Use. Pets, food and beverages, breakable containers, trash or debris, and smoking are not permitted in courts.

Section 11.5—Nets Lowered. The last group to leave will lower the net.

[The rules set forth in Articles X and XI, herein, are included for the time when and if the pool and tennis court are developed.]

ARTICLE XII: COMMUNITY CENTER

Section 12.1—Reservations and Group Use of Facility. Residents may reserve rooms or portions of the Community Center for social occasions, private parties, and other uses. Persons using the center will be responsible for setting up, and for cleaning and restoring chairs and tables, equipment, kitchen and cooking facilities, and conditions as they were before commencement of the activity. Such areas will not be used for commercial purposes. Residents will not use the center for activities open to the general public, except for sales activities of the declarant. Public, nonprofit groups using the community center will provide evidence of insurance covering the activity, and will agree to hold the association harmless and indemnified for any loss, claim, or damage occurring in connection with its use.

Section 12.2—Individual Use of Facility. Various rooms and facilities will be provided for individual use and enjoyment. They may be used only for their designated purposes. Room and facility availability may be limited; schedules will be posted at each room where applicable. Equipment will be used only for its intended purpose and in accordance with the manufacturer's instructions. Equipment will be used at the sole risk of each user, who will hold the association harmless for any loss or damage due to such use. Residents using the rooms will not exceed the room capacity posted by the Fire Marshal. Groups who are disruptive or noisy will be asked to leave, and rooms will not be made available to groups who have been shown to be disruptive or noisy.

ARTICLE XIII: LAUNDRY

Section 13.1—Laundry Rules. Clothes left in a machine that has completed its cycle may be removed and piled on the table if found unattended. Clean-up crews will remove clothes and personal belongings left overnight. Machines are to be used for normal household laundry within the capacity limits of the machine. Rugs, blankets, and bulky items that can overload or clog the machine with lint are prohibited. Lint screens on dryers are to be cleaned before every use. Flammable chemicals and other cleaning substances not designed for machine washers may not be used in the machines.

APPENDIX. COMMUNITY ASSOCIATION VILLAGE, INC. RULES (CONTINUED)

ARTICLE XIV: STORAGE AREAS

Section 14.1—Storage. The storage area will be kept neat and clean. No dangerous, inflammable, noxious, smelly, or other unpleasant goods, materials, or conditions will be permitted within the storage area. Interiors of storage bins will be kept neat, and storage will be in such manner to prevent falling, crushing, or damage to the materials stored. Storage areas will not be enclosed nor will any material block external inspection of the contents. None of the occupants' belongings may be left outside of the storage bins, unless permission has been obtained from the manager, and the extra material is stored in the location as designated by the manager. All persons leaving material within the bins or otherwise using the storage area will hold the association and other unit owners harmless and indemnified from any loss, damage or other destruction of such material or conditions caused by the use of the storage area. The association will not be responsible for any injury, loss, damage, or destruction to persons, goods, or materials within the storage area.