

# THE COMMUNITY BUILDER

## Compliant Rules and Regulations

Earlier this week, I was reading a blog by a local attorney called “Are You Enforcing Phantom Rules?” Subsequent to that, another article from a law firm in Virginia also spoke to ensuring that the Rules and Regulations being enforced are actually supported by the governing documents. Most of the time, your Rules and Regulations are promulgated as a result of the Declaration (Covenants, Conditions and Restrictions) which conveys the use restrictions that bind the deed to the land, unit or home that you own.

The question is, are your Rules and Regulations based on that Declaration or have they, through time, evolved to something that cannot be supported by the documents, statutes or law? Some circumstances may appear to be serious enough to cause rules to be adopted addressing the issue that may not be supported by the documents without an actual amendment. Amendments, of course, require prior notice to the membership and a vote by them as well. Sometimes, it is more expedient to simply draft a rule. As time goes by and Board members come and go, it is easy to forget or not recognize that the rule is really unenforceable.

Rules and regulations are extensions or detailed explanations of existing covenants or use restrictions. They cannot be harsher or punitive than the covenant. For instance, if your Declaration says “only two pets permitted of a household variety and may not be kept for breeding purposes”, your rules cannot limit size, weight, specific type of dog, etc. For rules to be valid based on those issues, the Declaration would have to state clearly that the Board had the authority to make these determinations.

Each year as elections take place and new board members are brought on board, it is always advisable to review not only the Rules and Regulations to make sure they are compliant and actually act in the manner required, but to review the operating policies of the Board and make changes or update them as well. It is also the best idea to always include your legal counsel’s review of any proposed Rules and Regulations, to ensure they are going to do what you hope they will.



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A good review will keep everyone apprised of what is a rule and what is not and what remedies the Board really has when it comes to enforcing your covenants through the Rules and Regulations.

