

Pets, Parking, Tenants Rules or Amendments

An often repeated question is, what can we do about pets, parking and tenants? What right does the association have to deal with pets, parking and nonresident owners? In fact, associations have significant power to deal with all of these matters and others. An association may have the absolute right to impose rules and regulations dealing with each subject. It can also amend the governing documents to deal with each subject and eliminate any question of authority. It can impose fines and penalties for violating the rules and regulations, and fines, penalties and additional remedies for covenant violations. All these procedures can be used in addressing the issues of pets, parking and tenants.

Courts have confirmed that associations have authority to impose rules and regulations, and fines for the violation of the rules or regulations. The courts have said that rules, regulations and fines are subject to the "Rule of Reason". That is, the court has the power and the authority to determine whether the rule is reasonable, generally, in its application in a particular association; and to determine whether it is reasonably and properly applied. With this standard, the court, can reach a judgment as to whether the rule is proper, reasonable, fair or properly applied. It can do that in any one of the different areas identified.

PET RULES

Courts have applied the rule of reason to pet rules. In one case, the court allowed a rule which prohibited dogs. The court said generally rules would not be appropriate to totally eliminate a pet. However, given the configuration of the particular property and its combined commercial and residential use with the people in the residences using the elevators concurrently with commercial users, a total prohibition on pets was reasonable. In that case the Declaration and By-Laws didn't address pets. Generally, however, such a total prohibition by rule is not acceptable. An association can have prohibitions; on the number of pets in a unit, consistent with the size of the unit and local code; on noise created by pets; on cleaning up after pets; on pet control; and on size of pets. It can require pet leashes and pet registration and many other requirements. It can always address and prohibit dangerous pets, wild animals and pets that may not appropriately fit within an association. The rules addressing pets should include a hearing and fine system and fine amounts for violations. It should also establish the right to employ more serious remedies at the discretion of the board, and with respect to more serious or repeated activities that contravene the governing documents.



If an association wants to minimize challenges to its rules and make them absolute, or if it wishes to eliminate pets entirely, it should amend its declaration to eliminate pets, and/or to include the more stringent pet rules. Courts have said that the rule of reason applies to rules and regulations passed by the board. It does not apply to amendments to the declaration. Amendments to the declaration cannot be challenged by the court and are not subject to the court's interpretation or modification unless the provisions are unclear and in need of interpretation. Consequently, if the rule is part of an Amendment, a rule that prohibits pets cannot be ignored or voided by the court because the court likes pets. A rule that is part of an Amendment cannot be modified by the court, is enforceable and must be enforced both by the association and by any court upon application by the association. If an amendment is drafted properly, it should also provide for recovery of fees and costs if the association is obligated to proceed to address an improper usage, in addition to fines.

PARKING RULES



The same type of requirement identified above applies to parking. However, this addresses parking in the common elements or limited common elements. Parking within a unit, such as within a garage that is part of a unit, can also be addressed; but it may have to be addressed differently. In addressing parking rules, regulations or limitations, one must recognize that there may be human rights and disability issues. There are some cases that appear to limit the association's control over common element parking, even if the declaration and the Act appears to grant broad authority over such parking to the association. Generally, however, the courts in most areas have applied the rule of reason in allowing associations to impose parking rules and regulations.

An association can require registration of all vehicles. It can impose a requirement for window stickers or passes and for guest passes. It can limit guest usage and/or limit the usages by unit owners of guest parking. It can prohibit certain types of vehicles and generally can prohibit commercial vehicles, even those used by owners as a part of their day-to-day business. It may not be appropriate to prohibit commercial vehicles from being parked within a separate, enclosed garaged assigned to the owner or occupant.



TENANT RULES

Rules and regulations can be applied to tenants. It is important to remember that all occupants, including all owners, are treated the same. For example, rules which require tenants to register and provide certain information should also require all owners and occupants to provide similar information. There is no prohibition on the association requiring information about all occupants of a unit. That information may be necessary for many purposes, including for emergency purposes. Rules and regulations that require providing leases are appropriate and are now mirrored in the Condominium Property Act, although the Act does not provide for fines for failure to supply this documentation, but provides for eviction. Rules limiting the number of occupants in a unit may be acceptable, provided they do not discriminate against a class of persons like minors or seniors. Other rules applicable to all other owners are acceptable. Time limits on leases with minimum time limits and prohibitions on transient uses are allowable. Credit and character information and requirements, prior to moving in, would appear to be allowable.

SUMMARY

In summary, pets, parking and tenants can be addressed by associations in many ways, including by rules and regulations. Many attorneys that concentrate in this area have packages of rules and regulations that address many of the matters that associations wish to address. We have rules and regulations that were created more than twenty years ago and have been continuously refined to address new and old issues and changes in the law. These rules and regulations packages are available for purchase by associations, and can be further modified to meet any special or specific requirements. Alternatively, we can prepare amendments to address, limit or eliminate pets, nonresident owners and control and limit parking.

