

To "Rule" or Not to "Rule"

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Channel Islands Chapter

OBJECTIVES

- ◎ CREATING RULES
- ◎ MODIFYING EXISTING RULES
- ◎ EFFECTIVE ENFORCEMENT



CREATING RULES

- ◎ IDENTIFY COMMUNITY'S NEEDS AND GOALS
- ◎ AVOID OVERRULING THE COMMUNITY
- ◎ DEVELOP REASONABLE RULES



CREATING RULES

CREATE PROCEDURE FOR CREATING NEW RULES

Board Resolution for Adoption of Rules

- Identify Elements/Ingredients of Resolution
- See Sample Resolution

CREATING RULES

BENEFITS OF ADOPTING PROCEDURE FOR CREATING RULES

- Avoid Common Pitfalls
 - Reactive Rules
 - Unreasonable Rules
 - Illegal Rules
- Objective is Compliance

CREATING RULES

Techniques for Creating Successful Rules

- Clear, unambiguous and enforceable
- Reasonable – not arbitrary or capricious
- Legal – Civil Code Section 1357.100, et seq.

CREATING RULES

State Rules in the Positive (if possible)

No trash may be placed on the street for pickup before 8 a.m. on the day of collection

Refuse shall be placed on the street for pickup only after 8 a.m. on the day of collection

CREATING RULES

RULES MUST BE CLEAR, UNAMBIGUOUS AND ENFORCEABLE

No unattractive yard art will be placed in front yards

Paint colors should be muted earth tones, except for pastels

Parking is not allowed on any street except for between 2 p.m. and 5 p.m. Monday through Friday on the left side and all day Saturday and Sunday on right side unless your vehicle is over 1 ton.

CREATING RULES

Yard art is restricted to areas behind gates and fences.

Paint colors must conform with the approved paint pallet attached to these Rules as Schedule "A".

Parking is not allowed on any street within the development.

CREATING RULES



RULES MUST BE REASONABLE AND LEGAL

No -


First floor owners may be assigned two parking spaces, and second floor owners are limited to one assigned parking space.

No pets are allowed in the common area (when the CC&R's allow pets).

Children shall not play in the common area.

CREATING RULES

Great Yard sign



“Even when laws have been written down, they ought not always remain unaltered.”

•Aristotle

MODIFYING EXISTING RULES

Techniques – Similar to Creating New Rules

Board Resolution for Revising Existing Rules

- Identify Elements/Ingredients
- Legal – Civil Code Section 1357.100, et seq.

Create Positive, Clear, Reasonable and Legal Rules

EFFECTIVE COMMUNICATION

BEFORE CREATING RULES

- Listen to Residents
- Learn Community’s Needs
- Learn Resident’s Expectations

AFTER CREATING RULES

- Educate Residents to Gain Voluntary Compliance
- Compliance is Objective – Not Revenue Source

EFFECTIVE ENFORCEMENT

ADOPT ENFORCEMENT POLICY

- Identify Elements/Ingredients

FAIR, CONSISTENT AND UNIFORM POLICY AND PRACTICES

- Reporting/Verifying Violations
- Actions to Gain Compliance

EFFECTIVE ENFORCEMENT

ADOPT AND USE EFFECTIVE DUE PROCESS PROCEDURES

- Redefine “Due Process”
- Develop Effective Procedure for Hearings

EFFECTIVE ENFORCEMENT

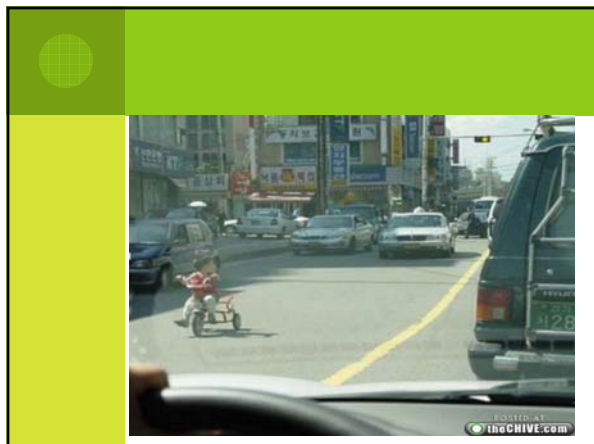
AVOIDING COMMON PITFALLS

- Compliance through Effective Adopting, Modification and Enforcement
- Fair Housing, FCC and Other Laws Frequently Overlooked
- Challenges to Enforcement



EFFECTIVE ENFORCEMENT

- Fair Housing Laws – Federal and State Fair Housing
Rules must not discriminate against sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation
- Permissible Discrimination
 - Age-Senior Housing (Age Restrictions)
 - Rationally and Reasonably Related to a Legitimate Purpose – Safety!



EFFECTIVE ENFORCEMENT

- Rules Legal on Their Face, But Discriminatory in Their Application

EFFECTIVE ENFORCEMENT

- Rules Singling Out Children
Children shall not play in the common area.
- Rules Singling Out Religion
Holiday decorations shall not depict Nativity scenes.

EFFECTIVE ENFORCEMENT

Common Defenses

Discriminatory
Rules that treat certain groups differently than others

EFFECTIVE ENFORCEMENT

Common Defenses

- Challenges to Board’s Authority to Adopt and Enforce
- Identify Scope of Authority to Adopt and Enforce Rules

EFFECTIVE ENFORCEMENT

Common Defenses

- Waiver/Estoppel
 - Follow Enforcement Policy
 - Managing Prior Board’s Failure to Enforce
 - Publish Changes in Enforcement Practices

EFFECTIVE ENFORCEMENT

Common Defenses

- Procedural Defects
 - Follow Due Process Requirements of Civil Code (Section 1363(h))
 - Follow Requirements under Governing Documents

EFFECTIVE ENFORCEMENT

- Due Process – Re-define
 - Hearings
 - Re-occurring vs Ongoing Violations
 - Procedure for Hearings

A slide with a green header and a yellow vertical bar on the left. The header contains the text "EFFECTIVE ENFORCEMENT". The main content area contains a single bullet point: "What if nothing works?".

EFFECTIVE ENFORCEMENT

- What if nothing works?

A slide with a green header and a yellow vertical bar on the left. The header contains the text "CONCLUSION". The main content area contains a bulleted list with three items: "Creating Rules", "Modifying Existing Rules", and "Effective Enforcement".

CONCLUSION

- Creating Rules
- Modifying Existing Rules
- Effective Enforcement

A slide with a green header and a yellow vertical bar on the left. The header contains the text "THANK YOU!".

THANK YOU!