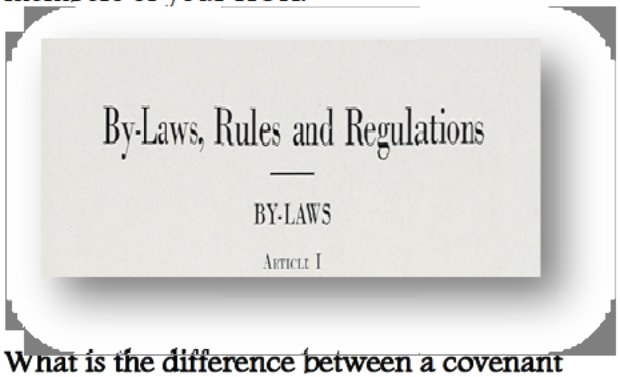
The HOA Information & Resource Center

COVENANT & RULE ENFORCEMENT

One of the key features of a homeowners' association ("HOA") is that they are covenant-controlled communities. Covenants and rules provide a mechanism to ensure architectural conformity, aesthetic integrity, and uniform enforcement. Upon moving to an HOA, a homeowner agrees to be subject to the covenants and rules of an HOA. The buyer cannot negotiate the covenants with the seller and they are deemed to "run with the land" and automatically pass with the chain of title in a covenant-controlled community. Homeowners should also understand that they may be subject to the HOA's enforcement should they be non-compliant with the covenants or rules and regulations.

It is important to know and understand the covenants and rules and regulations that govern your HOA. Covenant and rule enforcement are some of the biggest sources of contention in HOAs. By knowing the covenants, rules and procedures of your association you can help avoid problems that may be very costly or jeopardize your relationships with the members of your HOA.



What is the difference between a covenant and a rule? Restrictive covenants are deed provisions, which restrict the manner in which you can use your property and the appearance of your property. Covenants are broken up into architectural restrictions and use restrictions. Architectural restrictions generally require conformity in the appearance of the property, the material used to build, and may require approval for improvements additions. Use restrictions address the manner in which your property and the common areas can be used, addressing such things as parking, leasing, and pets. Restrictive covenants are contained in the Declaration (also referred to as the Declaration of Covenants; Covenants, Conditions, and Restrictions; or CCR's) and are drafted and recorded with the Country Clerk and Recorder at the time the HOA is created.

The board and its committees create the rules and regulations of the HOA. Rules govern how owners are to conduct themselves on the common areas and on the use of their property, commonly addressing parking, use of HOA property and facilities, and pet issues such as leash and waste rules.

What happens if I violate a covenant or a rule? An HOA can enforce covenants in a court of law against the violator and can seek to enjoin violators through a temporary restraining order and injunction. In addition, the HOA may seek to have the property returned to the condition it was prior to the alleged violation. This can result in costly litigation and construction costs. An HOA can also record a Notice of Covenant Violation, which operates similar to a lien and gives potential purchasers notice that there is a covenant violation on the property and could hinder the sale of the property.

An HOA may also seek to enforce its rules and regulations through a hearings process. HOAs may levy fines to induce compliance and if the violator fails to pay, the association may place a lien on the property and ultimately sue the homeowner or foreclose on the property. The HOA's governing documents may also provide that if an owner is in violation of a covenant or rule their voting rights may be suspended or the HOA may be allowed to suspend the use of recreational facilities or other HOA amenities. If it is determined that an owner is in violation of the covenants, the HOA may be entitled to

attorneys' fees and costs in enforcing the restriction.

Can an HOA fine me without hearing my case? A homeowner has the opportunity to present their case before a fine can be levied. The Colorado Common Interest Ownership Act ("CCIOA") requires HOAs to adopt policies, procedures, and rules and regulations concerning enforcement of covenants and rules, including notice and hearing procedures. Fines may not to be levied for a violation of rule unless an HOA has a policy for a fair and impartial fact finding process and provides the owner notice and opportunity to be heard before an impartial decision maker.

What happens if my neighbor is in violation of the covenants? How do I enforce the covenants against him? An owner may contact the HOA to let them know that a violation has occurred and the HOA can seek to compel enforcement of the covenant.

How do the owners change the covenants? Changing covenants requires the amendment of the HOA's declaration. Under CCIOA the declaration can be amended only with the affirmative vote of between 50% and 67% of the votes of the HOA (the governing documents will set the percentage).

How do we change rules? The bylaws will address how rules are created and changed in an association. Usually rules are created and changed by the board or it's committees.

What happens if my HOA does not enforce the covenants? The board has a duty to enforce the covenants. Some governing documents allow for the board to exercise discretion in the enforcement of the covenants while others require consistent mandatory enforcement. If the HOA is not enforcing the covenants it may be breaching its corporate duties.

Can my HOA tow or boot my car? Provided there is a stipulation in the covenants or rules, a parking violation may give the HOA authority to tow or boot a car.

Things an owner should keep in mind about covenants and rules. Know the covenants of your HOA thoroughly. Know if you need approval before making architectural changes. It may be very costly if an owner undertakes a project that is in violation of the covenants. For boards it is important to enforce its covenants and rules fairly and consistently. It is also important for boards to know their boundaries. Rules cannot violate state and federal laws, including fair housing rules, OTARD, and laws pertaining to discrimination. Senate Bills 100 and 89 address certain provisions that rules or covenants cannot conflict with, such as rules pertaining to flags, xeriscaping, energy efficient devices, and commercial vehicles.

Colorado Division of Real Estate
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