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**DRAFTING AND REVISING
RULES, REGULATIONS, POLICIES
AND
PROCEDURES
FOR
COLORADO HOMEOWNER,
CONDOMINIUM AND OWNER
ASSOCIATIONS**

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FOR
COLORADO HOMEOWNER, CONDOMINIUM AND OWNER
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1) **Key Points on Drafting and Revising Rules, Regulations, Policies and Procedures.**

- a) State Law/CCIOA Allows for Rules. The Colorado Common Interest Ownership Act (CCIOA) allows associations to adopt rules and regulations (unless this authority is limited in the declaration). See CRS §§ 38-33.3-106.5 and 38-33.3-302(3)(a).
- b) Case Law Limitations/Criteria for Valid and Enforceable Policies/Rules-Reasonableness. In general, courts require policies/rules to be reasonable. The indicia of a reasonable policy/rule are set forth below. Owners, residents and occupants are more likely to accept and cooperate with policies that have the following characteristics:
- i) “Reasonableness” Requirement. The policy or rule must be reasonable.
- a. A reasonable policy or rule is:
- just;
 - sensible;
 - not excessive (i.e., a policy or rule should be necessary and not more punitive than necessary); and
 - intended to promote legitimate goals.
- b. Unreasonable policies or rules are:
- illogical or unfair; and
 - too broad or too severe.
- c) Other Key Points for Valid and Enforceable Policies/Rules.
- i) Consistent with Other Laws. The policy or rule must be consistent with applicable federal, state and local statutes.

- ii) Consistent with the Governing Documents. The policy or rule must be consistent with the association's governing documents (i.e., a policy or rule cannot prohibit what the declaration or covenants permit and vice versa).
- iii) Related to Purpose of the Association. The policy or rule must reasonably relate to the operation and purpose of the association.
- iv) Fair. The policy or rule must be fair. It should not create a separate class or group of owners, residents or occupants.
- v) Clarity. The policy or rule should be clear and unambiguous.
- vi) Uniformly Enforced. The policy or rule must be uniformly enforced – this means there must be no selective enforcement or exceptions (i.e., a policy or rule must be enforced against all owners, not just owners who are delinquent in payment of assessments).

2) **Steps in Developing and Maintaining Reasonable Policies/Rules.**

- a) Need/Needed? Determine the need for the policy or rule in the specific area
 - i) Answer the question, “Why?”
 - ii) Ask whether the rule is designed to meet the purposes of the association/community (to maintain, preserve, enhance and protect the property value of the community, promote harmonious community living and preserve the common scheme and harmonious design of the community).
 - iii) Determine whether the problem identified is of sufficient consequence to justify creating a policy or rule – what are the trade offs?
 - iv) Check to be sure that the existing policies, rules and governing documents are inadequate to address the issue.
 - v) Consider both the immediate impact of a policy or rule and its long term implications.
- b) Reaction of the Community. How is the policy or rule likely to be received? Will the policy or rule solve a current problem while creating future problems for the community?

- c) Authority. Identify the source(s) of authority for the policy or rule.
 - i) Review the governing documents and CCIOA. Verify that the policy or rule will be consistent with and meet requirements of Senate Bills 05-100 and 06-89.
 - ii) Verify that any new policy or rule is consistent with the policy of the Association on how rules and policies are adopted. (That policy is one of the eight policies required of owner associations under Senate Bills 05-100 and 06-89.)
 - iii) CCIOA and/or the governing documents may provide authority for policies/rules.
- d) Process of Adoption. Before adopted, consider giving notice of the proposed policy or rule to the owners, whether required or not.
 - i) With notice of the proposed action, the association can build consensus and support for the policies/rules before they are adopted, and will gain acceptance and compliance.
 - ii) Invite written comments.
 - iii) Consider a hearing on the proposed policy/rule if there are significant concerns within the community.
 - iv) Consensus and compliance are possible when policies/rules are viewed as fair and reasonable by owners, residents and occupants.
- e) Scope. Define the scope of the policy/rule. Specify "who" and "what" will be covered by the rule.
- f) Reasonableness Testing. Check the proposed policy/rule against the criteria of a valid and enforceable policy/rule listed above.
- g) Clear Provisions. Use clear, concise and unambiguous language. The proposed policy or rule should be drafted in such a manner as to be concise and simple, yet clear and understandable. Avoid words or phrases that are vague or ambiguous.
- h) Review by the Association's Attorney. Before the policies are adopted, and if not drafted by the association's attorney, have them reviewed by the association's attorney.

- i) Notice of Rules. Once adopted, notify owners, residents and occupants of the new policies/rules.
 - j) Action to be Taken on Rules. Once adopted, act on and use the policies/rules.
- 3) **Updating Rules, Regulations, Policies and Procedures.** Keep the policies and rules relevant. Periodically review existing rules, regulations, policies and procedures to eliminate or revise outdated or unenforced policies/rules.