

Condo Insights

#39 – Policies & Procedures for Condominium & Community Associations

Condominium and homeowner associations are established by either a Master Deed or Declaration of Covenants, Conditions, Easements and Restrictions. These documents typically include the Bylaws and rules and regulations that govern and control actions and activities within the common areas and the residential units within the association. Rules are mandatory and specific. However, governing documents typically are not all-encompassing. The association's Bylaws generally grant the board of directors the powers to establish policies and procedures for the operation of the association. Policies provide guidance for what needs to be done in various circumstances.

Establishing policies and procedures benefits both the association and its members by establishing and defining expectations and consequences. While a board may have powers to establish policies and procedures, any policies and procedures established by the board must be consistent with and in accordance with the association's governing documents. This article will identify several of these policies and procedures.

Homeowner associations rely on their members for timely payment of fees and assessments. A collection policy defines the date on which fees and assessments are due, the grace period for payment of the fees, as well as late fees and/or penalties in event a member pays after the grace period or fails to pay. For most associations, fees and assessments are typically due on the first day of the period. The grace period varies by association but is usually ten or fifteen days for associations that require monthly payments. Associations that require quarterly payment may have a thirty-day grace period.

A collection policy will include a surcharge for late payment if fees are not paid before the end of the grace period and may stipulate increasing fees for ongoing delinquency. The collection policy should spell out additional steps the board is authorized to take against delinquent members to collect unpaid fees and assessments. Such actions may include filing liens and imposition of additional collection costs against the delinquent member if an attorney is involved, and possible acceleration of fees. Additionally, delinquent members may lose their status in "good standing" which could result in suspension of privileges to use the association's recreational facilities and amenities and loss of voting rights.

Associations may establish policies for pets. While the association governing documents may identify types of pets that are allowed and even size limitations or limits on the number of pets any single owner may have, the board may establish a policy which may require annual registration of pets and proof of vaccinations. The policy may spell out guidelines for control of the animal in common areas, require identifying tags on the animal's collar and consequences for failure to control the animal in common areas.

Associations that do not permit pets may want to consider establishing a policy for registering service animals and emotional support animals ("ESA"). If a service animal or emotional support animal is present in an association that does not permit pets, the board may require annual written documentation from a medical provider that the association member requires a service animal or ESA. Boards in such association's are encouraged to consult with their attorney for guidance regarding such matters.

Associations having a predominance of second-home owners and seasonal-use residences may want to establish policies and procedures for periods of extended vacancy. An association may establish policies and procedures including mandatory practices for when owners vacate their residences for extended periods of time for the purpose of preventing property damage from freezing pipes or other incidents which may occur during periods of long-term vacancy. Such policies may require interior residence heat to be maintained at a temperate high enough to prevent freezing, require that domestic water be turned off and even to drain the water heater and turn off unnecessary electrical breakers. Some associations require water leak sensors and alarms that are triggered by the presence of water.

State condominium laws in New Jersey require that all associations establish policies and procedures for handling housing-related disputes between members as well as between members and the association. Known as Alternate Dispute Resolution ("ADR"), most boards of directors have wide discretion to choose precisely how to implement the ADR within their particular association. Some boards choose mediation or arbitration, and others have committees that conduct a hearing process. Determining the method of ADR may depend on the issues or parties involved or the resources readily available to a particular association.

Other policies and procedures association boards may want to consider include policies for use of the association trademark by members, the use, storage and charging of electric vehicles, policies for snow removal to identify minimum accumulation of snow before shoveling or plowing, dryer vent cleaning policies for frequency of vent cleaning and policies for outside decorations defining acceptable displays and how long such decorations may be displayed.

In most Associations, the governing documents give the Board the authority to adopt reasonable rules, regulations, policies, and procedures that are in accordance with the Declaration and Bylaws. The rules, regulations, policies and procedures are not typically recorded; therefore, to establish, change or amend them all that is required is a Board vote to adopt at an open meeting. The rules, regulations, policies, and procedures must be distributed to the owners to be effective.

Condo owners may have never signed anything agreeing to the policies and procedures but by accepting the deed at closing there is language in the deed binding all unit owners to the Association and all governing documents including the rules, regulations, policies, and procedures. Condo buyers are advised to read the rules, regulations, policies, and procedures before purchase to avoid any confusion at a later date.

Jim Yost owns Elite Management and Advisory Services, LLC and is managing partner for Ocean Property Management Corporation, based in Wildwood. The firms manage numerous community, condominium and homeowner associations in southern New Jersey. He can be reached at yostopmc@comcast.net. Past columns are available online at www.oceanpropertymgmt.com.

Karim Kaspar, Esq. is Senior Counsel with Lowenstein Sandler LLP. He serves as general counsel to numerous community and condominium associations throughout New Jersey. He specializes in complex commercial litigation and real estate matters and has been active and instrumental in the firm's pro-bono activities. He can be reached at kkaspar@lowenstein.com.