

LEGAL BASIS FOR COVENANTS AND RULES

HindmanSanchez P.C. *Attorneys at Law • Denver & Fort Collins*

5610 Ward Road., Suite 300, Arvada, Colorado 80002-1310 Tel 303.432.9999 Free 800.809.5242 Fax 303.432.0999 www.hindmansanchez.com

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Legal Basis For Covenants and Rules

1. Statutory Legal Basis - CCIOA
2. Association's Governing Documents
 - Articles of Incorporation
 - Bylaws
 - Declaration
 - General Powers (e.g., broad powers to enact rules)
 - Specific Powers (e.g., prohibition against satellite dishes)
 - Pre-Enforcement Process (e.g., ACC)
3. Rules and Regulations
4. Guidelines

SCOPE AND LIMITATIONS OF RULES

1. Rule must relate to purpose of association and purpose sought to be achieved by the rule.
2. Rule must be consistent with governing documents: rule can not prohibit/permit what covenants permit/prohibit.
3. Rule can not restrain property rights or impose a forfeiture.
4. Rule can not violate fundamental constitutional rights (e.g., freedom of speech, civil rights, due process, etc.).
5. Rule and method of enforcement must be in compliance with applicable federal, state, and local laws.
6. Rule must be properly adopted.
7. Rule can not be ambiguous or vague (e.g., recreational vehicles, commercial vehicles).

DRAFTING RULES

1. Determine the Need for the Proposed Rule.
 - a. Determine the nature and extent of the problem to be dealt with by the proposed rule.
 - b. Verify that existing rules and restrictions are inadequate to address the problem.
 - c. Verify that no outside entity, such as the municipality, could address the problem.
 - d. Determine whether the problem identified is of sufficient consequence to justify creating a rule and an enforcement process -- what are the trade-offs?
2. Set Forth the Scope of the Rule.
 - a. Define who and what is to be covered by the rule and the time periods involved for implementation.
3. Define the Specific Parameters of the Rule, the Actions Required and the Penalties for Violation.
 - a. Simple, clear ,and concise language as to the rule is essential to understanding and enforcement.
 - b. If the rule involves the establishment of guidelines or discretion as to enforcement, set forth the initial guidelines at the outset. (This is particularly important with architectural control enforcement.)
4. Test the Rule for Compliance with Constraints.
 - a. Evaluate the rule and the extent to which it complies with constraints dealing with constitutional and other rights such as reasonableness, impartiality, civil rights, due process, fairness, equal protection, etc.
 - b. Verify that the rule is not inconsistent with specific document provisions already in place, such as requirements for notice, procedures for adoption, or penalties which may be imposed.
5. Give Owners Notice and Build Consensus
 - a. Most rules, covenants, and laws are successful because of voluntary compliance and acceptance.
 - b. Give notice of a proposed rule and seek owner, tenant, and resident input to the provision of the rule before formal adoption to help remove opposition and build consensus.
 - c. Upon adoption, provide ample notice and publication of the adopted rule and the time frame when enforcement will begin.
 - d. In some instances, recordation of the rules or a notice that there are rules is recommended in order to provide for ultimate enforcement in the courts.
 - e. Periodically, provide for publication and notice to all owners, tenants, and residents of the existence of the rules.

ACC VIOLATIONS

1. Record date request is received. Notify applicant.
2. Record any time limitations imposed by Declaration or guidelines.
3. Review application for compliance with Declaration and Guidelines.
4. Respond in writing and within time limits notifying applicant of approval or disapproval.
5. If disapproved, state reasons in writing to applicant.
6. If approved, state conditions of approval, if any, (e.g., time limits [forever or something less], bond, insurance, waiver and release, indemnification, responsibility for maintenance and repairs).

ENFORCEMENT PROCEDURES

1. Sanctions Imposed by Board Prior to Litigation.

- a. Notice and Opportunity to be Heard:

- Specific as to violation;
- Procedure for requesting hearing;
- Hearing procedures; and
- Findings

- b. Suspension of Privileges:

- Voting; and
- Use of Amenities

- c. Imposition of Fine:

- Authority

2. Court Enforcement

- a. Jurisdiction:

- Small Claims Court
- County Court
- District Court

- b. Relief:

- Injunctions - temporary and permanent
- Modifications, removal orders
- Attorney fees

- c. Self Help
- d. ADR
- e. Help From Government Agencies

WHO MAY (OR MUST) ENFORCE DOCUMENTS

- 1. Board of Directors:
 - a. Power/Authority
 - b. Duty to Enforce
- 2. Homeowner:
 - a. No Duty
 - b. But Usually Right to Enforce
- 3. ACC Committee

DEFENSES TO ENFORCEMENT

- 1. Change in character of neighborhood.
- 2. Abandonment.
- 3. Acquiescence.
- 4. Waiver.
- 5. Estoppel.
- 6. Laches.
- 7. Statute of limitations.

TOP 10 "DO'S" FOR SUCCESSFUL ENFORCEMENT OF COVENANTS RULES AND ARCHITECTURAL CONTROL GUIDELINES

10. Do carefully read your governing documents.
9. Do establish a written policy for covenant and rule enforcement and architectural review and communicate same to all owners.
8. Do establish architectural standards/guidelines and communicate same to all owners.
7. Do establish a written procedure for handling violations and communicate same to all owners.
6. Do be uniform in the enforcement of covenants and rules and architectural control violations.
5. Do provide for notice of violation and opportunity to be heard if you intend to impose fines.
4. Do consider all options/remedies available before deciding how to deal with violation.
3. Do act promptly and take legal action within one year of the violation.
2. Do consider assistance from government agencies (police, building or zoning department, code enforcement, etc.).

AND THE NUMBER 1 "DO" FOR SUCCESSFUL ENFORCEMENT OF COVENANT RULES AND ARCHITECTURAL CONTROL GUIDELINES:

1. Do obtain legal advice before filing suit.