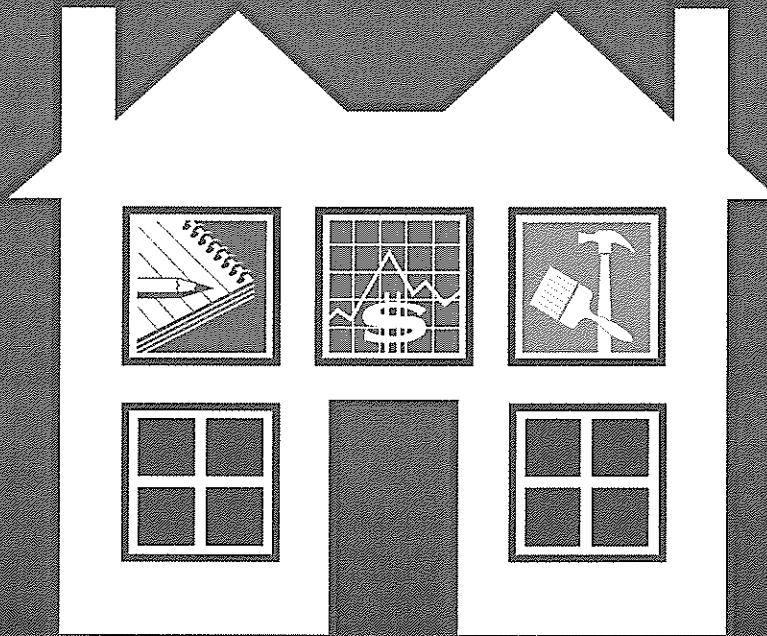


Simplified Self-Management ***A Practical Guide with How-To's & Forms***

An essential resource of best practices for Boards of condominium and community associations in Illinois



Learn how to get your "house" in order by proactively managing the **Administrative**, **Financial** and **Physical** aspects to end Board burnout and protect your investment.

CATEGORY 8: RULES & REGULATIONS

8A. HOW-TO... Create Rules & Regulations

*From the specialists in
Board and
Self-Management Training*

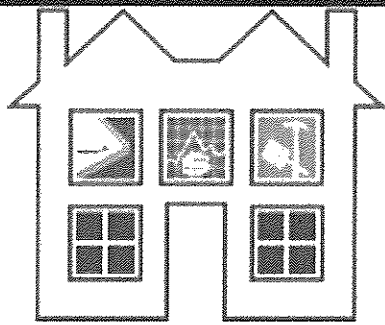
Shirley Feldmann
and Angela Falzone

Association Advocates, Inc.

Helping Homeowners Protect Their Investment

www.AssociationAdvocatesInc.com





Simplified Self-Management

HOW-TO.... 8A. CREATE RULES & REGULATIONS

In this packet, you will find the following topics that are specific to this How-To process:

- A. Introduction
- B. AAI Forms List
- C. Step-By-Step Instructions
- D. Definitions & Explanations (if applicable)
- E. Next Steps
- F. Resources.

A. INTRODUCTION

When condominium ownership came into this Country in the 1960's, it was the first time we had legal ownership co-joined within the same property. Prior to this format, we had apartment living, co-ops, which is actually a legal corporation, single-family homes and row houses joined by attached walls, but not necessarily by joint ownership. Condominiums changed that format by allowing owners to live below and above, next to and across from each other, sharing in the ownership of common areas through a percentage of the whole property along with the rest of the owners. Later, townhomes, master associations and single-family home associations added new and different forms of community association life.

It did not take long before the conflicts within this arrangement became evident. As the owner above wanted to exercise at 4:00 in the morning, and the owner below wanted to sleep, a formal method of controlling these types of conflicts was needed. Lawsuits became a major part of condominium living, and out of lawsuits came legislature. Soon, every state in the Union had a Condominium Act from which to guide and direct the owners on how to live together in harmony under the same roof. These guidelines were also incorporated into legal documents called Declarations and Bylaws specific to each association, stating that a Board was to be formed to control the environment within the property. Because these directives were more generic, many areas of conflict remained and, therefore, Rules and Regulations became a third level of control from which to activate the harmonious living condition within the specific dynamics of individual condominium associations.

Whether your Association is three units or 333 units, Rules and Regulations are important to the smooth functioning of the property. While smaller associations think of rules as restrictions to enjoyment, nothing can be further from the truth. Rules provide direction for the Board on actions to take under certain scenarios as they occur, and create a process from which to act. For example, addressing the damage from an owner's dog each time it happens gives the Board constant reactive obligations with potentially different outcomes in each case. Rules put in place to dictate what must be done when an owner's dog damages the property gives the board consistent clear and direct action to take in each incident, but also enhances the chance that an owner may do everything possible to prevent the dog from damaging the property as it will be against the rules, and he/she can be fined or other action may be taken.

Rules and Regulations are an important tool for the Board and, to help in understanding this requirement, AAI has created this How-To, incorporating instructions as well as guidelines from which to create, adopt and enforce rules and regulations within the Association. The end result should contribute to harmonious living conditions, happier and compliant owners and, as a by-product, higher property values.

B. AAI FORMS LIST:

Please review the List of Forms and Usage. Every Association is different; therefore, you should customize these forms to meet your Association's specific needs. Please note that there may be information in the Header & Footer sections that require your customization or deletion prior to distribution.

Summary of Forms Needed for this How To are: Forms 8.Rules F1-F5

Note: The forms provided are sample templates ready for customization and should not be distributed until a final legal review by your attorney is completed to confirm that there are no conflicts with your Association's governing documents.

C. STEP-BY-STEP INSTRUCTIONS

Refer to your Summary Sheet from the Training Session and/or read any applicable sections in your Association's Declaration/Bylaws before getting started.

1) Understanding the Declaration & Bylaws: As noted above, the Declaration and Bylaws create the template from which your Association must be run as created by the developer at the time of inception. Reviewing the contents should be the first order of business in creating Rules to further the intent of those documents, and to enhance owner's understanding of how living in a condominium is different from other forms of residency. At the closing of the purchase of their unit, each owner in a condominium association signs an agreement that they have read the Declaration and Bylaws, and understands that the title to their property is attached to restrictions that dictate how they must act. First-time condo buyers do not always appreciate this form of ownership or realize the depth of this commitment, and rebut the Board's attempts to enforce various procedures but, through properly adopted rules, the Board has great power to demand and expect compliance within reason, and owners will have no choice but to learn their legal obligations or face the consequences.

Section 18 (k) of the ICPA states that the Bylaws shall provide for at least the following:

"Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners."

Section 18 (l) of the ICPA continues:

"Method of adopting and of amending administrative rules and regulations governing the operation and use of the common elements."

Section 18.4 (h) of the ICPA states that the powers and duties of the Board of Managers shall include, but shall not be limited to, the following:

"...To adopt and amend rules and regulations covering the details of the operation and use of the property, after a meeting of the unit owners called for the specific purpose of discussing the proposed rules and regulations. Notice of the meeting shall contain the full text of the proposed rules and regulations, and the meeting shall conform to the requirements of Section 18(b) of this Act, except that no quorum is required at the meeting of the unit owners unless the declaration, bylaws or other condominium instrument expressly provides to the contrary. However, no rule or regulation may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I of the Illinois Constitution, nor may any rules or regulations conflict with the provisions of this Act or the condominium instruments."

This, therefore, gives the Board the full responsibility and authority of creating the rules and regulations and understanding the governing documents of the property is an important first step. Nuances such as design, location, recreational amenities, garages, etc. will be identified in the Declaration and Bylaws and, therefore, the Board is obligated to ensure that language is used in the creation of rules and regulations that will enhance the owners' ability to enjoy their surroundings while not misusing or creating a nuisance that may affect others' enjoyment of their home. In addition, the rights of individuals must be considered to ensure that the Rules and Regulations are not in conflict with federal, state or other applicable laws.

The powers for non-condominium associations are quite different than for condominiums. Rules authority must be found in the Association governing documents. Many of these Association documents only allow the Board to pass rules governing common areas, meaning they cannot regulate conduct in the owners' homes. When in doubt, you should consult the Association attorney as to the scope of the Board's rule defining power.

2) Rules Committee/Commission: (*See Category 6.Meetings/Agendas/Minutes & Action Items for more information about Committees/Commissions*) By allowing owners to join forces and serve on a committee/commission to assist in the creation of rules and regulations, the Board not only delegates the workload to others, but can also be an effective method of creating respect and understanding of the process and potentially compliant ownership for the final document. The process of creating a committee/commission should be discussed at a Board Meeting where a motion would be made, seconded and approved to establish a committee/commission for the purpose of creating a draft of rules and regulations for the Board's review. Many further steps will be needed to adopt the final draft, therefore, the commission's role would be to research and create the proposed first draft.

Volunteers may be solicited at the same meeting, with one Board member offering to act as member and liaison to the Board. Commissions can be at least two volunteers or several, but the membership of a commission should be applicable to the task and, in this regard, two to three members can be sufficient in the smaller building. Larger buildings may succeed with three to six members, but consideration should be given to keeping the number lower to eliminate the "too many cooks in the kitchen" syndrome. It should also be noted that volunteers wishing to serve on the commission so they can create hardship rules out of anger or satisfy personal agendas should be denied the chance or at least carefully monitored. Obviously, if no owners volunteer to serve on the committee, the task of Rules creation will remain with the Board.

3) Drafting The Rules: It is now time to determine what rules should be considered to provide the Board with the tools to protect the property and encourage harmony amongst residents. Many suggested rules will come out of the Declaration/Bylaws review, but templates for the language as well as other examples or concepts for rules can come from several sources. These can include, but may not be limited to: Obtaining samples of rules from other associations of similar size and amenities; Obtaining complete guides from attorneys; Requesting rule samples on-line through the internet; Purchasing rules guides through various trade organizations. We caution you, however, to shy away from long documents and from reiterating all points as noted in the Declaration/Bylaws or you take the risk that the document will not be read. Larger properties with more amenities will require a longer set of Rules, but a smaller property should aim for Rules no longer than 6-10 pages. AAI has included a *Sample Rules & Regulations* for properties under 30 units that you may use to customize for your specific Association's needs and amenities.

1	8.Rules_F1.doc	<i>Sample Rules & Regulations</i>
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The use of examples is an excellent tool for Board or commission members to begin their language concepts, as the wording of rules is an important aspect, which can solicit or repel compliance.

For example, the rule to control dog's use of the common areas may read: "Pets shall not be permitted to defecate on any Common Property. Pet owners must clean up after pets immediately, if an accident occurs on Common Property." The language here is concise and clear, telling the pet owner not to walk the dog on common property but, if something does happen, what the owner must do to correct the problem. However, imagine the response if the language were changed to read: "Pets allowed to defecate on Common Property will be removed from the premises immediately." While the Board would have the right to remove a pet from the property under serious circumstances, the stronger language here will only serve to create anger and potentially damaging relationships with pet owners in the Association. Therefore, drafting language that gives understanding to the issue and intent of the rule, while guiding the reader on actions that must be taken, will go a long way to establishing the working relationship necessary for the harmonious life within the community, which is the purpose of Rules and Regulations in the first place.

4) Too Many Rules: In addition to the design, location, and amenities that exist within a property, other concepts may be considered as needing a rule; however, it is highly recommended that "less is more." It is not important that every aspect of life within your Association be considered to contain a rule. Obviously, issues that have come up such as pet problems, noise issues, nuisance matters should all be addressed initially in the first draft of rules, but some Boards or commissions make the mistake of detailing virtually every nuance of life within the premises and the outcome is a cumbersome, oversized document that will repel the common logic of any owner and probably never be read and certainly not taken seriously. The fact that rules can always be added should be considered when drafting the first document, and only those important issues that make up the most generic patterns of life within the Association should be included. In addition to Pets, a list of the general issues may include, but not be limited to:

- a. Assessments (Due date, late fee, notifications, legal actions)
- b. Alterations/Remodeling
- c. Balconies/Patios
- d. Bicycles/Storage and Use on the Premises
- e. Common Property (Use and respect for, landscaping, snow removal)
- f. Decorations (Holiday, general on exterior)
- g. Deliveries
- h. Elevators
- i. Emergencies
- j. Garage/Parking -Outdoor (Use of, storage on, maintenance/storage of vehicle)
- k. Elections (Procedures, requirements)
- l. Insurance (Owner's obligations, Mandatory Unit Owner Coverage)
- m. Maintenance (Within unit, limited common area)
- n. Moving (In/out, use of elevator, security during, hours/days allowed)
- o. Sale/Lease of Unit
- p. Satellite Dishes
- q. Security
- r. Signs (For sale, advertisement)
- s. Storage lockers (Anywhere on premises)

Although many Declarations/Bylaws include the Mandatory Unit Owner coverage, it is such an important issue that we recommend including it to ensure it does not get glossed over. A *Sample Mandatory Insurance Proof of Coverage Form* is attached that should be sent out annually to ensure compliance. This may be sent out at the same time as the annual *Owner/Resident Information Form* (see *Category 2- Management Transitions*).

2	8.Rules_F2.doc	<i>Sample Mandatory Insurance Proof of Coverage Form</i>
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In addition to this recommended list of topics, the specific design and amenities of your property should also be considered, such as: special entrances or designs; swimming pool; party room usage; exercise rooms/equipment; shared utilities (common boilers, central air conditioning systems which would include the times of the year for turn on and off); shared porches and stairwells; roof decks (access to, usage of); common grills; etc.

Once the list of issues to be covered has been established and agreed to, by using the examples of various other sources, language can then be designed that will bring out the best understanding of the rule's objectives, and solicit the most compliance of the owners for a good functioning document.

Another important aspect to consider is the ability of the Board to monitor the rule. Requesting something arbitrary or ambiguous will not only confuse the owner in how they should comply, but may set the Board up to fail in monitoring and enforcing. For example, a Board made a rule that all furniture on balconies and patios must be green for uniformity. Not only was there confusion on what shade of green or what type of materials can be green (green chair, white pads?) but units on the top floors where balconies were difficult to

see and be monitored did not feel the need to comply and that caused great conflict among owners. Obviously, the rule was soon modified to state: "Only furniture consistent with outside usage was allowed on patios and balconies." All references to color were eliminated.

5) Enforcement: The draft of what to include and how to verbalize the rules is very important, however, it is not complete until the enforcement policies and procedures have been included. Many methods can be incorporated here to create a protocol for enforcing the objectives of the rules. These can include, but may not be limited to: A warning letter upon first offense; A minimal fine for the second offense; An immediate fine for each offense; Additional sanctions and/or fines as the Board deems appropriate; and, Legal action. Depending upon the rule, consider the best method of enforcement for the infraction.

The simplest process to create an Enforcement Policy is to either outline the specific fines/per offense and/or make one generic statement such as:

"Unless otherwise noted, upon second or continual violation after written warning, a fine of not less than \$25 shall be added to the violating owner's account. Subsequent violations may result in additional fines of not less than \$50 or at the Board's discretion. Other fines and sanctions may be imposed at the Board's discretion. Violations of a continuing nature are subject to a daily fine until remedied.

Most attorneys do not recommend that owners be fined immediately for a presumed violation unless perhaps there is a safety or other serious issue. This would be contrary to the old saying: "Innocent until proven guilty." A *Sample Violation Warning Letter* is provided. It is recommended that a file be created either for the individual owner or a file for all Owner Violations to be kept in the Association's records. Accurate record keeping is important, especially to confirm over the years whether unit owners have already been warned and/or what steps have been taken by the Board of notification.

3	8.Rules_F3.doc	<i>Sample Violation Warning Letter</i>
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Additionally, the ICPA clearly states in 18.4 (l) that a fine can only be levied after notice and an opportunity to be heard. This, therefore, sets the requirement that an owner should receive a warning notice first of the perceived violation. After a second warning and an opportunity to come before the Board and explain their position, a fine may then be imposed.

6) Complaint Forms: Often owners see other residents violating rules, but do not wish to get involved. In these instances, violations will continue, and the eventual result can be disharmony among the owners. As an aid to assisting the Board in monitoring the rules, a *Rules Violation Witness Complaint Form* can be used as part of the rules, which may encourage law-abiding owners to notify the Board when they witness violations throughout the property. A sample is enclosed for customization.

4	8.Rules_F4.doc	<i>Sample Rules Violation Witness Complaint Form</i>
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Items such as which dog was seen damaging the landscaping, or whose car was leaking oil in the garage to cause floor damage can be presented to the Board to take appropriate action against the violating owner. In addition to the receipt of fines, this process also increases the Board's opportunity of being reimbursed for damages to the property by fining the correct person involved.

The use of a *Rules Violation Witness Complaint Form* in smaller associations may not be necessary, but in larger associations where many opportunities for rule violations exist, such a form can be an excellent management tool for Boards to maintain order, provide consistent rule enforcement and establish a written history of the process from notice through hearing determination.

The *Rules Violation Witness Complaint Form* should contain who saw whom doing what. Dates, descriptions, locations, and a signature from the complaining owner are important to the validity of the complaint. If an owner is not willing to put their name on the form and/or step forward as a witness, then the incident becomes hearsay, and the Board will have to acknowledge their inability to proceed with the hearing and/or fining process.

7) Owner's Rights: It is important to include in your Enforcement Procedures a statement of owner's rights and a process that allows them to protest under various circumstances the accusation that they violated a law and/or the imposition of a fine.

Some rule violations are clear and simple, and the owner will no doubt cease the action and/or pay the fine after due notice. Infractions such as damage to property or illegal parking (when witnessed by another), non-payment of assessments or fees, dog barking nuisance, etc. is hard to argue with. But other violations may not be so obvious and, based on actual examples, might include: Pet damage when not actually witnessed but suspected; Noise nuisance from above, but unclear which unit it originates from; Carpet damage appearing in the halls near a specific unit, etc. These and many other types of issues will arise and owner's accused of such violations may find it necessary to defend themselves and, therefore, will deserve a process in which that is possible.

Owners must be given the right to a Hearing before the Board or a Committee appointed by the Board. As uncomfortable as it seems, the Board will have to act as judge and jury, and determine the validity of the complaint or violation, and whether the fine or penalty imposed is fair and appropriate. The Board may set a specific date for the Hearing (which often may be scheduled in Executive Session before the next Board Meeting) and notify the owner of the date, time and location with instructions that they may request a different date in writing if they cannot attend. As a general rule, the owner should be given no less than 21 days after receipt of the notice of violation and/or fine to request a Hearing. The Board must respond within a certain time frame, generally 14 days and allow the Hearing to take place. A convenient time is then set for all parties involved to attend, and the Board should hear and consider arguments, evidence, witness statements regarding the violation, and the action that was taken (fine, violation notice, warning). The final determination by the Board will then be made by voting at the next open Board Meeting and documented in the Minutes. A letter then should be sent to the owner of the determination and fine, if applicable, which would be binding upon the owner, and payment of any charges or fines considered fair by the Board will stand and be added to the owner's ledger.

When a fine is imposed by Board adoption at an open Board Meeting after due process, any failure to pay can result in the Board's ability to take legal action including, but not limited to, liens, foreclosures and evictions, with all legal costs becoming the responsibility of the owner.

8) Legal Review: Once the final draft of the rules has been completed by the Board or commission including referencing and attaching all forms relating to the execution and enforcement of the rules and the Board formally "approves" the draft, it is recommended that the Association attorney review the draft for all legal clarifications. The attorney will review with an eye to ensure that the Rules and Regulations are not in conflict with the Association's governing documents, the ICPA and other federal, state or local laws.

9) Notification, Meeting & Adoption Process: The ICPA states that the notice of the meeting must be made in the same manner as a Members Meeting:

18 (b) (6) of the ICPA states:

"That written notice of any membership meeting shall be mailed or delivered giving members no less than 10 and no more than 30 days notice of the time, place and purpose of the meeting."

NOTE: Notice is frequently not required for non-condominium associations, although it is still recommended.

Once the Board and Association's attorney have approved the final draft, **per Section 18.4 (h)**, a meeting of the unit owners must be called for the specific purpose of discussing the proposed rules and regulations. The notice of this meeting must contain the full text of the rules and while the meeting does not require a

quorum of owners (unless the Declaration/Bylaws state otherwise), the process is comparable to a Members Meeting although the owners do not get to vote. Owners should be allowed to question the rules, with specific comments or complaints regarding the language, intent or fining/enforcement policies, and the Board should listen carefully to their concerns. It is the Board, however, that will ultimately vote to "adopt" a final version, therefore, once all comments have been made, the Presiding Officer at the meeting (generally the Board President) will ask for a motion by a Board member to adopt the rules, either with modifications based on the comments, or as originally presented. With a "second" to the motion, the Board can vote unanimously to adopt the final draft. If there are many changes to be made, it is recommended that the meeting be adjourned, the draft reworked, and the process repeated, including the 10-30 days notice and a new meeting called.

As an introduction to the Rules, a Board Resolution should be drafted and approved at the Board Meeting adopting the Rules to establish the Board's rights, reasoning and document provisions to create the Rules. This may also be reviewed by your attorney at the time the Rules & Regulations are reviewed as he/she may have different language to include and/or may fill in the blanks on the form. Notification on the Resolution should also identify the date of the final adoption, and when the rules will become effective. A *Sample Board Resolution To Adopt Rules* is included in the attached materials for drafting purposes.

5	8.Rules_F5.doc	<i>Sample Board Resolution To Adopt Rules</i>
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The full set of final adopted rules should contain the Resolution by the Board signed by all board members, and establishing the date they were adopted as well as the date they become enforceable. Check with your Declaration/Bylaws as some indicate rules cannot be enforced until a period of time after adoption.

Once a final adopted draft of the rules has been completed, a full final copy including Forms, Resolution, Enforcements, and any attachments should be sent to all owners (and tenants) with a cover note to retain for future reference. Without all applicable steps—including the distribution of the draft copy, open meeting for discussion and distribution of a final adopted set—Rules could be challenged, and the Board's efforts will have been wasted. The goal is to establish fair, realistic Rules and Regulations that are clear and concise, without ambiguity, that creates a transparent and consistent enforcement policy for all owners and residents to live harmoniously within the property.

D. NEXT STEPS....

1. Be sure the adopted Rules & Regulations are given to the contact person in charge of Sales/Leases of Units to ensure that they are provided to the new owner or tenant.
2. Enforcement should be consistent amongst all unit owners and residents or the Board could be accused on favoritism or discrimination.

E. RESOURCES

1. Condo attorney
2. ACTHA (Association of Condominium, Townhouse & Homeowners Association)
3. CAI (Community Associations Institute)

