



## **#270 HOA Homefront – Does Your HOA Have the Required Rules?**

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Operating rules are often called “house rules” or “rules and regulations” by associations in California. Under Civil Code 4350(a), rules must be written, and under Civil Code 4340 are adopted by the board of directors. In adopting or changing rules, boards must follow the procedure stated in Civil Code 4360.

Most rules are tailored by the board of directors to the needs and desires of a given community, and may address parking, meeting procedures, architectural standards, or other topics. However, many associations are not aware that each association, regardless of size, must have five sets of rules prescribed by statute.

**Election rules:** Civil Code 5105 requires associations to have election rules. The statute gives the basic requirements of election rules. These rules would apply not only to board elections, but also to any matter on which a membership vote is required and which requires the 30 day notice and other procedures required by Civil Code 5100(a). These rules must conform to the bylaws, but also can add additional requirements regarding candidate eligibility, per the appellate case of Friars Village v. Hansing from 2013.

**Internal Dispute Resolution (“IDR”) Policies:** Civil Code 5905 requires all associations to adopt a fair and reasonable policy to establish an IDR procedure, in which a homeowner may meet with another homeowner or the board to try to work things out short of litigation. If an association fails to create such a policy, Civil Code 5915 sets forth the procedure.

**Architectural Modification Request Procedures:** A frequent board and management function is to respond to homeowners who wish to modify their residence or adjacent common area. Civil Code 4765 requires associations to have a written procedure for the process. If the association has no procedure in its rules, then homeowners and board alike have no guidance as to how applications are to be processed.

**Assessment Delinquency Enforcement Policies:** Civil Code 5730 recites detailed disclosures regarding association handling of delinquent assessments, and under Civil Code 5310(6) is part of the Annual Policy Statement to be published to members. Civil Code 5310(7) also requires that the association policies in enforcing lien rights be specified and annually given to members. Associations might adopt the contents of Civil Code 5730 as rules and then add any lien enforcement policies to satisfy Section 5310(7).



**Schedule of Fines:** Most associations have a practice of imposing fines, after a hearing, to discourage members from violating association rules and covenants. However, many do not know that the only fines which can be imposed are those which are disclosed in the association's written rules. Civil Code 5850(c) restricts fines to those as stated in the written fine schedule in effect at the time of the violation.

Each of these five rule sets apply to all residential or mixed-use common interest developments in California. The IDR, delinquency, architectural modification application procedures, and the schedule of fines must be disclosed annually as part of the Annual Policy Statement under Civil 5310.

Each of these rules must be adopted pursuant to the process in Civil Code 4360, so remember to give the members the exact text of the proposed rule change at least 30 days before the board vote on the proposed changes and allow for open forum comments before adopting the rules.