



#272 HOA Homefront – The Rules ... On Rules

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It is important to create good association operating rules and to make sure the rule topics required by statute are also covered, but all that is wasted if the association fails to follow the required rule amendment process. Because rules are amended only by the board, the Civil Code requires special procedures to alert members in advance when boards consider changing or creating rules.

Civil Code 4360 sets up the following two meeting process:

1. The board must give members at least 30 days advance written notice, *with a copy of the verbatim proposed change and a statement as the purpose and effect of the change.* (first meeting)
2. At the second board meeting, considering the rule change, the board must receive member comments (if any).
3. If the rule change is adopted, notice must be given to members within 15 days after the meeting.
4. If the change is controversial, 5% or more of the membership may, within 30 days of notification of a rule change, demand a membership meeting to vote upon its reversal. If a majority of a quorum votes to overturn it, the rule change may not be reinstated by the board for one year.

The law allows for emergency rules, if immediate action is necessary to avoid imminent threat to health, safety or to substantial economic loss. Boards may pass emergency rules for up to 120 days, but they cannot be renewed.

In making changes to association rules, consider these five process tips:

1. Discuss the rule. If the rule change is too complicated to draft during the board meeting, then delegate someone (the attorney perhaps?) to draft language to be considered at the next meeting for publication. It is better to have good rules adopted slowly than poor rules quickly approved.
2. Once the rule change motion is introduced and seconded, suspend board deliberations and reopen members' open forum on the rule change. Chances are, there will not be much comment, unless the rule change is controversial.
3. Listen to the members. The open forum aspect of the process is very important. Listen. If significant opposition to the rule arises, more consideration should be given. Can the proposed change perhaps be improved? Is the board disturbing a hornet nest, so that an overturn vote

is all but certain? Such a rule change may not be in the best interests of neighborhood relations, even though it may have originally seemed like a good idea.

4. Must the amendment be passed immediately? Perhaps after further study/discussion/modification, it can be republished to members for a later board vote.
5. If the change is adopted, send notice to the membership quickly. Don't wait to send it with the draft meeting minutes - the secretary has 30 days for the minutes, while this notice must go out within 15.

Perfection is not required. Per Civil 4350(d), as long as the board acts in good faith and in substantial compliance with the process, the rule should be valid, even if some minor noncompliance with the process occurs.

The law, while potentially frustrating, protects associations by forcing their boards to slow down before changing rules, thereby giving members an important voice in this process. The hoped-for results are better and less divisive rules and more harmonious communities.