

HOAMCO – *Best Practices*



Rule Development – Part Two

Part One of Rule Development focused on the overall definition of rules and guidelines. This Best Practice addresses Sources of Authority to Make and Enforce Rules. Part Three will address the steps in developing rules and regulations and use of a resolution process to adopt the rules. Further, some sample rules and regulations from HOAMCO's client base will be shared.

First, check all the legal documents in your community's hierarchy of authority to verify its authority to make and enforce rules. The most important sources of a community's authority to make and enforce rules are:

1. State statutes and court decisions. Often statutes or case law empower the community association to make and enforce rules. Consult with legal counsel periodically to ensure rules are proper under current law.
2. Governing Documents. The documents provide general powers, which consist of the broad authority to adopt and enforce rules in order to carry out the purpose of the community association. That purpose is to preserve, maintain, and enhance the community's property.

Governing documents also provide specific powers – the authority to adopt and enforce rules in specific areas. Governing documents may be silent as to the ability to adopt rules; however, general corporate power should provide this right. Verify with state statutes in these instances.

Final authority to adopt and enforce rules rests with the board of directors – unless the governing documents specify otherwise. A board may delegate the task of drafting or enforcing rules to standing ad hoc committees or to other sources – when the governing documents allow. The board should include the owners in the formation of rules, through the ad hoc committee, town meetings, focus groups, etc. Further, a final legal review to ensure that the rules are not in conflict with state, national, and local laws, as well as the governing documents is highly recommended. The upcoming Best Practice will highlight providing notice of rules to the membership as part of the rule development process.