

HOAMCO – *Best Practices*



Rule Development – Part Three

Once the authority to make and enforce rules is verified, the next step will be to determine the criteria to be used in developing and reviewing the association rules. Utilizing the following criteria is encouraged:

- The rule must not violate a fundamental constitutional right.
- The rule must be consistent with applicable federal, state and local statutes and governing documents.
- The rule must reasonably relate to the operation and purpose of the community.
- The rule must be reasonable – one that is just, sensible and not excessive.
- The rule must be fair. It must not create a separate class or group of people. (For example, a rule that treats resident and non-resident owners differently.)
- The rule must be uniformly enforced.
- The rule must be necessary.

It is strongly suggested that the association engage legal counsel to confirm the board's authority, the wording of the rule, and its enforceability. Further, the *proposed rules* should be sent to the membership prior to adoption to gain acceptance and compliance. Some associations will encourage written comment or even an information meeting to address comments/questions from the membership.

Once the rule has been published and input received, the board should act on it at its next regularly scheduled meeting. Meeting minutes should recite the steps involved in the rule development. They reflect the board's official action. They should not include individual statements and views that are not recorded as dissenting opinions.

After the board adopts the rule, publicize it and tell members when it is effective. Allow ample time for any necessary owner adjustment.

Finally, ensure that the adopted rules are included with Welcome/Escrow Packets.

Attached are two sets of rules to use as a reference.

Example 1

XYZ Community Association, Inc.

Use Restrictions and Rules

Adopted by the Board of Directors
July 27, 20--

The following restrictions and rules shall apply to all of the properties until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to the Declaration.

1. **General.** The Properties shall be used only for residential and related purposes consistent with the CC&R's, this Declaration and any Supplemental Declaration.
2. **Restrictions and Rules.** The following restrictions and rules are hereby adopted by the Board of Directors:
 - a. **Holiday Decorations.** Holiday decorations are permitted to be installed without approval of the Association's Architectural Committee; provided however, such decorations shall be installed or erected no earlier than forty (40) days prior to the subject holiday and shall be removed no later than twenty (20) days after such holiday. All holiday decorations shall be turned off by 11:00 p.m. each night.
 - b. **Lawn and Roof Ornaments.** Except as permitted under Rule 2(a) regarding holiday decorations, no lawn or roof ornaments or other decorative items visible from neighboring properties are permitted without the prior consent of the Association. Existing lawn and roof ornaments placed prior to approval of subject Use Restrictions and Rules are grandfathered in and can remain in place until changed or removed.
 - c. **Maintenance and Repair.** Unit owners are responsible for maintaining all aspects of the exterior of their home in good condition and repair including but not limited to painting, roof, downspouts and gutters, decks, fences, exterior windows and doors, driveways, walkways and landscaping. Any changes to the exterior of the home including painting, re-roofing, etc. shall require approval, in writing, of the Association's Architectural Committee.
 - d. **Glass and Glass Treatments.** The installation of non-reflective metallic film (designed to reduce sun and heat) on the inside of windows shall be subject to the approval in writing of the Association's Architectural Committee and shall not have an obtrusive appearance or reflective glare visible on any neighboring lot or parcel. Reflective glass, reflective foil, aluminum foil, newspapers, sheet or towels are not allowed on windows.

- e. **Outside Storage.** Personal property other than barbecues and lawn and/or deck furniture may not be stored outside of a residence or garage unless totally screened from view of neighboring properties. The erection of a play set shall require the review of the Association's Architectural Committee.
- f. **Flagpoles.** Flag poles are permitted for displaying the following flags; American, the State Flag, U.S. Army, U.S. Navy, U.S. Air Force, U.S. Marine Corps, U.S. Coast Guard, POW/MAI and an Indian Nation flag are permitted but are restricted to a flag no larger than 3' by 5' mounted on the side of a home on a pole no longer than 7' in length or on a free standing pole not greater than 18' in height.
- g. **Nuisances – Non-Constructing.** No activity shall be permitted on any lot that may disturb the quiet enjoyment of any other lot. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property, including mistletoe (an air-borne parasitic disease that kills its host trees and spreads to others) within the Association, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No motor vehicle shall be operated within the Association except by a licensed operator. No motor vehicle or recreational apparatus shall be operated within the Association as to create a loud or annoying noise. No exterior horns, whistles, bells or sirens, except security devices used exclusively for security purposes, shall be located or used on any property located within the Association.
- h. **Auto Maintenance.** No repair or maintenance work shall be performed on any motor vehicle or other equipment except wholly within the enclosed garage. Motor vehicles in an inoperative condition shall not be stored anywhere on the property except in the homeowner's garage. ALL motor vehicles other than those stored in the homeowners' garage must have current license tags.
- i. **Weed Abatement and Dead Tree Removal. Weeds approximately 12 inches tall and dead trees on properties will be considered a violation as they create a fire hazard. It is the responsibility of the owner to cut or remove grass and weeds in excess of twelve inches (12") high and trees which appear dead, dangerous or likely to fall or appear to be infected with infectious diseases, parasites or insects throughout the property.**

Example 2

ABC HOMEOWNERS ASSOCIATION, INC.

Association Rules and Regulations

December 7, 20--

The following rules, regulations and restrictions shall apply to all of the Lots, Association Easements, and common areas and all other areas and property located within the ABC Community ("ABC"). These Association Rules apply to all Owners, and their family members, guests, invitees, licensees, lessees, agents, contractors, delivery persons, and visitors (hereinafter "Owners"). These Rules shall be enforced by the Board of Directors of ABC Homeowners Association (the "Board") and/or the Design Review Committee (the "DRC") to preserve the value, desirability and attractiveness of ABC, to ensure the proper operation and maintenance of a premier residential project, and to administer and enforce the provisions of the Declaration of Covenants, Conditions and Restrictions for The ABC Community (the "Declaration"), the Articles of Incorporation of ABC Homeowners' Association, Inc. (the "Articles"), and the Bylaws of ABC Homeowners' Association, Inc. (the "Bylaws"), as amended and supplemented. These Rules supplement the Declarations and in no manner are intended to modify or permit any other conduct or activity that violates any local, state or federal laws, ordinances or regulations. The capitalized terms set forth herein are further supplemented and defined within the Declaration.

1. Association Easements and Common Areas. All Owners and their invitees are permitted to utilize the private streets in ABC for licensed, motor vehicle travel and personal use such as walking, running and bicycling. No motor vehicle may exceed 17 m.p.h. nor shall it be parked on any easement area, except temporary and occasional overflow parking for guests and for temporary parking as may be required for construction, service and delivery vehicles during daylight hours and for only such period of time as is reasonably necessary. No unlicensed motorized vehicle or recreational vehicle shall be driven on any private streets, except with the permission of a Lot owner and for the sole purpose of immediately exiting or returning to ABC from contiguous properties, and shall not be operated by children under 16 years of age unless directly supervised by an Owner.

ABC is a gated community and, except for fire, emergency and public safety personnel, no person shall be permitted to enter ABC except by permission or invitation of an Owner and no Owner shall permit entry of any person to solicit or contact other Owners of Lots. Each Owner will only utilize the front entry gate and be assigned a pass code which he will be responsible to safeguard. In the event such pass code is compromised, such Owner shall immediately contact the Board or its management agent. Each Owner shall be responsible for ensuring that each guest and invitee complies with all rules and regulations of ABC. No Owner, guest, invitee, or contractor shall attempt to by-pass, tamper or interfere with the operation of the community gate and no vehicle over one ton shall pass through the community gate but shall only utilize the separate contractor's gate.

2. Residential Use. All Lots shall be used solely for residential, single family use and occasional guests and for no other purpose. An entire Lot and all buildings thereon must be rented together for single family use to a person or family, and no portion of any building or Lot may be rented separately, nor may any bed and breakfast be operated from any Lot, nor may any timesharing, fraction-sharing, or similar program be permitted on any Lot. All lease arrangements must be in writing and shall include and incorporate the Declaration as an addendum. Owners shall advise all lessees in writing of all ABC rules and regulations and the Owner shall be responsible for lessee's compliance and any violations and fines resulting from lessee's actions. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Owner within 10 days of execution of the lease.

An Owner may engage in a home office business, which is limited solely to the operation of a phone, mail delivered by the United States Postal Service, computer, facsimile, and other non-visible communication devices and equipment. The term "business" as used in this section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. No business-related deliveries, shipments or client meetings are permitted at ABC and any business activity must further comply with the following restrictions: (i) the existence or operation of the business activity may not be apparent or detectable by sight, sound, or smell from outside the Lot; (ii) the business activity must conform to all zoning requirements and other ordinances for the Lot; (iii) the business activity does not involve visitation to the Lot by clients, customers, suppliers, or other business invitees nor any door-to-door solicitation of residents of ABC; (iv) absolutely no signage, logos or other visible identification markers; and (v) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

No business, trade, garage sale, moving sale, rummage sale, estate sale, vehicle sale, or similar activity shall be permitted within the ABC Community. The leasing of a Lot shall not be considered a business or trade within the meaning of this subsection.

3. Vehicles. No more than six (6) licensed motor vehicles may be located on any Lot and no more than two operative and licensed vehicles may be parked outside of an enclosed garage. No construction or work vehicles with a gross weight of over one ton are permitted to be parked or maintained on any Lot except temporary parking as may be required for construction, service and delivery vehicles during daylight hours and for only such period of time as is reasonably necessary. No vehicle repairs or maintenance shall be conducted outside of an enclosed garage or structure. No mobile homes, recreational vehicles, golf carts, boats, other watercraft, trailers, stored vehicles, tractors, motor homes, trucks (other than pickups), inoperable vehicles, equipment, garden or maintenance equipment, camping and recreational equipment, dilapidated or unrepaired vehicles and similar equipment shall be kept or parked on any Lot outside of an enclosed garage or structure overnight nor are they permitted on any private street or association easement, except as provided in paragraph 1. The use or riding of any off-road vehicles, including but not limited to trucks, automobiles, bicycles, motorcycles, snowmobiles, ATV's, dirt bikes, mini-bikes, motorized scooters, go carts, and other recreational vehicles shall be prohibited on any Lot, except for their limited and reasonable use in construction, maintenance or other similar activities.
4. Animals. No more than three (3) dogs, cats or other common household pets may be permitted outside on any Lot and each such pet must be registered, licensed and inoculated, as required by law, and appropriate and regular clean up shall be maintained for such pet. No pets may be kept, bred or maintained on any Lot for any commercial purpose. Any pet causing or creating a nuisance, unreasonable disturbance or inconvenience to other Lots, in the sole discretion of the Board, or that is permitted to leave its Lot, endangers the health or safety of any person, or that has bitten or attacked any person or pet off of its Owner's Lot, shall be permanently removed from ABC upon written notice from the Board. All pets shall be kept on a leash while in any easement or common areas and Owners shall be responsible for immediately cleaning up after their pets in such areas. While not on a leash, pets shall otherwise be appropriately confined to their owner's respective Lot.

No Owner shall raise, breed, or keep any other animals, including fowl, reptiles, horses, swine or cattle on their Lot, unless otherwise stated in Declaration. Capturing, trapping or killing of wildlife within ABC is prohibited, except in circumstances posing an imminent threat to the safety of persons or pets using the Lot or by a licensed exterminator.

5. Defensible Space (Fire Safety). Regardless of whether or not an Owner has commenced construction on a Lot, all Owners are recommended to be responsible to remove dead trees and limbs from trees near a home, clean gutters and roof of needles and leaves, remove small trees and brush that may burn rapidly, haul away garbage and trash, clean up and remove dead vegetation, stack firewood away from home, keep decks free of flammable materials, and continually provide open space around all structures. Owners shall also post their home address where it can be seen by fire fighters and in compliance with the ABC Community Design Guidelines (the "Design Guidelines"). Upon seven (7) days written and advanced notice to an Owner, the Board may contract with appropriate contractors to enter any Lot and complete any work needed to create defensible space and assess such Owner for the reasonable costs of such work. No tree over three (3) inches in diameter shall be removed without approval of the DRC.
6. Nuisances. ABC is intended and designed as a peaceful mountain retreat. No audible power equipment shall be permitted within ABC by lot owners prior to 8:00 a.m. Monday through Saturday or any time on Sunday, to include lawn mowers, blowers, and chainsaws. No audible nuisance or disturbance or noxious or irritating odors or fumes shall be permitted within ABC which is or may be offensive or detrimental to any other Lot or to its occupants. This shall include any nuisance, disturbance or odor from persons, animals, equipment, machinery, motorcycles, vehicles, motorized vehicles, recreational vehicles, motorized scooters, mini-bikes, dirt bikes, any two-cycle engines, lights, televisions, radios, loud speakers, horn, whistles, bells, ringers, car alarms, stereos, electronic devices, audio receivers, musical instruments and/or any other condition, noxious or offensive activity which, in the sole determination of the Board, tends to cause discomfort, annoyance, or nuisance to occupants of any other Lot(s);

No visual nuisance or disturbance shall be permitted within ABC which is contrary to the Declaration and/or the rules of the DRC that may otherwise be offensive or detrimental to any other Lot or its occupants, or that may render any portion of ABC unsanitary, unsightly, offensive, or create a health or safety risk. This shall include any nuisance or disturbance caused by any bright lighting, colored lighting, rubbish, debris, plants, animals, structures, radio towers, or other materials or things placed or permitted to accumulate upon any Lot. Owners may display holiday decorations if the decorations are of the kind normally displayed in single family residential neighborhoods, are of reasonable size and scope, and do not disturb other Owners and residents by excessive light or sound emission or by causing an unreasonable amount of spectator traffic. Decorations shall remain subject to review by the Board and may be disapproved for any reason. Holiday decorations may be displayed in season only from November 1 to January 31 and, during other times of the year, from one week before to one week after any nationally recognized holiday. Permanent outside lighting must be approved by the DRC.

No fires or other hazardous activities shall be permitted on any Lot unless in a fireplace, fire pit, grill, or other contained unit pit approved by the Board or the DRC. No trash, leaves, debris, rubbish, garbage, or other materials may be burned or incinerated on any Lot. At any time and on written and/or verbal notification, the Board may prohibit and/or restrict any and all fires, grilling or similar activities on all Lots and areas within ABC for such period of time as deemed necessary in the discretion of the Board, by applicable fire restrictions and/or drought conditions. No fireworks, fire crackers, sparklers or other pyrotechnics may be utilized at any time on any Lot or anywhere within ABC. ABC shall follow all temporary or permanent fire restrictions adopted by the forest service or other governmental agencies.

No hazardous or offensive activities shall be conducted nor shall any Improvements be constructed on any Lot or anywhere within ABC which are or might be unsafe or hazardous to any person, animal or property or threaten the safety of the occupants of other Lots. No firearms, hunting, bows, arrows, air pistols, radio-controlled or model planes, nor other similar devices may be used or discharged on any Lot or anywhere within ABC. No on-site storage of gasoline, heating, propane, or other fuels, except that a reasonable amount of fuel may be stored on each Lot for emergency purposes and operation of yard equipment, generators, and similar equipment.

7. Unightly Debris or Articles. No stored materials, articles, debris, refuse, garbage or trash shall be visible from any other ABC Lot. Trash, recyclables and debris shall be kept at all times in a covered container and any such container shall be kept within an enclosed structure or appropriately screened from view. Firewood shall be appropriately screened from view. No lumber, grass, shrub or tree clippings, compost piles, animal waste, plant waste, metals, or bulk materials shall be kept, stored or allowed to accumulate on any Lot except within an enclosed structure or appropriately screened from view. All rubbish, trash, garbage and recyclables must be disposed of at least twice per month by an Owner or through an approved removal service and may only be stored between regular garbage pick ups, in approved containers.

No dumping of clippings, leaves or other debris, oil, petroleum products, fertilizer, or other potentially hazardous or toxic substances is allowed in any drainage ditch, stream, pond, or lake, or elsewhere within ABC or on any Lot, except that fertilizers may be applied to landscaping on Lots provided that care is taken to minimize runoff.

8. Improvements. No "change in the existing state" of any Lot shall be made or permitted, nor shall any Improvement or structure be initiated or constructed on any Lot, without the prior, written approval of the DRC. Without limiting or modifying the definitions of such terms under the Declarations, change in the existing state and Improvement shall include any excavation, digging, construction, landscaping, clearing, obstruction or re-channeling of drainage flows, installation of drainage swales, storm sewers, or storm drains, change in appearance and the permanent or temporary placement of any fencing, building or structure of any kind or nature whatsoever on any Lot. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment; clotheslines; swimming pools; and hedges, walls, dog runs, animal pens, or fences of any kind. No existing Vegetation over three (3) inches in diameter shall be removed without approval of the DRC.

No Improvement on any Lot shall be permitted to become rusty, dilapidated or otherwise fallen into disrepair as to create a dangerous, unsafe, unsightly, or unattractive condition. Upon prior written notice to such Owner and completion of the ten day exchange of information period required by state statutes, the Association may correct such condition and enter upon such Owner's Lot for the purpose of doing so and such Owner shall create a lien in the same manner as other Assessments as set forth in the Declaration. Such Owner shall be personally liable, and his property may be subject to a mechanic's lien and/or other lien, for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each such Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand thereof or the amounts may, at the option of the Board, be added to amounts payable by such Owner as a regular Assessment.

Maintenance of Buildings and Landscaping. No Improvement upon any Lot shall be permitted to fall into disrepair and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof. Any maintenance and/or repair of any Improvement shall not alter the appearance, color, or finish, of said Improvement without prior review and approval of the DRC.

9. Signs. "For Sale" signs must adhere to the following criteria:
- a) Only one "for sale" sign is allowed. The size of the "for sale" sign may not exceed eighteen by twenty-four inches
 - b) Only one sign rider is allowed. The size of the sign rider may not exceed six by twenty-four inches
 - c) The sign may be placed indoors or outdoors, but must be on the Owner's property.

Signs must be removed from all Lots within two weeks after the close of escrow of the property.

10. Satellite Dishes. Unless governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, no antenna or other device for the transmission or reception of television, internet or radio signals or any other form of electromagnetic radiation or any associated equipment shall be erected, used or maintained outdoors on any Lot or Parcel or Common Elements, whether attached to a building or structure or otherwise, so as to be Visible From Neighboring Property or the street, unless approved in writing by the Design Review Committee. Any device governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, shall be affixed to the residence and mounted, to the extent reasonably possible, so as to not be Visible From Neighboring Property or the street.
11. Landscaping. Each Lot shall remain in as natural a condition as possible to preserve the natural, aesthetic condition of ABC and any changes or modifications shall be approved in advance by the DRC. In the event any Owner shall fail to install and/or maintain landscaping in conformance with such approvals or restrictions, the Board, upon prior written notice to such Owner and completion of the ten day exchange of information period required by state statutes, shall have the right to correct such condition and to enter upon such Owner's property for the purpose of doing so, and such Owner shall promptly reimburse that Association for the cost thereof. Such cost shall create a lien enforceable in the same manner as other assessments set forth in the Declaration.
12. Fencing. All fencing, screening, and dog runs must be in compliance with the current Design Guidelines in effect.
13. Flags. In accordance with State Statute § 33-1808, and as it may be amended, Owners may display the American flag, the POW/MIA Flag, the State Flag, an Indian Nations Flag, or an official or replica of a flag of the United States Army, Navy, Air Force, Marine Corps or Coast Guard in the following manner:
 - a) Placement of flags, poles, number of flags
 - i) Prior to installing a flagpole on any lot, the Owner of said lot must, in writing, submit a request including specific plans detailing the height, type, location, method of installation and color of the flagpole to the DRC for approval.
 - ii) Only one (1) flagpole of any type is allowed on a Lot.
 - iii) Flagpoles must be attached to structures, not free-standing poles.
 - iv) The length of the flagpole shall be no greater than five (5) feet in length.
 - v) Flags may be a maximum of sixteen (16) square feet.
 - vi) Only cloth flags are permitted and must be displayed on a flagpole. For example, flags may not be displayed by attaching flat to a wall or flat on the inside or outside of a window, or hanging from eaves or on a garage door. Nor is any other type of flag permitted, such as flags made solely out of lights or paint or other materials.
 - vii) Flags may not be placed on the Common Area.
 - b) The American Flag
 - i) Shall be displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).
 - ii) Shall only be displayed from sunrise to sunset.
 - c) The United States Army, Navy, Air Force, Marine Corps or Coast Guard
 - i) Shall be displayed in a manner consistent with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 United States Code sections 4 through 10).

14. Construction. Construction of all Improvements on any Lot shall be pursued between the hours of 7 a.m. to 6 p.m. on weekdays and Saturdays, unless otherwise necessary and approved in advance by the Board, the DRC, the President or any management agent thereof. Reasonable accommodations shall be made to permit necessary construction activities to occur within ABC that may otherwise be considered a nuisance if it is necessary to accomplish and carry out the approved plans and Improvements in a timely and cost-effective manner. No Owner shall allow any person or persons constructing Improvements (or providing similar services) to deposit rubbish or debris of any kind upon his Lot or within ABC during construction, allow any litter to accumulate, allow dogs or other animals to run free or allow any unnecessary, audible nuisances (e.g., loud music, radios, walkie talkies, or horns) to occur during construction.
15. Fines and Special Assessments If any Owner, his family, or any licensee, lessee, or invitee is in violation of these Rules, the Board may, in addition to any other legal remedies it may have and pursuit of any and all damages incurred, and upon completion of the ten day exchange of information period required by state statutes, impose a reasonable fine upon such Owner, the amount of which shall be determined by the Board, and/or may suspend the right of such person to use the Association Easements under the terms and conditions set forth in the Declarations.

Fines assessed by the DRC are in differing amounts and may be found in the Design Guidelines.