

Legally Speaking...



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The True Purposes of Rules

By Adam J. Cohen, Esq.

American author Tom Wolfe once said, “If a conservative is a liberal who’s been mugged, a liberal is a conservative who’s been arrested.”

It’s not surprising that a person’s opinion on how strictly a rule should be enforced depends on which side of the dispute that person happens to be on. As an attorney for community associations, I see this all of the time. A resident will complain about someone else’s loud music, but is surprised when neighbors complain about his own party. Owners want late fees waived when they forget to pay their own common charges on time, but grumble when delinquencies impact the community’s annual budget. Perhaps the most common defense asserted by someone who has clearly broken a rule is that the Board doesn’t adequately enforce the rules against other people.

Boards must walk a fine line when exercising their broad discretion in choosing what rules to enact, how to apply them in particular situations, and the severity of the sanctions to impose. On the one hand, Boards want to be reasonable and even-handed, and to appear so. They also want to avoid unpleasantness with their neighbors if possible. On the other hand, ignoring misconduct actively encourages more of it, directly affects quality of life in their community, and impacts the finances that everyone has put in their care.

This reveals the true purposes of rules in a community association. Ultimately there are only two: safety and money. Rules on things like speed limits, structural renovations, and fire hazards are primarily concerned with physical safety, while rules on other issues like landscaping, noise, and building aesthetics are designed to improve property values. Maintenance standards are also aimed at preventing monetary losses resulting from property damage, legal liability, and higher insurance premiums — or at least shifting those losses away from the community’s budget and instead back to the individuals responsible for causing them.

Living in a communal environment like a condominium means sacrificing some individual liberties in exchange for a number of conveniences and financial benefits. Although you aren’t free to paint your house bright pink, neither is anyone else, and the exterior uniformity makes every home on the street more valuable for resales and mortgages. The concept of rules in a homeowner’s association is similar to zoning restrictions and other laws which apply to other kinds of living arrangements. For example, laws that prevent strip-mining, driving at 60 miles per hour, or building a skyscraper on a residential street



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are also motivated by safety and property values. In a homeowner’s association, the decision-makers on what these restrictions will be and how they will be enforced are not far-away politicians but the people living there themselves. The impacts of violations are, likewise, felt directly by people very close by. They need and deserve rules that protect them, their families, and their property.

Understanding the true purposes of rules – safety and money – is important for both Boards and unit owners alike. When writing rules, deciding on penalties, and mediating disputes between owners, Boards should maintain perspective and focus by remembering the rationale at stake. The goals are protection and deterrence, not profit or punishment. Likewise, residents can appreciate the need for restrictions based on the consequences of not having them. Littering, speeding, leaving a child unsupervised, not fixing a leaky pipe, and frequent short-term rentals can put people at personal and financial risk, especially if allowed to become the norm. The question every resident needs to ask is not “what if I want to do what this rule prohibits,” but rather, “what if everyone did what this rule prohibits?” ■

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