

By Barbara Kirchheimer

CURIOUSER & CURIOUSER

Illustration By Greg Hargreaves

Governing documents and rules can sometimes seem strange, illogical or even nonsensical. It might help to understand where they came from. If that doesn't work, you might want to change them.

*i*n one Alexandria, Va., condominium complex, children under age 14 must be accompanied by an adult to use the tennis court. Yet inexplicably 11-year-olds can use the pool by themselves.

Residents in some Scottsdale, Ariz., communities are subject to rules for carports and pools—when their communities have neither.

And in Chesterfield, Va., board members in one town-

house community have taken on feline police duties, requiring mug shots of residents' cats to be kept on file in case of improper outdoor activity. What's next, a database of paw prints?

Seemingly contradictory, unenforceable or bizarre rules may make community association board members feel like Alice tumbling down the rabbit hole into a world where nothing makes sense.

ODD RULES can end up in a community's governing documents or rule book for a variety of reasons. But it can take a bit of sleuthing to track down how they got there. A busy attorney may use one community's declarations as a model for another community's without making changes to reflect differences between them. What may result, if nobody is paying close attention, is a document that can undermine the credibility of the association, or at least drive residents as mad as a hatter.

Certain rules that may seem odd or annoying to residents may reflect agreements developers made with municipalities to get a green light to build the community in the first place. Take, for example, a community association in Bucks County, Pa., that had a rule in its declarations restricting the wattage of all exterior lighting.

"Now how in the world is a manager supposed to enforce that one?" asks Steven Brumfield, CMCA, AMS, PCAM, vice president of operations for Wentworth Property Management's lifestyles division in Valley Forge, Pa., and a CAI board member, who oversaw the property.

Short of having community managers climb light poles to check each bulb, it might be a little difficult. But it turns out there was a reason for the provision. The community is located in a rural region, Brumfield says, and the planning commission was concerned that the area's character would change if the new community lit up the night sky.

Brumfield also recalls a community of townhouses in northern New Jersey, where residents were prohibited from watering their lawns with irrigation systems. Residents were perplexed at why they had to use hoses instead. According to Brumfield, the municipality had insisted the provision be added to the community's CC&Rs because local authorities were concerned about putting too much of a strain on municipal wells.

"But of course that wasn't specified in the document," he says, "and so the owner looks at the document and says 'That's completely ridiculous that I can't have an irrigation system.'"

Another example comes from Virginia attorney Todd Sinkins, who describes a client community that has some frustrating parking rules. The city of Alexandria, Va., required the community of 1,800 condominiums and townhouses to set aside a certain percentage of its parking spaces for visitors, and the rule was spelled out both in the community's CC&Rs and its land-use approvals, he says. The result is hundreds of prime parking spaces that routinely go unused and are annoyingly off-limits to residents.

Because the rule is not only built into the CC&Rs, but also into the community's zoning ordinance, if the association doesn't enforce the parking restrictions, the city can argue that it is violating its zoning ordinance, Sinkins says. To change the zoning, the city council would have to amend the land-use approvals. To change the CC&Rs, 75 percent of the homeowners would have to approve. Both are difficult to do. "The challenge for that client is to regulate their own residents who violate the CC&Rs," Sinkins says.

WE'RE ALL MAD HERE

Developers commonly insert restrictions into a community's governing documents that are intended to enhance and protect property values—

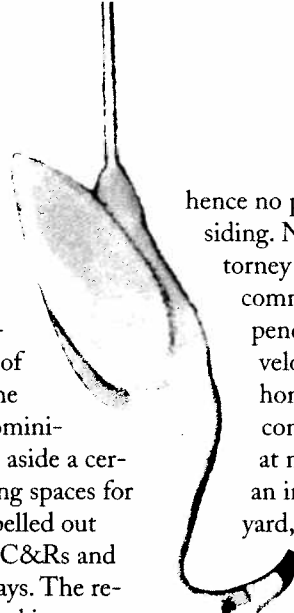
STAGNANT

Strange rules make it into association governing documents and rule books in a variety of ways. Understanding their history can make enforcement easier.

Seemingly arbitrary rules sometimes are included at the behest of developers or local governments.

Attorneys may produce carbon-copy governing documents for several associations with different amenities, causing confusion and aggravation.

If you can't live with the rules, you can try to change them. But sometimes governing documents make that difficult to do.



hence no purple doors or hot pink siding. Nevertheless, Houston attorney Roy Hailey says rules for communities can vary greatly depending on the goals of the developer and the prospective homeowners. Residents in one community might take offense at not being able to display an inflatable snowman in their yard, but residents in another might be perfectly content with the restriction. "It depends on your development, what you can get away with, and what your residents will tolerate," Hailey says.

Some of these architectural or landscaping restrictions may seem quirky or capricious, especially when they regulate the smallest of details, such as how many potted plants owners can place by their front doors.

Hailey says he was surprised when a developer of an upscale, gated community wanted the design guidelines to include a requirement that all units have shutter dogs. No, this was not a pet restriction. If you don't know what a shutter dog is, don't worry. Hailey had to look it up too. They are the attachments that hold shutters open against a building. The developer wanted to make sure each unit had working—and not just decorative—shutters.

Then, there are times when omitting the details can cause problems. Take, for example, David Larkin's unexpected foray into fountain shopping.

Larkin, the general counsel for ancillary businesses for Toll Brothers, one of the nation's largest developers, found himself in the uncomfortable position of mediating a fracas that had erupted between two neighbors after one of them erected an 8-foot fountain in his front yard. As Larkin soon discovered, one person's artistic expression can be another person's nightmare.

"Our documents at that time didn't expressly address the word 'fountain,'" Larkin says. "They addressed landscaping and improvements. One wondered whether a fountain was an improve-

ment, which required approval, or if it was landscaping, in which case you just had to make sure it was done nicely.”

The fountain happened to be a few doors down from the developer’s sales office, and the developer was still trying to sell a few lots within the community, so Larkin was enlisted to help the resident shop for an alternative fountain that would be acceptable to the neighbor. Unfortunately, the fountain owner did not share Larkin’s tastes, they could not agree on a substitute, and the neighbors continued to squabble. Ultimately, Larkin says, he washed his hands of the matter. (Not in the fountain, of course).

“Our lesson was to be clearer on fountains, which we are now,” he says.

Among community rules, few stir up

being known as the gated community with dog fights in someone’s garage. But when it comes to preventing these scenarios, attorneys and managers suggest that regulating offensive pet behavior is more effective than limiting the number or weight of pets. A 4-pound dog that yelps all night can be far more disturbing than an 80-pound dog that lies around all the time, says Larkin.

Such rules also put attorneys in the position of having to define “small” and “large” animals, not to mention pets versus livestock. This can be more challenging than it may first appear. Remember when potbellied pigs were in vogue as house pets?

Sinkins, the Virginia attorney, says he once had a client who defined “small” dogs as those 75 pounds or less.

maintained by the association, because in the documents it said it would be maintained by the association,” Hanley says. Oops.

This kind of lax attention to detail is a pet peeve of Marjorie Jean Meyer, CMCA, PCAM, a vice president of As-socia Inc., a large national community management company. Such boilerplate governing documents are the reason many Houston associations hold their annual meetings on the same night—the third Tuesday in January. Meyer says she once had to attend five meetings in one night because attorneys were spitting out the same documents to all associations, she says.

The key to well-crafted governing documents is flexibility, Meyer and others say. “Boards need to be able to re-

Boards need to be able to respond to changing conditions without having to deal with amending the documents.

as much emotion—and potential headaches for managers—as pet restrictions. “Pet rules are always difficult to enforce,” Brumfield says. “Sometimes it’s because it’s difficult to know whose pet is doing what, or to prove it.”

But proving it is just what the association at Branch’s Trace, a 103-townhouse community in Chesterfield, Va., tried to do when it made a rule that residents must register their cats with the association and provide a photo, description of the cat and proof of inoculations. There had been complaints of cats sitting on cars, digging up dirt and using people’s flowerbeds as litter boxes. “We’re out there to protect property values,” says Robert Small, CMCA, AMS, PCAM, the community’s manager. “All the problems stopped once we got the registration figured out.”

Still, he says, he doesn’t plan to spend his time roaming the property looking for cats making mischief. “I hope we won’t hear any more about it.”

Not many developers would relish having a dog kennel on their property, or

“In that case,” he says, “it was because the president of the board happened to own a golden retriever.”

UNCOMMON NONSENSE

Sometimes rules can become downright nonsensical when attorneys who churn out governing documents use one community’s CC&Rs as a template for others without checking the details. Regional real estate booms can exacerbate the problem, says Jim Hanley, president of Rossmar & Graham, a Scottsdale, Ariz., management company. Suddenly, you have an explosion in the number of planned communities, and there just isn’t time to customize governing documents. For example, Hanley occasionally deals with communities with no carports that have rules for carports in their CC&Rs, or communities without a common pool whose documents include rules for use of the pool. This can sometimes lead to serious misunderstandings.

“We’ve had cases where a homeowner would think we’re referring to their particular pool, that it would be

spond to changing conditions without having to deal with amending the documents,” she says. This applies especially to matters such as maintenance fees. Some documents require unit owners to vote for even the smallest increase in assessments. “Especially in this economy, they’re going to say no, when the association is suffering even more,” Meyer says.

OFF WITH THEIR HEADS

Part of the reason flexibility is so important is that it’s often extremely difficult to amend an association’s CC&Rs, or declarations. Requirements vary greatly by community and by state, but all document amendments must be approved by some minimum percentage of owners.

Documents in older communities, especially, can be difficult or even impossible to change because they require 75 percent or even 100 percent of unit owners—and sometimes even the mortgage holders—to agree. Compounding the problem is the simple fact

that people move frequently—and take their votes with them. You may have 75 percent of the owners agree today, but 72 percent tomorrow when someone sells a unit.

Most attorneys now recommend establishing a lower threshold, such as a simple majority of unit owners, to amend the CC&Rs. Some states have even stepped in, sometimes prompted by a community that is having difficulty amending its declarations.

Colorado, for example, has set a floor of 51 percent and a ceiling of 67 percent to make changes to the governing documents so communities need only a simple majority of owners to amend covenants, says Elina Hindley, an attorney in Arvada, Colo.

Covenants should be general enough that they don't need to be revised often, Hindley says. "We want them to be able to flow with the times."

But no declaration is impossible to

amend, says Virginia attorney Robert Diamond, who is a member of CAI's College of Community Association Lawyers (CCAL). "The key is you have to convey the message and be persuasive about why this matters," he says.

Depending on state and community requirements, that can mean holding special meetings to discuss the change, sending out letters to residents, explaining the change in a community newsletter, or even going door to door to make a case.

Most attorneys these days suggest that extremely specific restrictions should be put in rules and regulations, instead of the covenants. Depending on the community and the state, such rules can often be changed with a simple majority vote of an association's board, which allows a community to evolve with the times.

Even the most meticulously crafted covenants and rules cannot prevent all



of the altercations that inevitably arise in communal living. "You're never going to have a perfect set of docu-

ments; even with a perfect set of documents, you'll have an owner who says it's not perfect," says Jeffrey Van Grack, an attorney in Bethesda, Md., and a CCAL member. But irrational or poorly thought-out rules can make disagreements even more difficult to resolve. "When you take a problematic rule and combine it with a problematic owner or problematic board, it becomes totally problematic," he says.

While Alice had to confront the Mad Hatter or the Queen of Hearts, your occasional trip down the rabbit hole can be less unsettling if you understand where your community's bizarre rules come from and what you can do with them. **cg**

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