

When they Break the Rules: Board Options for Difficult Residents

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Caveat!



Ideas and Instruction only!

You should request the
assistance of a lawyer for any
client who may need legal representation!

This is not legal advice!

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Roadmap



- Overview of Rules
 - Nuisance
 - Disturbance
 - Crime
- Types of Rule Enforcement (and What Not to Do)
 - Owner Rule Enforcement
 - Eviction Process for Tenants
 - Ejection Process for Tenants, Guests, & Unauthorized Household Members

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Where Do Rules Come From?

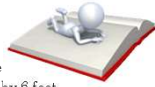


- **Declaration:** Once upon a time, each Century Village community created a Document – the “Declaration of Condominium” that formed the basis of the Association
- **Amendments:** Properly voted upon – per Florida statute, 75% of membership. Declaration may provide less. Update your docs to make amendments easier!
- **Rules and Regulations/Board Resolutions:** May interpret, clarify and assist in the administration of the CC&Rs.

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What are Some Typical Rules?

- **Per the Declaration:**
 - No more than two pets
 - Guests must register with the gate guard
 - Tenants must be approved/credit score requirements
 - Owners are responsible for their yards
- **Per the Rules and Regulations:**
 - Owners must clean up after pets
 - Grass can't be more than 6"
 - No blocking stairways, no toys left outside
 - Flagpoles must be no larger than 4 ½ feet by 6 feet



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Preventing Violations: Screening

- If the Declaration requires it, tenants & new household members must be approved by the Association.
- Association may have basic requirements:
 - Credit score
 - Criminal background check on all household members
 - Proof of income (rent no more than 30% of income)
- If the Declaration allows it, rules can be enforced against **Tenants**.
 - Rule Enforcement
 - 7 Day Notice of Non-Compliance
 - 7 Day Notice of Termination
- Also, you may enforce against the owner.



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Rule Violation: Unapproved Pets

- The Declaration can state pet rules (i.e., dog weight rule).
- The Rules and Regulations can expound upon those rules (i.e., clean up after your dog...)
- Breed restrictions tougher to enforce than size and limit, but are possible.
 - Pit Bull, Rottweiler, Akita, Bernese, Canary Dog, Chow Chow, Doberman, Husky, Karelian Bear, Rhodesian Ridgeback, and Russo-European Laika.
- CANNOT EVER refuse or request a pet security deposit for a service or companion animal!!

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Rule Violation: Abusive Behavior

- The Declaration gives owners the right to “peaceful enjoyment” of their property
- When someone is yelling at others or harassing others in a way that leads to distress, the association can step in to enforce the rules.
- If this happens at board meetings, you can set rules:
 - 3 minutes of speaking per person
 - “Broken record” technique
 - Hire off-duty officer
 - If someone won’t stop yelling, suspend the meeting and everyone leaves
 - If needed, call the police

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Rule Violation: Harassing those in Protected Classes

- Fair Housing protects vulnerable individuals in protected classes such as:
 - Disability
 - Race
 - National Origin
 - Sexual orientation/Gender/Marital Status
- When someone in the community is harassing a person in a protected class, the association MUST take action!

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Rule Violation: Hoarding

- Hoarding creates health hazards and can cause pestilence.
- The Declaration can prevent junker vehicles and limit objects in the common elements.
- Additionally, the Association can enter the unit for inspection *if there's an articulable belief of violations that threaten others in the community.*
- Code enforcement may get involved if you report it.
- A lawyer letter and some coordination can often fix this!

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Rule Violation: Aberrant Behavior

- Nudity
 - Call the police, this is illegal. (And yes, get a picture if it's outside.) Rule enforcement can be started.
- Dementia / Schizophrenia
 - Try to involve family. If family can't be reached, baker act or elder services. Your lawyer can help with this too.
- Drugs/Alcohol
 - Your lawyer is your best friend!
- Adult children with behavior challenges
 - Your lawyer can send a strong letter and often the family will remove the occupant.

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Rule Violation: "Remaining" Family after a Death

- Sometimes an occupant inherits the property, doesn't pay the bills, and engages in a lot of rule violations. The person faces homelessness, and will do everything to stay as long as possible.
- Do collections – this is the easiest way to remove someone, but it holds the risk that they might pay in the end, and you're stuck with someone who is engaging in violations
- Injunctive relief – the lawyer can ask a judge to make the person stop violating the rules
- These cases can be expensive and a bit stressful for the community, as they may last a long time and be expensive.

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Rule Violation: Criminal Behavior

- Call the police immediately
- Call the lawyer and do your own rule enforcement – the standard for a criminal conviction is much higher than that of a rule enforcement violation
- DO NOT ENGAGE. Don't yell or force your way into a door.

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Selective Enforcement

- If Associations do not enforce the rules against everyone, they may lose the right to enforce against anyone!
 - Satellite Dishes
 - Home Businesses, fences, decorative items, solar panels.
 - Parking violations
 - Vehicle registrations
 - Bad tenants
- **Best bet: no exceptions except for articulable hardship!**



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What Kind of Evidence to Collect?

- Pictures
- Diaries/Documentation
- Written Complaints



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When Rules are Violated: Eviction

- All Evictions must be premised on a proper notice.
 - Three Day Notice, Noncompliance Notice, etc.
- Parties skip personal service—much faster!
- Parties can enter into a Stipulated Agreement that is supervised by the Judge.
- Final Judgment entered (and writ of possession issued if):
 - Parties don't respond
 - Association wins hearing
 - Tenant defaults on stipulated agreement



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How Can Associations Evict Tenants?

• Sample Language:

The parties recognize that the Association, as agents for the landlord/Owner, has the power to evict the tenants and occupants under Chapter 83, Florida Statutes, for violations of the Association Documents and reasonable Rules and Regulations, as amended from time to time.

In the event that any tenant(s) of any Unit is in violation of any provision contained in the Association's governing documents, or any laws or ordinances, the Association shall have the right to evict the tenant(s) as if the Association were the landlord under such lease and levy an Individual Assessment against the Owner and Unit. In the event that the Association initiates eviction proceedings, the Owner of the Unit that is the subject of the eviction proceedings shall be liable to the Association for all attorney's fees and costs related to such eviction proceedings, and any unpaid attorney's fees and costs shall be levied against the Owner and Unit as an Individual Assessment and shall be a lien upon the Owner's Unit.

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Types of Statutory Notices

- Nonpayment
 - Rent only
- Noncompliance
 - Housekeeping, unauthorized household member
- Termination
 - Significant Noncompliance
 - Fees, Housekeeping, Trespass, etc.
 - Month-to-month tenancy
- Rent Withholding
- Inspection



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When Rules are Violated: Fine Notice

- 14 Day Notice of Fine Meeting
- Must provide an opportunity to cure
- Must inform of possible penalty. Generally, Associations may fine (pursuant to statute) \$100/day or violation, and up to \$1,000 per type
- *Gotta make sure they got the notice*



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When Rules are Violated: Fine Collection

- **Condominiums** – fine cannot become a lien against the property; collect at estoppel or through a small claims action:
 - Collect assets from bank account
 - Garnish wages
 - Sell car
- **HOAs** – if fine is \$1,000.00 or more, it can become a lien against the property.



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When Rules are Violated: Arbitration/Mediation



- If fining doesn't work, Condominium Associations can go to arbitration or **pre-suit mediation**.
- Very similar to court, require a pre-arbitration notice with an opportunity to cure.
- The action proceeds like a lawsuit, and can end with a written opinion.
- When against the Association, insurance may defend.
- Arbitration is non-binding. If the losing party wants to appeal, they can file a lawsuit.

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When Rules are Violated: Lawsuit

- If rule violators continue to violate in HOAs, the HOA can file suit in county or circuit court to enforce the violations and the fines.
- Condo Members may proceed to file a lawsuit if they disagree with the Arbitrator's decision.
- **Lawsuit options include:**
 - Ejection
 - Breach of Contract
 - Injunction
 - Request for Specific Performance
- Prevailing party is entitled to attorney's fees. Unpaid attorneys fees may be basis for collection action and foreclosure.



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The Eviction Process



- Who qualifies:
 - Tenants, when the documents have been updated
- STEP 1: Notice
 - All evictions are premised upon a Notice. Associations can do evictions if permitted in their Docs!
 - It is absolutely essential that notices be facially correct.
 - If there is an error in the Notice, the Judge will most likely dismiss the action, regardless of the underlying merits in the case.

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The Eviction Process

- STEP 2. Filing the Complaint
 - An eviction is initiated through the filing of a Complaint, outlining the grounds by which a landlord is entitled to retake possession of the leased premises. There is a fee for filing the case in court, and it varies by county.



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The Eviction Process



· STEP 3. Serving the Complaint

- Once filed, the Complaint is then served on the Tenant by an independent Service Processor, or by a sheriff deputy. The service processor must make several attempts to personally serve the Tenant. If unsuccessful, they may post it on the door.

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The Eviction Process

· STEP 4. The Tenant's Response

- If the Tenant files a reply in the case, it is called an Answer. Afterward, the Judge will typically schedule a mediation and final hearing, to be held within the following few weeks.

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The Eviction Process

· STEP 5. Mediation

- Mediations are court-appointed meetings that are facilitated by an unbiased third-party, the Mediator. Typically held just prior to the Final Hearing, landlords and tenants very often resolve the dispute without the need for a final hearing.



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The Eviction Process

- STEP 5. The Stipulated Agreement
 - Stipulated Agreements are binding contracts supervised by Judges.
 - If the Tenant fails to abide by the terms of the Stipulated Agreement, the Landlord writes a letter (called an affidavit) to the Judge.
 - The Judge may enter a Judgment for possession and money against the tenants, without a final hearing.

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The Eviction Process



- STEP 6. Final Hearings
 - When landlord and tenant disputes are not settled in mediation, they go to the Judge to make a determination as to whether the Tenant should be evicted.
 - If the Judge finds in favor of the Landlord, the Tenant will be forced to move by the Sheriff.
 - If the Judge finds in favor of the Tenant, the Landlord must start all over again to evict the Tenant, correcting whatever was wrong in the case.

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Alternatives

- Non-renew lease (if allowed)
- Convince owner to do an eviction
 - Requires some rule enforcement action anyway



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