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**HOMEOWNER ASSOCIATION
PROBLEM SOLVING AND RULES**

Kazakstan

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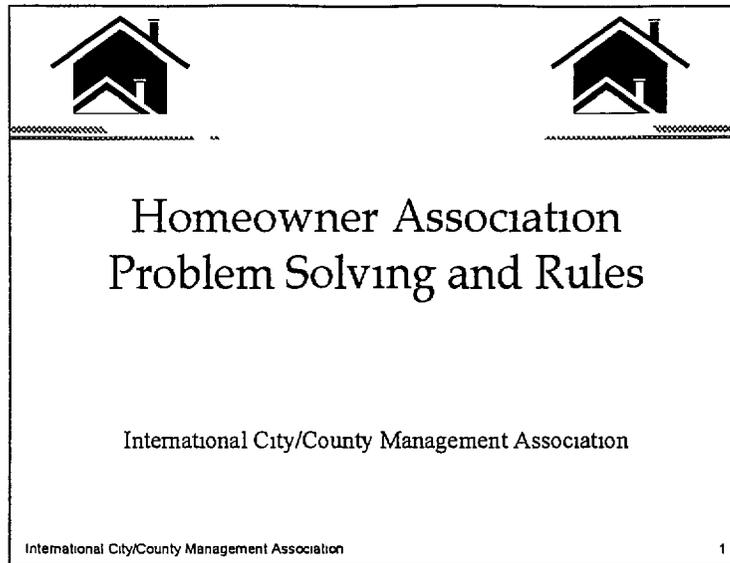
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ABSTRACT

This is a course instructor's guide for "Homeowner Association Organizations and Operations" prepared by Paul Mengert and John Stern, ICMA consultants in Kazakstan, under Task Order No 110. It includes the course agenda, course protocol and procedures, course format, and sample exercises for course participants.



Course Agenda

- 9 30 Welcome and Introductions
- 10 15 The Seven Steps to Problem Solving
 - Exercises
 - Identify Problems
 - Define Problems
- 11 05 Tea Break (15 minutes)
- 11 20 Exercises
 - List Five Solutions
 - Analyze Possible Solutions
- 1 00 Lunch Break (1 hour)
- 2 00 Exercises
 - Select Solution(s) and Explain Implementation Plan
- 2 30 Seeking Compromise
- 2 35 1 Purpose of Rules
 - 2 Governance by Rules
 - 3 HOA Rule Structure
 - 4 Authority to Make Rules
 - 5 Rule Making
 - 6 Nine Steps to Developing Rules
 - 7 Typical Rules (refer to sample rule in this section)
- 3 30 Tea Break (15 minutes)
- 3 45 Remedies
 - Rule Enforcement

3 55	Mock Hearing
4 30	Summary



WELCOME

International City/County Management Association (ICMA), funded by the United States Agency for International Development (USAID), offers a complete set of courses on starting and operating Homeowner Associations (HOAs) These courses are intended to teach people how to be responsible HOA board members

This course is designed to teach the Organization and Operation of Homeowner Associations to help HOA Directors fulfill their duties and responsibilities It is not designed to teach organization skills or to teach people to become HOA managers

ICMA's other courses on HOAs include

- Overview and Formation of HOAs
- HOA Organization and Operation
- HOA Maintenance and Contracting
- HOA Budgeting and Accounting

Persons who serve as HOA Chairmen, Board Members or Managers, and active HOA participants or local officials involved with HOAs should consider taking the complete set of courses

Course Objective

This course is designed to acquaint the participants with approaches to problem solving, rule making, and rule enforcement

This course is taught largely through facilitation, whereby course participants are asked to think about problems in certain ways. Approaches are suggested which lead participants to an understanding of the following subjects

- Analyzing a Problem
- Seeking Compromise
- Purpose of Rules
- Governance by Rules
- Rule Making
- Hierarchy of Laws and Rules
- Remedies
- Rule Enforcement

THE SEVEN STEPS TO PROBLEM SOLVING

ISSUE How to resolve conflicts and difficult situations

One of the key jobs of Board of Directors members is to solve problems. Many associations pass rules either to establish a standard of conduct or to solve a particular problem.

Before passing a rule it is important to make sure the problem has been properly identified.

1 **Identify problems** - It is important that the Chairman and Board of Directors be cognizant of problems in their HOA. When possible, a proactive approach should be used to identify, understand and solve problems. Problems are often smaller and easier to solve if they are identified early and acted upon quickly.

2 **Define the problem** - Determining exactly what the problem is can be the most important step in developing a satisfactory solution. Often the real problem is not obvious, and considerable study may be required to ascertain the exact nature of the problem. The advice of professionals may be needed, or interviews with owners, or some other approach may be required.

Some problems can be solved in a simple way. For example, owner A may complain that owner B's children play on the steps and make too much noise, owner A wants the homeowner association to pass a rule which forbids children playing on the stairs. The Board of Directors decides to do some investigation by talking to owner C. Owner C is informed that complaints have been received about owner B's children playing and making noise on the stairs, and owner C is asked if that behavior has been noticed. Owner C says, "Oh, I'll bet owner A is the one who made the complaint. Ever since owner B had that party last month and didn't invite owner A, she has been mad at owner B. Those are some of the most polite and well-behaved children I have ever seen. They never make any noise."

This provides information that the problem may not have been exactly as described. The Board of Directors (or Chairman) may go further in the investigation and visit owner B to explain that a complaint has been received about their children playing on the stairs and making too much noise. Owner B then says, "Oh, I believe owner A is still mad at me for not inviting her to my party last month. I need to talk to her." The next day owner A calls to say she made a mistake and withdraws her complaint and request for a rule change.

Other problems are more complex and may require other types of investigation. When receiving a report, it is best to ask pertinent questions. Owner D may call to say, "I've got a roof leak and you need to get someone up here to fix it right away." The person receiving the call might say, "Where are you seeing the water coming in?" Owner D responds, "Well, I haven't actually seen any water, but I was on my back balcony and I got wet." When owner D is asked, "When did this happen?" he responds, "This morning." The chairman knows that it hasn't rained today, so he or she tells owner D that the problem will be checked right away. After arriving, the chairman asks owner D to show where he was standing when he got wet, and it is determined that the water had to come from the balcony of the unit above D. The chairman goes upstairs and talks to the owner of the unit above D and explains that the downstairs neighbor got wet this morning, and asks to look at his balcony to see if the source of water can be determined. The Chairman notices that the owner of this unit has plants in pots on the balcony, and the soil in the pots looks damp. The Chairman asks the owner when the plants were last watered and finds out it was this morning. The pots have holes in the bottom to allow excess water to drain. The Chairman asks the owner to place something under the pots and to please be careful when watering his plants so as not to get water on the downstairs balcony. The Chairman then goes back to owner D and explains what caused the problem and the solution.

It may also be necessary to get engineers, plumbers, electricians, architects or other professionals involved to determine the exact cause of some problems.

3 Develop Many Possible Solutions - Once the problem has been identified, it is best to write down a list of as many solutions as possible. While forming this list there is no attempt to determine which suggested solutions are most cost-effective, or productive, even possible. The idea is simply to list a variety of alternatives that could possibly solve the problem. Even ridiculous ideas are welcome and should be included, because sometimes they lead to plausible solutions. No idea is a bad one in this phase of problem solving. It is best to have several different solutions to consider, using a variety of approaches, e.g., make a rule, seek a compromise, fix it, remove it. The sorting out of the "good" and "bad" solutions will come in the next step.

For example, some of the possible solutions for a roof that leak are:

- Put a bucket under the leak
- Fix the leaking area with tar
- Install a new roof
- Remove the antenna that caused the leak, and put plastic over the hole
- Put glue in the hole
- Cover the hole with metal
- Do nothing because it does not affect the directors

4 Evaluate Positive and Negative Effects Of Each Possible Solution - During this step the "pros" and "cons" of each possible solution to the problem are examined and listed. Then elimination of those which are not feasible begins. Those which are not legal (if any) should be eliminated first, then those which are obviously cost-prohibitive are ruled out. For instance, if one of the alternatives to solve the problem was to tear down and rebuild the building, that one can be eliminated at this stage because it is obviously too expensive. However, if the Board is not sure whether or not an idea is cost-prohibitive, they should leave it on the list as a possible alternative at this point.

5 Select Best Option(s) - The next step is to select the best option or options. More investigation, such as obtaining price estimates from contractors may be needed at this point. Several questions need to be answered regarding the implementation of each of the remaining possible options, such as

If this solution is adopted, what will be the impact on the owners? The building? The utility lines?

Will this be best for the homeowner association in the short term? In the long term?

What is the cost to do this now? Will there be additional costs in the future and, if so, how much?

Does this solution create more problems while solving the present one? If so, what are those problems?

The answers to these questions and others will help the Board of Directors to select the best option or options. It may become evident that more than one action is required to solve the problem and to prevent additional problems. Also, the Board should **not overlook communications**. It is very important to consider the impact the solution(s) will have on all the owners and how well this is communicated to them can make the solution “successful” or “unsuccessful.”

6 Implement the Solution - There may be several steps involved in implementation, depending on the nature of the solution. If construction is involved, what steps will need to be taken to protect the area around the construction? If access to the building will be affected, what can be done to minimize the impact? If utilities will be interrupted, what other arrangements can be made to minimize the impact of the disruption on the owners and the utilities?

If a new rule or procedure is to be adopted, the rule or procedure needs to be published to the owners, along with the effective date. The purpose of the rule (i.e. the reason it is being adopted) needs to be clearly stated. The rule needs to also state what sanctions will be imposed on violators, if any.

7 Evaluate - After the solution(s) is implemented the Board of Directors must monitor the results to make sure that the solution is appropriately addressing the problem and the desired outcome achieved. If satisfactory results are not achieved, a different or additional solution maybe required.

Group Exercises

Participants should be divided into four groups. Each group should complete each exercise as assigned and report to the group. Reports should take 5 minutes each.

- 1 Identify 5 to 10 non-governmental problems HOAs face (i.e., not taxes or registration). At this point, only list the problem, do not discuss it (10 minutes)
- 2 Working with one identified problem, discuss the details of # the problem. Answer questions about the problem including who, what, where, when, how long, how much, why, for how long and how bad (10 minutes)
- 3 Identify at least five unique solutions for the chosen problem. At this point no effort should be made to critique the quality or viability of solutions. The point of this step is to develop a list of as many solutions as possible, not a process for one solution (10 minutes)
- 4 Identify and evaluate the good and bad points of five possible solutions (10 minutes)
- 5 Select one or more solutions and explain why it was chosen. Also explain how it would be implemented (10 minutes)

SEEK COMPROMISE

*Issue: When there is a problem listen to what everyone needs
and/or wants Solutions without rules*

- **Is There A Way To Resolve The Problem?** - The Board of Directors should always look for compromises that satisfy both parties. If owner A complains about owner B, the Board should try to find a compromise. Possibly owner B will agree to modify the offending behavior somewhat to satisfy owner A? With a little ingenuity, matters can often be resolved without the creation of rules.
- **Look For Win/Win Solutions** - There may be a way for both parties to “win.” For example, if owner B is learning to play drums and the noise disturbs owner A, is there a time when owner A is not home that would be a satisfactory time for owner B to practice? If owner A is the only one complaining, and owner B is willing to practice only at the times when owner A is not home, this is a “Win/Win” solution. Owner A is not affected by the noise, and owner B can practice drums at home.
- **Do NOT Become Emotional** It is very important that the Board of Directors not become emotional. If you are a Board of Directors member, and you recall that owner A previously complained about owner C cooking a smelly dish, do not get disturbed and assume that owner A is especially sensitive about the neighbors. Owner A may have a legitimate complaint about owner B’s drum practice.

PURPOSE OF RULES

Issue: *Set standards and suggest appropriate behavior*

Homeowner associations by their very nature involve living close to other people and families. Because families have different standards by which they live, and compromises cannot satisfy all situations, it is important that associations outline what is acceptable behavior and set certain limits for everyone's benefit. This is generally done in the form of rules. While rule making and setting of standards is encouraged, the rules must be reasonable and fair.

- **Promote Harmony** - Rules promote harmony because they establish "expected behavior," and people are more comfortable when they know how others are going to react in a given situation. Also, most of the time people do not mind behaving in a certain way when they know everyone else is also required to behave the same way in that situation. Most people have heard someone say, "I'll play by the set of rules as long as everybody else has to play by the same set of rules." Most people feel this way.

- **Set Standards** - Standards have to do with treating everyone equally. No one likes to be singled out or considered "different." Maintaining standards in real estate also promotes higher values on the homes. If a person is considering moving to a new home and looking at two very similar homes in different areas, one in an area that looks well cared-for and the other that looks unkempt and messy, the person would probably choose the well cared-for area as the more desirable one, if all other things are equal. It naturally follows that people are willing to pay more to live in a well-kept area, so property values are increased.

Standards also ensure that people will be treated the same way in similar situations. For instance, if an owner allows his/her pet to "use" an inappropriate area, and residents know that the owner received a polite letter asking him/her not to let the pet "use" the inappropriate area, this creates an expectation for the residents. If another owner allows a pet to "use" an inappropriate area, owners then *expect* that

owner to also receive a polite letter asking that the pet not be allowed to “use” the inappropriate area

● **Preserve, Protect And Enhance Assets Of The HOA** - This is a very important concept that the homeowner association must always keep in mind. Each owner has a substantial investment in his/her home, and it is incumbent upon the homeowner association not to do anything that would subtract from the value of that investment. It is normal to see rules governing the use of the common areas. Typically these rules are designed to prevent any damage being done to property of the homeowner association and to ensure the peaceful use and enjoyment of those areas by the owners. Rules that prevent damage to units or common areas help to protect each owner's investment. Where possible, the homeowner association should strive to *improve* the common areas and the general appearance of the building, thereby enhancing the value for the owners.

GOVERNANCE BY RULES

Issue. *Rules set a standard for behavior*

- **Behavior In Common Areas** - It is generally stated in the Bylaws that the Board of Directors has the authority to pass rules governing the use of and conduct in the common areas. Normally the Bylaws do not give the Board of Directors the authority to regulate an owner's behavior inside a unit, except to the extent that it affects other owners, such as excessive noise or running a business from the home.
- **Activities, Modifications, Use And Appearance Of Exterior Space** - As stated above, normally on the interior of units, the Board of Directors only has the authority to regulate activities which impact other residents. This would include modification to the structure of the building. Further, the Board of Directors generally does have the authority to regulate the appearance of the exteriors of the units. Particularly if an owner wants to modify the exterior appearance of a unit, the person is generally required to request permission in writing for the modification. Also, the Bylaws generally state that if an owner does receive permission to make an exterior modification, that owner (both present and future owners of the unit) is also required to maintain any addition that is made to the unit.
- **Use Of Common Areas** - The Bylaws generally also give the Board of Directors the authority to make rules governing the use of the common areas.

WHAT IS THE STRUCTURE OF AN HOA RULE ?

Issue: *What rules accomplish*

- **A Specific Statement of Required Behavior** - While it is clearly appropriate to state some background information about a rule (cite the authority to make the rule, state the purpose of the rule), rules also need to clearly explain *exactly* what the offensive behavior or activity is. An example rule might be

“WHEREAS, the Happy Homeowner Association Bylaws give **authority** to the Board of Directors to pass rules governing the use of the common areas,

WHEREAS, there have been several complaints (**the reason**) about excessive noise coming from units holding parties late at night on weeknights, and

WHEREAS, it is the **intent** of the Board of Directors that all residents are entitled to the peaceful enjoyment of their respective units and the common areas,

NOW THEREFORE, it is **decreed** that, effective June 1, 1996 on week nights (Monday, Tuesday, Wednesday, Thursday, and Friday) no owner or his guest(s) shall make noise that can be heard outside their apartment after 11 00 PM. Anyone who makes noise that can be heard outside their apartment after 11 00 p m on week nights (as evidenced by receipt of complaints from residents) will be fined 100 tenge per offense **(the penalty)**

This rule states specifically what the offensive behavior is and explains the penalty for not complying with the rules.

● **Limits of Rights and Privileges** - It is a common feature of rules that they place limits on an individual's rights and/or privileges. Often people confuse *rights* and *privileges*. For instance, to be licensed to operate a motor vehicle on public roads and streets is a privilege. When people lose their license, they often feel as if they have been stripped of one of their rights, but this is not the case.

In the above rule example, the right of using one's apartment for parties has been limited. This is a limitation of rights. When living in the somewhat confined environment of a homeowner association, extra care must be taken by all residents to ensure that their actions do not adversely affect the *rights* of other residents to peaceful enjoyment of their units and the facilities.

● **Creates Some Type of Penalties** - While rules sometimes do not carry any specific penalties, it is far preferable to state the exact penalty (or range of penalties) for an infraction.

For instance, a less effective version of the above rule example, might say that some people have been disturbed by noise late at night and that all owners are requested to respect the rights of others and to please not make noise after 11:00 p.m. on weeknights. It would be nice to think that most people will be courteous and respect the rights of others at all times. However, the complaints about noise shows that this rule and penalties are necessary.

In the first, more effective example, the penalty is stated: offenders is fined after the offense. Other types of penalties that can be used, depending on the authority given in the association Bylaws, could include loss of voting rights or other privileges for a specified period of time.

AUTHORITY TO MAKE RULES

Issue: *Why can homeowner associations make rules?*

- **Republic Laws** - Homeowner associations have the authority to make rules. This authority is derived from the laws of the Republic of Kazakhstan. Homeowner associations also have the authority to establish assessments to pay for the maintenance and replacement of common areas, and may pass rules governing the use of those common areas.
- **HOA Bylaws** - Much of the authority to make rules in a homeowner association comes from the HOA Bylaws. The Bylaws may state, "No person shall make alterations to the exterior of his or her unit without first having received written permission to do so from the Board. To accomplish this, the Board shall establish procedures for owners to submit requests to be considered for exterior alterations." This statement in the Bylaws gives the Board the authority to design a form for owners to use in requesting exterior alterations and to publish procedures for handling these requests.

NORMAL HIERARCHY OF AUTHORITY

<i>Issue Which has the highest authority?</i>

- **Laws of Republic** - The laws of the Republic take precedence over all others. Homeowner associations may not pass rules or regulations that are in conflict with the laws of the Republic. If a homeowner association passed a rule that conflicted with a law of the Republic, if challenged, the law of the Republic would be upheld over the rule or regulation of the homeowner association.

The constitution, national laws, presidential decrees, national policies and resolutions from the Cabinet of Ministries take precedence over all other forms of law or rules below them in the hierarchy. Local ordinances, rules of the homeowner association, etc., must not be in conflict with laws of the Republic.

- **Local Ordinances** - Local Ordinances take precedence over HOA Bylaws or rules of the association, but again must not be in conflict with national policies, presidential decrees, or laws of the Republic.

- **Bylaws of the Association** - Next are the Bylaws of the homeowner association. These take precedence over rules passed by the homeowner association, but must not be in conflict with local ordinances, national policies, presidential decrees, or laws of the Republic.

- **Rules of the Association** - Next come rules of the homeowner association. HOA rules take precedence over policies or procedures that may be adopted by the Chairman of the association, but they are below the Bylaws of the homeowner association, local ordinances, national policies, presidential decrees, or laws of the Republic in the hierarchy of authority.

- **Manager/Chairperson** - Last in the hierarchy of authority would be policies or procedures adopted by the Manager or Chairperson. All other rules, laws, and policies described take precedence over those of the Manager/Chairperson.

CAREFUL RULE MAKING

Issue: *Rule making requires careful planning and forethought*

● **Rules Must Have Sense of Fairness** - Rules should never be arbitrary or capricious. Each person should feel as though he or she is being treated just like everyone else. For instance, it would be patently unfair to pass a rule that states, "Only owners are allowed to use the swimming pool. Renters are not allowed the use of the recreational facilities." This is unfair because it creates two classes of people. Remember, no one likes to be singled out or considered "different."

Another example: "Anyone who pays the assessments after the 10th of the month will be required to pay a \$10 late fee." Is this rule fair? In this case, it is fair because "Anyone" who pays after the 10th is subject to the late fee.

Rules should not create a class.

● **People Will Question Fairness of Rules** - It is human nature to question the fairness of a situation when placed in that situation. *There must be no discrimination or classes of people!* All persons need to be treated the same way in any given situation. If the situations are different, then that is not discrimination (e.g., "Anyone who pays assessments after the 10th of the month.")

● **If Poorly Conceived It Will Not Be Enforceable** - For instance, a rule that stated "Anyone whose pet 'uses' an inappropriate area will lose their privileges to occupy their unit" would be difficult, if not impossible to enforce. The penalty needs to fit the infraction and be reasonable. The Board needs to think about who is going to determine whether or not the area in question is "inappropriate?" How would notification be made? Is it fair? Does the penalty fit the infraction or is it excessive?

Sanctions associated with a given rule should have at least some relationship to the offense governed. For example, if there were a rule that stated, "Any owner who causes damage to the common areas will be required to reimburse the homeowner association for the cost of the repairs," would be legitimate because the repairs would cost the homeowner association money. Rules should govern clearly definable behaviors or situations and have sanctions which are related to the area or behavior in question.

NINE STEPS TO DEVELOPING RULES

Issue. How to make rules

1 **Determine Needs** - The first step to developing a rule is to determine if there really is a need for a rule. Generally, the problem solving process discussed earlier should be followed before beginning the rule making process.

Determine if there are several persons behaving in an unacceptable manner or is it just one or two people? If only one or two people are causing a problem, can this be solved by talking to them about it? If talking to them about the problem does not help, sometimes a letter from the Board of Directors will be the solution. Writing a letter "formalizes" the position of the association and "puts it on record." If writing does not help, or if numerous people are causing the problem, a rule may be needed.

2 **Consider Short and Long Term Effects** - While it may be convenient to pass a rule to eliminate undesired behavior, it is very important for the homeowner association to try to consider what impact the proposed rule could have at a later time. As an example, suppose that some residents have complained about cars parked in front of stairwell entrances, so that pedestrian access is blocked. Investigation reveals that people are leaving their cars parked in front of the stairs overnight due to a lack of space as well as laziness. Certainly complaints would be reduced or eliminated if barricades were set in front of the stairs so no cars could park there and block the entrance. There may be a temptation to pass a rule and install barricades. Then in case of fire, the fire trucks might not be able to get to the fire. Rule-making must follow a deliberate, methodical approach that considers both the short and long-term consequences.

3 **Identify Authority** - The homeowner association must be certain that it has the authority before passing a rule. Generally the homeowner association can regulate behavior in a unit only to the extent that it disturbs or affects others. The source of the authority is usually the Bylaws.

Prior to passing a rule, it is necessary that the homeowner association **identify** the source of its authority in the particular situation. If a

review of the Bylaws reveals that the homeowner association clearly has the authority to regulate behavior in this situation, the Board of Directors may proceed to the next step in rule-making. If there is some question as to whether or not the Board of Directors has the authority to act in a certain situation, it is best to get clarification (whether by seeking legal advice or some other "official" determination) before proceeding.

4 **Define Scope** - It is very important to determine the scope of a rule

- d) To whom does it apply (everyone, children under 16, etc.)
- e) Where does it apply? (Common areas, parking area only, hallways, balconies, stairways, etc.)
- f) When does it apply? For instance, if a homeowner association were passing a rule regarding noise, does it only apply from midnight to six a.m.? Every night? Or just Monday through Friday?

5 **Is The Rule Fair?** - This is often the hardest part to answer. If people believe a rule to be fair, they are more likely to comply with it. In the discussion of careful rule-making and enforcement, remember the caution about creating classes of people (e.g., owners versus renters, etc.). While it is important to avoid creating classes of people, it is not always possible (children under the age of 16, for example).

Please recall the example about revoking the use of an apartment for allowing a pet to "use" an inappropriate area. Most people would not consider this rule to be fair, because the penalty is not commensurate with the offense.

6 **Establish Penalties** - For a rule to be effective, it has to carry a penalty. The penalty should fit the violation. Depending on the Bylaws of the homeowner association, some of the penalties available may include revocation or suspension of the use of the recreation facilities for a specified period of time, loss of voting privileges in the HOA, imposition of monetary fines, or other suspension or revocation of use of common areas.

An example of a proposed rule is

“WHEREAS, the Happy Owners’ HOA Bylaws gives authority to the Board of Directors to pass rules governing the use of the common areas, and

WHEREAS, there have been several complaints recently regarding excessive noise coming from units holding parties late at night on weeknights, and

WHEREAS, it is the intent of the Board of Directors that all residents are entitled to the peaceful enjoyment of their respective units and the common areas,

NOW THEREFORE, it is now decreed that, effective June 1, 1996, that on weeknights (Monday, Tuesday, Wednesday, Thursday, and Friday) after 11 00 p m owners or their guest(s) may not make noise that can be heard outside their apartments

Any owner who violates this rule will be fined 200 tenge

7 Communicate - This step is one of the most important ones in rule-making. Before adopting a rule, the Board of Directors should communicate the rule in writing to the members of the homeowner association, and allow time and provide a mechanism for owners to respond to the proposed rule to the Board with their comments. The cover letter that accompanies the proposed rule should state that the Board of Directors is considering adopting a rule and that comments from owners are invited. Owners should be asked to respond within 30 days if they object or have suggestions to improve the rule. The letter should also indicate that after all objections and suggestions have been received, the Board of Directors will act on this subject within two weeks or by a given date. The Board should review all comments received, and consider those that are appropriate.

8 Act Promptly - If the Board states that they are going to act on a proposed rule by a certain date, the owners have a right to expect that the Board will do that.

After considering all owners’ comments, the Board should make any necessary changes to the rule, then approve and adopt it. Similarly, if the Board of Directors receives a request from an owner to enact a rule to correct a problem, the Board has an obligation to consider that owner’s request and to act promptly. If the Board determines that a

proposed rule is not feasible, either because the Board does not have the authority, or the proposed rule would be in conflict with the Bylaws, or for some other reason, there is an obligation to notify the person who made the request of the reason(s) for not adopting the rule

9 Give Notice To Owners Regarding Action - After the Board of Directors acts on the proposed rule, the Board has an obligation to notify the owners in *writing* regarding the decision, whether that decision was to adopt the rule as originally written, to adopt with modifications, or not to adopt the rule. If a rule was adopted, a copy should be sent with the notice

Group Exercise (20 minutes)

Formulate a rule to address the problem of children playing in and vandalizing stairwells. Attach a penalty to the rule and write a notice to the owners explaining the rule. Remember the steps

- 1 Determine need
- 2 Consider short and long term effects
- 3 Identify authority
- 4 Define scope
- 5 Consider the fairness of the rule
- 6 Establish penalties
- 7 Communicate proposed rule and receive comments from owners

TYPICAL RULES

Issue: *Rules affect many different areas of conduct*

● **Pets, Children, Parking** - It is interesting to note that in some of the oldest homeowner associations in the United States, some of the problems that were experienced 100 years ago regarded pets, children, and parking - some of the same problems experienced today! Not everyone loves animals, and many find some aspects of pet ownership, such as droppings in undesired areas, very negative. It is not unusual to see a homeowner association adopt rules governing where pets can be “exercised,” thereby reducing the inconvenience of residents having to watch carefully where they walk.

Another aspect that commonly is regulated in homeowner associations regards children. As people get older, they often have less tolerance for the normal activities of children. The noise levels and activity levels of children can be disturbing. It is common to see rules governing where children are allowed to play and sometimes when they are allowed to play. Another problem that arises is that some children can become mischievous or malicious at certain ages and may commit acts of vandalism. There are some occasions when the homeowner association can adopt rules to help alleviate the problems associated with these types of activities. For example, if a homeowner association experiences problems with vandalism, a rule could be adopted stating a minimum age for use of the playground without adult supervision. Sometimes these types of rules can be effective, but often they are very difficult to enforce.

● **Solicitation** - HOAs almost always have the authority to regulate who comes on the property. While there is seldom a desire to limit a resident’s ability to have personal visitors or to hire contractors to work inside a unit, there may be a desire to limit other “outsiders”, such as salespeople or other solicitors from coming on the property. In some areas, there may be an ordinance that regulates soliciting. The situation may be that to invoke the ordinance, a sign that says “No Soliciting” would have to be posted.

● **Disturbances** - The Board of Directors has the authority to regulate behavior inside units only to the extent that the behavior (or result of the behavior) adversely affects other residents. An example of this would be making noise that disturbs other neighbors in the homeowner association. The solution may be to adopt rules governing noise during certain hours, such as late evening to early morning when most people are sleeping. Another example would be operating a business from a unit. The additional traffic created by customers visiting the business may be an annoyance to other residents, and it is not unusual for operation of business from the unit to be prohibited or limited. Sometimes these prohibitions or restrictions are imposed by local regulation or ordinance, or in other cases it is by the Bylaws or rules adopted by the Board of Directors.

● **Rental Restrictions** - The Board of Directors may find it appropriate to create a rule or rules that addresses the rental of apartments. Such rules often limit the number of persons who may live in a rented apartment and/or specify some of the other terms of the rental contract. In all cases the owner is responsible for any damages caused by his or her tenants.

● **Use Of Common Areas** - The homeowner association has the authority to regulate the use of the common areas. The right to access one's unit (which is typically done by passing through common areas) is guaranteed to all owners and residents. Often, rules can be made which govern which outside doors can be used and at what times, other than that, access to one's unit cannot be regulated. The extent to which use of common areas can be governed often depends on what facilities are included in the common areas.

If the homeowner association has any recreational facilities, such as a playground, the use of these can be regulated. As a general rule, in the absence of any infractions or other problems, each owner should expect to be able to use these facilities. Owners generally do not mind having to comply with some restrictions, such as hours of operation, age limitations (i.e., children under a certain age have to be accompanied by an adult to use the playground) and a responsibility not to increase costs or expenses to the homeowner association.

Other typical restrictions have a basis in cost-saving to the homeowner association or are related to the comfort or enjoyment of owners. For instance, some homeowner associations may have a rule to prevent smoking in the common areas as the smoke disturbs some owners or is found to increase the frequency with which the hallways have to be cleaned. Either of these is justification for having rules to govern this behavior.

- **Modification Of Doors And Balconies** - It is not unusual for the homeowner association to enact rules governing modification of doors and balconies. This is because these features generally join or can be viewed from the common areas. Restrictions are often necessary to protect property values and to reduce the likelihood of offending another person. For instance many associations may decide to regulate the exterior appearance of the building. Some balcony modifications and unsightly storage on the balcony or patio may reduce the appearance and therefore the value of the units within the homeowner association.

- **Wiring, Antennas, And Electrical Cables** - The installation of wiring, antennas, and electrical cables is often regulated. In general, it is necessary that any current-carrying wires or cables be properly installed for the safety of the building and its occupants. Most electrical fires result from improper installation or unauthorized modifications. It is generally best that installations be done by qualified, professional electricians. Also, while installing wiring on the outside of a building may not be unsafe, it is unsightly and can reduce the resale value of units.

Further, damage to the roof must be taken into consideration during access for installation or removal. Many people consider it to be unsightly to have an assortment of antennas of various sizes and shapes visible on the outside or on the roof of a building. Real estate professionals also advise that this reduces property values. The homeowner association should consider the placement of antennas, aerials, or satellite dishes. They should be installed in a safe manner and should not be visible from the outside. The key to this situation is that they be installed safely and in a manner agreed upon by the association.

Care must also be taken in the installation of cables or wires that pass from one floor to the next or through a wall. Safety of the facility must be the foremost consideration, along with leak integrity and appearance.

- **Sample HOA Rules** - A sample set of rules from an existing HOA is presented as an attachment to this course booklet. As can be seen, a wide range of issues is addressed. All rules are meant to benefit the majority of owners. If this sample set of rules is considered for use in HOA, the Board and owners should discuss and consider each rule to understand its potential impact and consequences, and how it will benefit the HOA.

REMEDIES

Issue: Enforcement

- **Self Help** - Using *self-help* refers to those times when solutions can be reached among the people and with resources that are already available to the homeowner association. The drum example described earlier in the Compromise section is an illustration of self-help. When objectively investigating problems, solutions that are satisfactory to all concerned often present themselves. If owner A and owner B were told that they had to find a solution whereby owner B's drum playing was not a nuisance to owner A, they would most likely have found the solution on their own, unless there was some other conflict between them.
- **Fines** - Monetary fines are another solution that can be used. These absolutely must be used consistently. For example, if owner C is fined 10 tenge for late payment of assessments, then owner D should also be fined 10 tenge for the same offense. Fines should never be used arbitrarily or capriciously. Consistency in fining and owner knowledge of fine penalties are absolutely essential.
- **Peer Pressure** - Peer pressure is another good way to achieve compliance. For instance, if the Board of Directors has a policy of publishing the results of hearings on a bulletin board, this will encourage owners to comply with the rules. No one wants their name published as a rule violator.
- **Suspension Of Privileges** - Suspension of privileges has already been mentioned as a way to achieve rule compliance. The effectiveness of this sanction varies depending on the individual, but if names are published, peer pressure will again come to bear. The importance of the policy that *penalties must fit the offense and be enforceable* cannot be over stressed. The Bylaws will often have specific instances of when privileges can be suspended.
- **Contact Police Authorities** - Homeowner associations should not be in the business of enforcing local ordinances. If an owner commits an offense under a local ordinance, the police authorities should be contacted to handle it.

RULE ENFORCEMENT

Issue: *These rules are enforced*

- **State Rule And Explain the Reason** - If an owner breaks a rule, the Board should notify the owner that he/she has broken a rule, state what the rule is, and give the reason the Board believes the owner broke the rule
- **Schedule a Hearing** - The owner should be given a hearing to tell his/her side of the situation. The Board should inform the owner that a hearing regarding the situation will be held and provide the owner with the date, time, and place. The owner should also be told what information, documentation, statements, or witnesses he or she is allowed to present at the hearing. In addition, the hearing notice should indicate what options (i.e., sanctions or penalties) are available to the Board of Directors
- **Hold Hearing** - The hearing should be held at the designated time and place, whether the owner is in attendance or not. The Board of Directors should consider all the facts available regarding the situation. The owner should be allowed to make statements, present witnesses in his or her behalf, and present any other documentation or statements relative to the situation. Once all information, testimony, statements, and documentation have been received, the Board should inform the owner that he/she will be notified about the decision and thank the person for coming to the hearing
- **Make Determination ONLY AFTER HEARING** - The Board of Directors should not make a decision while the owner is present, but they should indicate to the owner when they expect to issue their decision. If necessary, the Board may close the hearing after receipt of all the evidence (testimony, statements, documentation, etc.) and adjourn until another time and place, or the Board may hold a closed Board of Directors meeting there and then

The Board deliberates in private after all information has been received. Once the Board has considered all information, the Board members should vote and render a decision. The Board's decision should be given in writing and should allow for an appeal of their decision. The decision should state the procedures to be used to request an appeal.

- **Allow For Appeal** - If the owner requests an appeal to present additional information, witnesses, or testimony, the Board should grant that request. If the owner does not have additional information, witnesses, or testimony, but requests that the case be heard by an outside arbitrator, to the extent feasible, the Board should accommodate that request. The outside arbitrator, if used, should be mutually agreeable to both parties.

- **Prompt Action** - If the decision requires enforcement action by the Board, the appropriate sanction or penalty should be applied as soon as possible. Failure to do so will undermine the future authority of the Board, send the wrong message to owners about the intent of the Board, and not deter additional inappropriate behavior.

Group Exercise

The HOA has a rule prohibiting children from playing in, or vandalizing the stairwells (see the rule on the next page)

Hold a mock hearing of a parent whose two children are accused of violating the rule Use nine persons to play the various parts

- Select
 - 1 - Chairperson
 - 3 - Board of Director members who know nothing about the situation
 - 1 - Director who is a good friend of the accused parent and who talks during the hearing to defend the parent and children
 - 1 - Accuser
 - 1 - Alleged offender (the parent)
 - 1 - Witness known to be reliable and honest
 - 1 - Witness who is everyone's friend but drinks too much
- Set up a head table for the Board The Chairman should first call the meeting to order
- Then recognize the accuser who claims that the alleged offender's children play in and vandalize the stairwell
- Next the Chairman asks what the witnesses have to say
- The alleged offender has an opportunity to respond
- The participants can "make up" whatever other facts they desire for this exercise
- Now the Board of Directors must decide what to do For 5 to 10 minutes the Board should consider the problem and the alleged violation using the techniques learned The Board should discuss each step openly, determine if there was a violation, apply the rule if applicable, then announce its decision

Rule for Group Hearing Exercise

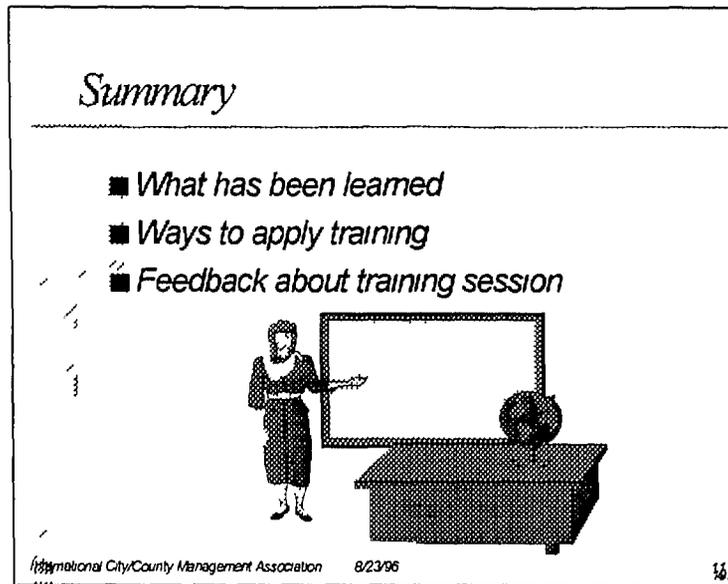
“WHEREAS, the happy Owners’ HOA Bylaws gives authority to the Board of Directors to pass rules governing the use of the common areas, and

WHEREAS, there have been problems with vandalism and noise being made by children in the stairwells, and

WHEREAS, it is the intent of the Board of Directors that all residents are entitled to the peaceful enjoyment of their respective units and that the common property be protected,

NOW THEREFORE, it is decreed effective June 1, 1996, that children shall be prohibited from playing in, or vandalizing the stairwells. The parents of any child who is found to have vandalized, written on, or in any other way damaged or defaced the common property shall be responsible for the damages

The Board of Directors shall be the authority to fine the parents of a child who has violated this rule an amount not to exceed 10,000 tenge plus the cost to repair the actual damages. Alternatively, The Board may require the child and/or parents to repair the damages instead of or in addition to the said fine



WHAT HAS BEEN LEARNED

- Analyzing a Problem
- Seeking Compromise
- Purpose of Rules
- Governance by Rules
- Rule Making
- Hierarchy of Laws and Rules
- Remedies
- Rule Enforcement

How can the information discussed help directors to do their job, and serve homeowners more effectively?

How can this course be improved?

What kind of future training should ICMA provide?

**Where to Get More
Information**

Contact ICMA for

- Free monthly newsletter
- Other training sessions
- Books, articles
- Electronic sources
- Consulting services



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CONTACT ICMA FOR MORE INFORMATION

ICMA publishes various booklets, provides courses, and issues a monthly newsletter to which people can subscribe for free

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or contact the nearest **ICMA regional coordinator**

We encourage class participants to attend additional courses, and to share the knowledge that they gained with others, for example by writing an article for their local newspaper or teaching a class regarding homeowner associations. Interested persons can e-mail (in English) Paul Mengert, an HOA consultant to ICMA, at PMengert@aol.com