



HUMPTY DUMPTY
Lacked Proper Hygiene;

HUMPTY DUMPTY
Got COVID-19;

The Association Lacked
Proper Covenants;

HUMPTY DUMPTY
Used Common Elements;

All The Unit Owners
Suffered Major Ailment;

This Could've Been
Avoided With Rule
Enforcement!

*By Michael J. Shifrin, Attorney/
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Everyone is familiar with the character Humpty Dumpty from the English nursery rhyme. Sadly, after his great fall, Humpty Dumpty could not be put back together again. In today's pandemic-plagued environment, associations lacking in the rules and rules enforcement may have numerous Humpty Dumpty's on their hands.

CONDOMINIUM AND COMMUNITY ASSOCIATIONS ARE PRIMARILY GOVERNED BY THREE SEPARATE DOCUMENTS: 1) DECLARATION; 2) BYLAWS; AND 3) RULES AND REGULATIONS.

Federal and state statutes also apply; however, the declaration and bylaws are the most applicable on a daily basis as they are designed specifically for the association they govern. Section 18.4 of the Illinois Condominium Property Act expressly empowers a board of managers to adopt and amend rules and regulations covering the details of the operation and use of the property. The developer, or its attorney, typically creates the declaration and bylaws of an association and records them before turnover. Truth be told, most association members never read their declaration and bylaws. They receive them with numerous other documents at their closing and place them in a drawer alongside other "closing documents" to collect dust. As a result, the rules and regulations document become their primary source of control. This is one compelling reason why most association boards create rules and regulations.

THE PURPOSE OF ASSOCIATION RULES AND REGULATIONS IS TO SUPPLEMENT THE EXISTING DECLARATION AND BYLAWS, NOT REPLACE THEM.

To fill in the gaps and address areas of concern not already addressed in the declaration and bylaws. For example, most associations have a paragraph in their declaration that addresses noxious and offensive activity. It may say something like: "no noxious or offensive activity shall be carried on in any unit or in the common elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other unit owners or occupants." A board may wish to expand upon this restriction. A rule

that specifically prohibits excessive noise within the common elements from 10 pm – 8 am and provides examples of behavior considered to be noxious and offensive nicely supplements an association's noxious and offensive covenant. It also stands a better chance of being read by association members rather than collecting dust in drawers.

One of the major challenges of designing 'effective rules' is that they must be clear and easy to follow. They need to strike a balance of being specific enough to enforce but broad enough to capture all possible violations. For example, an association may intend to eliminate the use of fire of any kind from its balconies. It adopts a rule that "prohibits the use of open flames on a balcony." On its face it seems like an effective rule. However, some owners may interpret this rule to allow the use of gas grills on balconies because the flame is concealed inside the grill itself. The phrase "open flame" is subject to interpretation. A more effective rule would read "grilling of any kind is prohibited on balconies." This distinction seems subtle, but it makes a big difference when the board interprets a rule and applies it to circumstances within the association. Boards that take time to think about specific language that convey their intent will have a much easier time with rule enforcement.

No matter how clear and concise an association's rules are, the board must also have an established protocol for their enforcement. **Without enforcement, rules are meaningless.** Enforcing association rules and regulations should be carried out by the board, often in conjunction with management, and should work like a well-oiled machine. Many associations include their 'enforcement procedure' in the rules document itself. They do this to help educate association members about the process and to provide fairness and due diligence to all.

A strong rule enforcement procedure typically contains a few basic components. It usually outlines the ways in which owners may file complaints with the board about alleged violations. Such options typically include emails, handwritten letters to management or completion of specific incident complaint forms. Violation complaints should always be as specific as possible and include the date, time, and location of the incident. They should also include any witnesses and supporting evidence that may support the complaint. This may include video or tape recordings, pictures, written statements, or police reports.

Upon receiving violation complaints, boards should review them and discuss whether they believe a violation exists. The fact that a complaint is lodged does not in and of itself mean a violation notice must be sent to the alleged offender. This step is sometimes overlooked by boards and management. There may be occasions when complaints are lodged and no action is taken because the board does not believe a violation occurred. This is an acceptable outcome.

If a violation is suspected to have occurred, a warning notice to the alleged offender is usually the first step. The notice should outline the facts and circumstances, cite the specific rule that was violated and provide the owner with an opportunity to cure the violation – if it's ongoing – or to refrain from engaging in such behavior again. The warning notice should also outline the potential fine if the violation does not cease. If the violation continues or there is a repeat occurrence, a second violation notice is sent coupled with the threat of a fine. The owner must be given an opportunity to request a hearing with the board. If timely requested, a hearing is held with the board at which time the owner is afforded the opportunity to present his or her defense. Following the hearing and at the next open board meeting the board votes upon levying the fine. If no hearing is requested, the board votes at the next open board meeting upon levying the fine.

If the violation continues or there is a repeat occurrence, a third violation notice coupled with the threat of an increased fine is mailed. The opportunity for a hearing should be provided before the board



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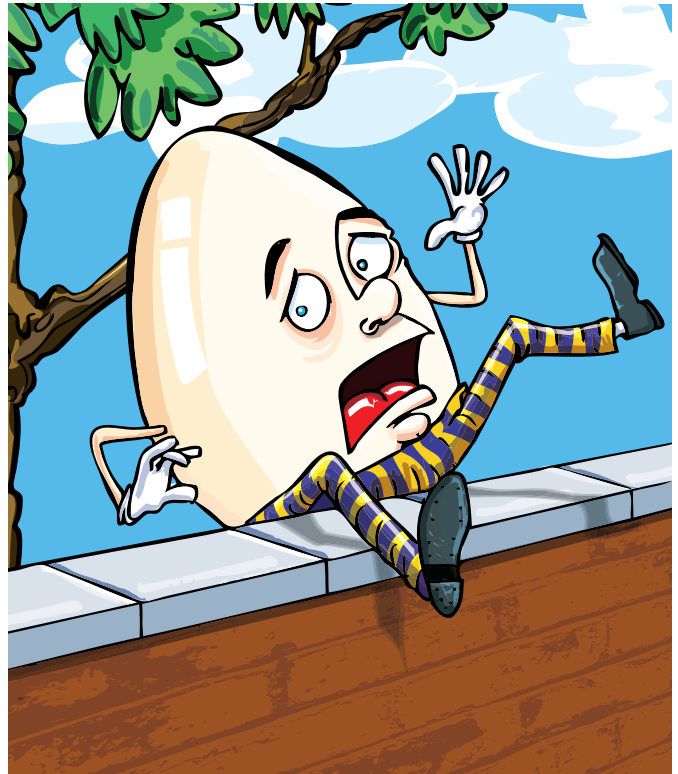
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votes upon levying the fine. Finally, if the violation continues or there is a repeat occurrence following the third violation notice, the matter is turned over to legal counsel and legal action commences.

EACH ASSOCIATION PROCEDURE HAS SUBTLE VARIATION AND MAY BE CUSTOMIZED TO FIT THE ASSOCIATION'S INDIVIDUAL NEEDS. HOWEVER, THESE ARE THE MAJOR COMPONENTS FOUND IN MOST ASSOCIATION RULE ENFORCEMENT PROCEDURES. Remember, one of the keys to maintaining a first-class community is uniform and consistent rule enforcement. Violations left unchecked cause rapid deterioration of association property, association culture and morale. **They may also result in a handful of Humpty Dumpty's to manage.** 



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