

Sex, Drugs & Rock n Roll

Enforcing Rules & Policies



WHAT WILL WE COVER

Purpose

Duty to Enforce

Drafting

Adopting

Enforcing

Penalties

An Operating Rule is...

Rules typically apply to issues where the behavior of one resident, tenant, or visitor has an adverse impact on a neighbor

- Use of the common area or of an exclusive use common area.
- Use of a separate interest, including architectural standards.
- Schedule of penalties and discipline process.
- Delinquent Assessment policy.
- Architectural Review process.
- Election Rules.

Civil Code Sections 4355(a)

An Operating Rule not...

- A provision of the CC&Rs
- A decision regarding the maintenance of the common area.
- A decision on a specific matter that is not intended to apply generally.
- A decision setting the amount of a regular or special assessment.
- A rule change that is required by law, if the board has no discretion as to the substantive effect of the rule change.
- Issuance of a document that merely repeats existing law or the governing documents.

Civil Code Section 4355(b)

PURPOSE



PUNISH ANNOYING PEOPLE



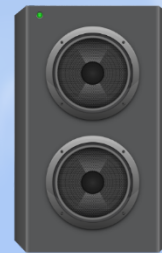
BOOST REVENUE



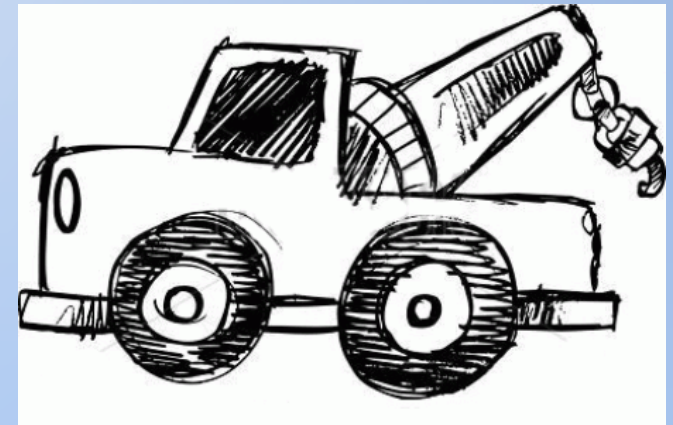
Pets



People



Parking



PURPOSE OF RULES



Preserve



Promote Harmony

DUTY TO ENFORCE

DUTY TO ENFORCE

A homeowner's association, through its board of directors, has a duty to enforce its governing documents.

Nahrstedt v. Lakeside Village Condominium Assn

Any owner who believes that the association is not discharging its duty to enforce the restrictions has an individual *cause of action* against the association....

Posey v. Leavitt

ENFORCED RULES



ROUTINE INSPECTIONS



Duty to
Investigate

Use a checklist - *consistency matters*

- Violations
- Maintenance issues
- Evaluate Vendor's work
- Proactive management

DRAFTING RULES



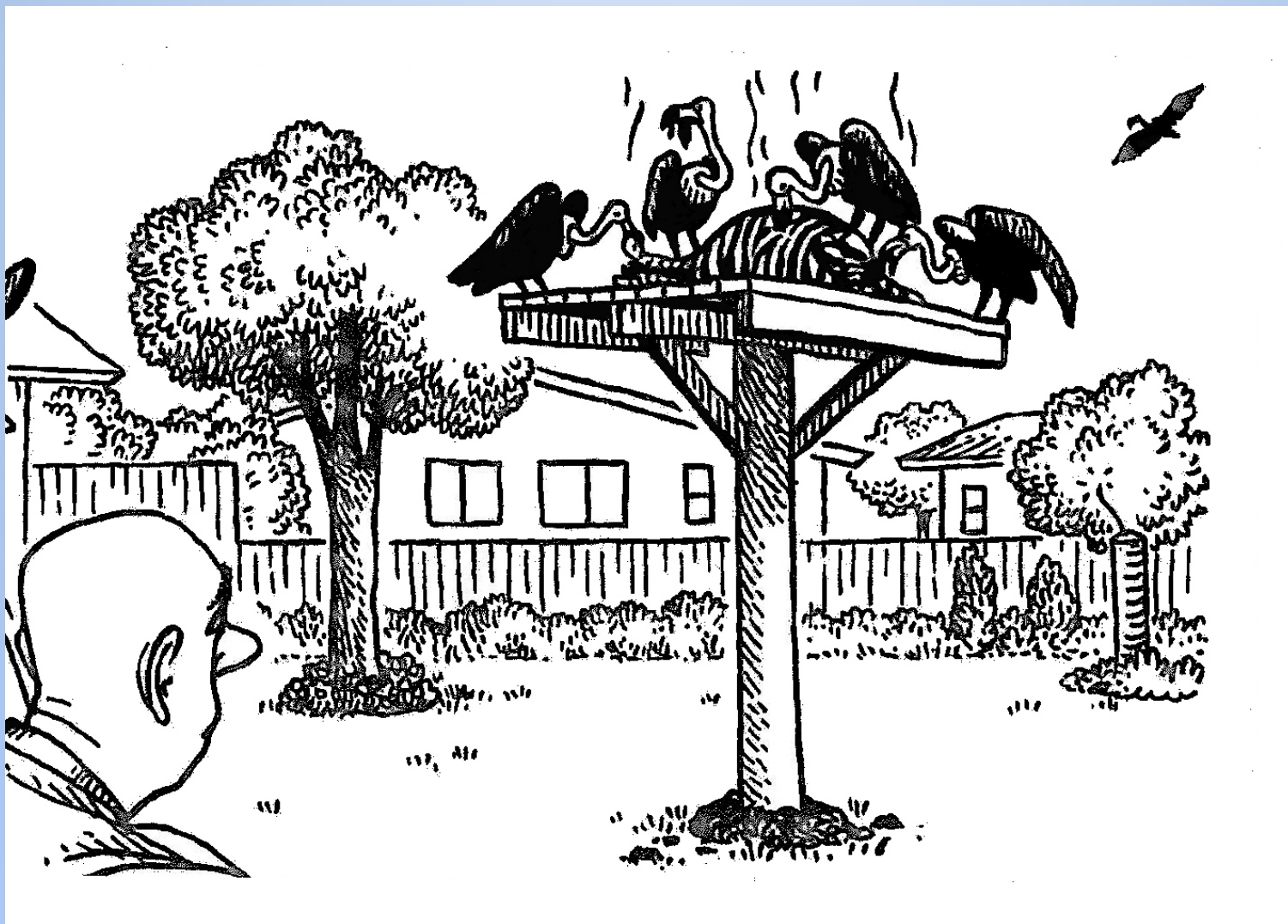
RULES MUST BE:

1. Reasonable (benefit outweighs the burden)
2. Sufficiently detailed
3. Enforceable
4. Consistent (With hierarchy)

The neighborhood
association said I could
have a bird feeder but
they didn't specify
what kind.



BIZARRO By Dan Piraro



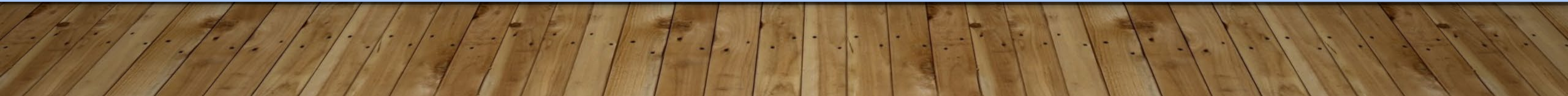
Patio usage is restricted as follows: Only conventional, tasteful patio furniture and potted plants may be placed on balconies. Balconies may not be used for storage of any kind, including bicycles, household items, storage bins, shelving units, litter boxes, and other such items. No balcony enclosures of any kind are permitted. Due to smoke, odors and fire hazards, no charcoal barbecues are permitted.

6. BALCONIES

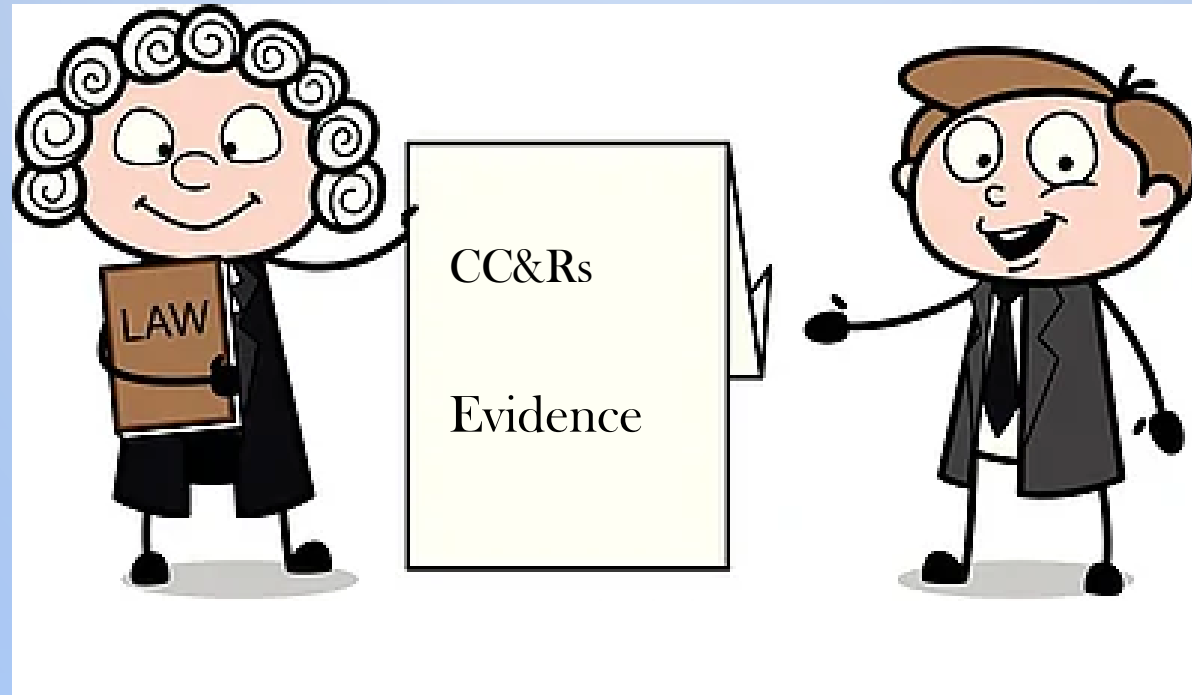
6.1 Furniture and Potted Plants. Only conventional, tasteful patio furniture and potted plants may be placed on balconies.

6.2 No Storage. Balconies may not be used for storage of any kind, including bicycles, household items, storage bins, shelving units, litter boxes, and other such items.

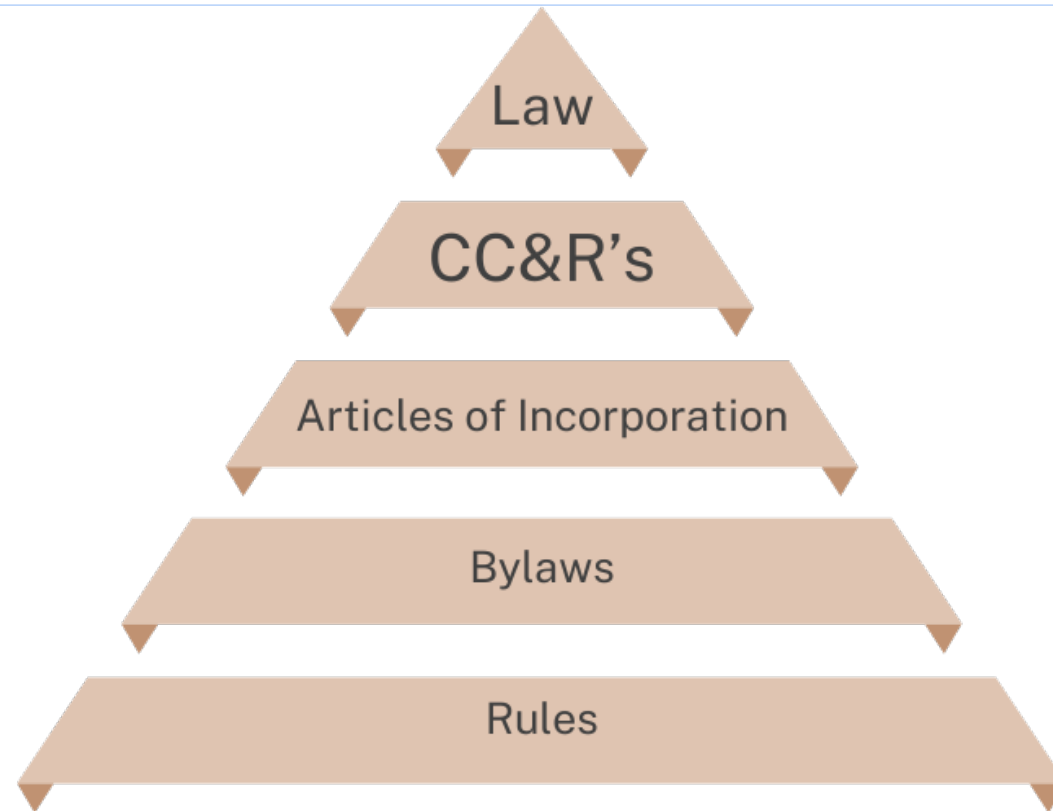
6.3 No Enclosures. No balcony enclosures of any kind are permitted.



IS IT ENFORCEABLE?



CONSISTENT WITH
HIERARCHY
CIVIL CODE §4205



FAIR HOUSING LAWS

1. Americans with Disabilities Act
2. Federal Fair Housing Act
3. Fair Employment and Housing Act
4. Unruh Civil Rights Act





PROTECTED CATEGORIES

- ▶ Disability
- ▶ Race/Color
- ▶ **Familial Status**
- ▶ Sexual Orientation
- ▶ Marital Status
- ▶ National Origin
- ▶ Ancestry
- ▶ Religion
- ▶ Source of income
- ▶ Medical condition
- ▶ Age
- ▶ Gender Expression

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

1515 Clay Street, Suite 701, Oakland, CA 94612-5212
(510) 622-2941 TDD (800) 700-2320 Fax (510) 622-2951
www.dfeh.ca.gov



RE: *Housing Rights Center v. _____ Homeowners Assn.*

[A review of] the association's rules revealed the following violations:

It states that, "**children** are not allowed to play in the garages, the flower beds, lake or streams or, after 8 p.m. on the Fire Road." (This rule specifically targets children and is considered a violation of the laws enforced by this Department. The rules must be deleted or revised to delete the word "children" wherever it appears."

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Swimming pool hours at the two ***family pools*** are from 9:00 a.m. to 10:00 p.m. daily. (You can not have separate pools. All pools should be able to be used by anyone regardless of their age or family status.)

Children's toys and other play equipment including strollers must be taken home after use. (You cannot have a rule which identifies a specific protected group. Rules have to be general in nature.)

ADOPTING RULES



CIVIL CODE § 4360

1. 28-days notice before adoption:
 - a. text of proposed change
 - b. describe purpose & effect of change
2. Adopt at open board meeting.
3. Consider member comments.
4. Give notice of rule change 15 days after board meeting.

EMERGENCY RULE

1. Imminent threat to public health or safety
2. Adopt at an open board meeting
3. Effective for 180 Days after notice to membership

Civil code §4360(d)

ENFORCEMENT



INVESTIGATE

1. Waivers may have been granted
(reasonable accommodation)
2. Legacy Status
(change in standards)
3. Previously unknown violations

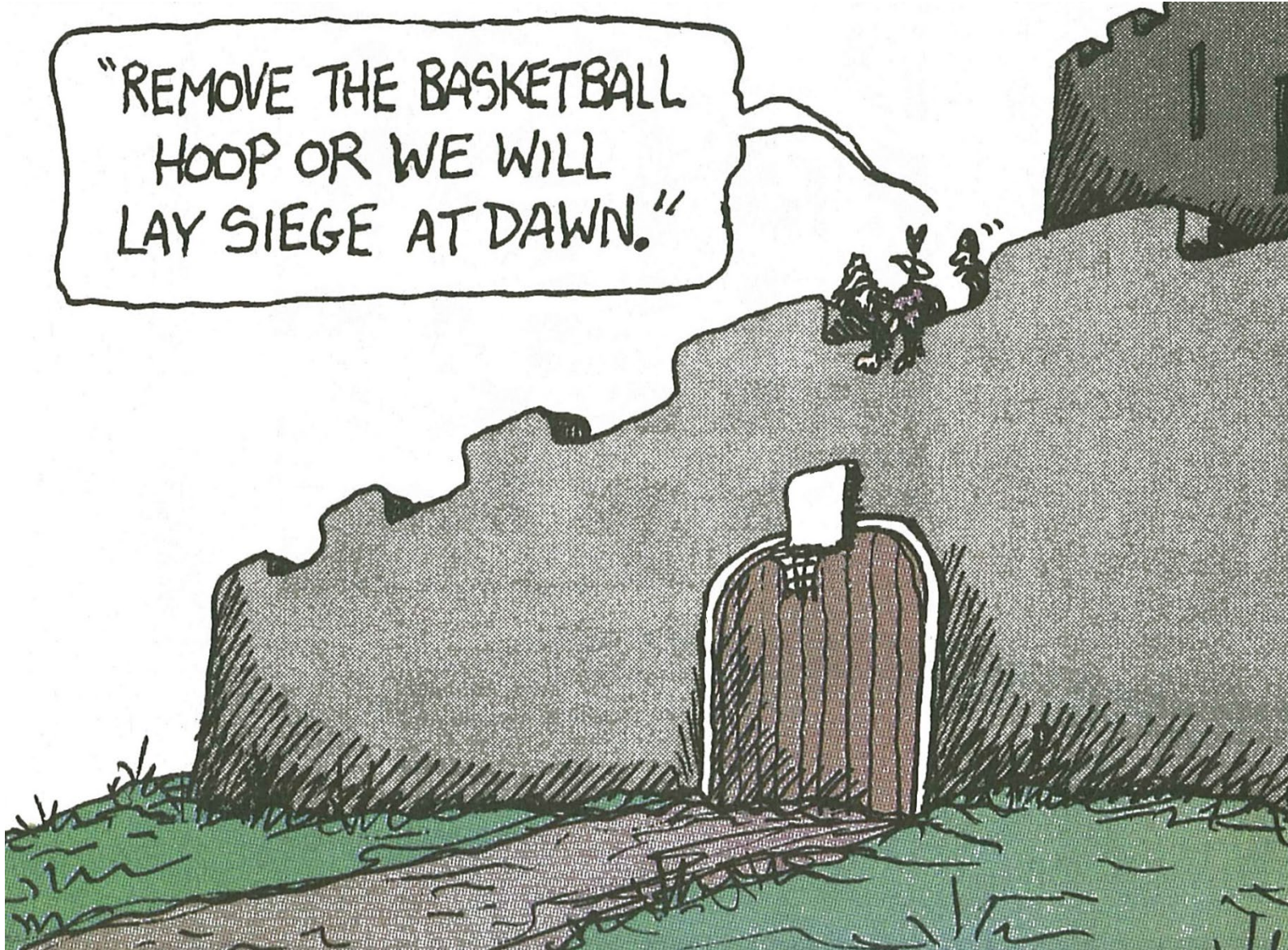


FRIENDLY Letter

IN THE BLEACHERS By Steve Moore



"REMOVE THE BASKETBALL
HOOP OR WE WILL
LAY SIEGE AT DAWN."





-
- **“If you already paid, please accept our apology for the death threat...and warm wishes for the holiday season.”**

LETTER: BE SPECIFIC

Dear Owner:

It was noted that you are parking your car in violation of the governing documents.

- Management



Dear Owner:

It has been reported that since 4/1/22, you have been parking your red Corvette (license 2CUL4U) in the Guest Parking space next to your Unit which is a violation of Parking Rule No. 10 and Section 6.8 of the CC&Rs. (See enclosures.)

- Management



EVIDENCE

1. Photos
2. Documents



HEARING NOTICE

Dear Owner,

You are being called to a hearing before the Board of Directors where you will be fined because you have continued to park your car in violation of the governing documents.

- Management



PROPER NOTICE

1. Description of **Alleged** Violation & Evidence.
2. Hearing Date & Location/Link.
3. Describe Member Rights.
 - Attend hearing
 - Respond in writing
4. Deadline for Response
5. Possible discipline/fines

RESCHEDULING



Boards should honor the first request to reschedule.

Thereafter, it requires good cause.

LETTER

Members can submit
letter rather than appear
personally.

Corp. Code 7341(c)(3)

The Study
Court Street Baptist Church
Corner 6th and Court Street
Lynchburg, Virginia August 5, 1920.

Prof. G. W. Fiske,
Oberlin, Ohio:

Dear Mr. Fiske; I received your letter last May asking in reply to the business circular which I sent you, if I had given up preaching all together. I am glad to say that I have not. I am related to the business mostly as prophet and dreamer, leaving the more practical affairs to those who have more time and love for details.

I am at present, pastor of the oldest and one of the largest colored churches in Virginia. I might add also that it is frequently called the Ministers' Slaughter House. It is a fact that no pastor during the past forty years has been able to say "Lord, now lettest thou thy servant depart in peace." My sailing at present is smooth with no clouds in sight, and my prayer is that I may do some good on the voyage and at last be granted a safe harbor.

I need all that Church Administration which I left out of my course at Oberlin. Will you please furnish me with a list of good (good) readings on the subject?

I am enclosing a check for \$20.00 to be put to my account. It was my intention to send it earlier, but Satan hindered. Can Drs. Bosworth and Hutchins be reached at their Oberlin addresses now? Do you know Gillett's African address?

Always remembering your great kindness and sympathy and the rich value of your instruction in the good old Oberlin days, I am,

Yours faithfully,
Kevin Johns

EXECUTIVE SESSION

- Even if member requests otherwise.
- Civil Code §4935(b)



NO SHOW

- Cannot impose penalties solely on failure to appear.
- Must review evidence and make findings based on evidence.



MOST USED DEFENSE

Discriminatory Enforcement.

“Look at all the other violations.”

“You’re picking on me!”



SECOND MOST USED

Wrong Guy.

“I didn’t do it!”



DELIBERATE



- ✓ **Dismiss the accused**
- ✓ **Discuss the evidence**
- ✓ **Impose penalties (if any)**

EXECUTIVE **MINUTES**

- Make a finding as to if the violation existed.
- Record decision.

(Helpful when directors develop amnesia in the face of litigation.)

OPEN MEETING **MINUTES**

- Next open meeting minutes:

“The Board held a disciplinary hearing involving a parking violation and imposed a \$50 daily fine.”

NOTICE

Notice of decision by 1st class mail or personal delivery within 14 days (unless governing documents provide shorter notice).

PENALTIES & FINES

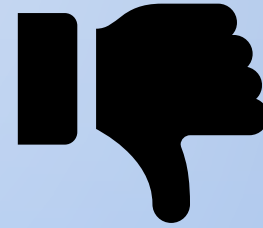
Fine Schedule

1st Offense..... Warning

2nd Offense..... \$25

3rd Offense..... \$50

4th Offense..... \$75





SUSPENSION OF PRIVILEGES



Penalty and Fine Schedule

1 st Violation.....	warning or fine up to \$500
2 nd Violation (same offense)	\$100 to \$500
3 rd Violation (same offense).....	\$300 to \$500
Additional Violations (same offense).....	up to \$700
Safety Violation.....	warning or fine up to \$1,000
Continuing Violation.....	daily fines until cured
Suspension.....	common area privileges may also be suspended
Assessment.....	may be levied to reimburse HOA expenses



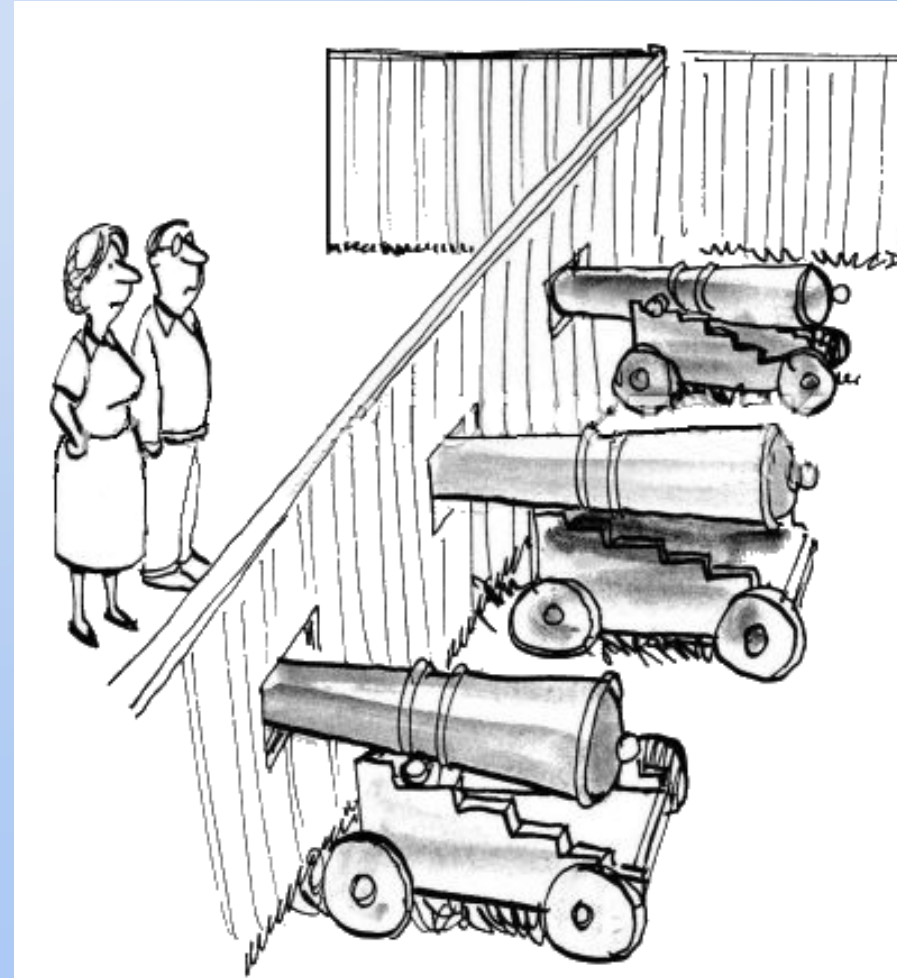
NEXT STEPS IN ENFORCEMENT **PENALTIES AND RULES**

1. IDR (Internal Dispute Resolution)
 - Meet & Confer with Lawyers
2. ADR (Alternative Dispute Resolution)
 - Mediation
 - Arbitration
3. Litigation
 - Small Claims
 - Superior Court



NEIGHBOR DISPUTES

- Must investigate
- Refrain from involvement in disputes that don't affect common areas or other neighbors.

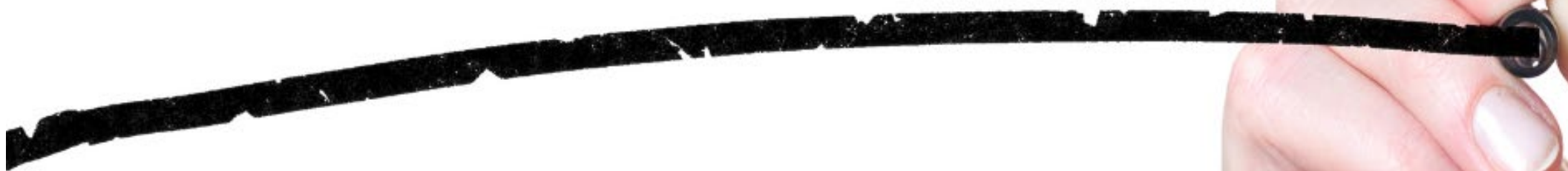


ILLEGAL ACTIVITY

- Report to police.
- Enforce under “nuisance” provision of CC&Rs.



SUMMARY



1. **Written Rules** (promote harmony & preserve property values)
2. **Duty to Enforce**
3. **Due Process**
 - a. Notice of Hearing
 - b. Evidence (docs & witnesses)
 - c. Opportunity to Defend (personally or by letter)
4. **Notice of Decision**
5. **Penalties**
 - a. Flexible fine structure
 - b. Daily fines
 - c. Suspension of privileges