

Breaking Bad

Dealing with Rule Breakers

By W.B. King

As the old adage goes, one bad apple can upset the apple cart. The same theory holds true for residents who choose to ignore bylaws or house rules, even if they are well-intended and in place to serve the greater good of the community. In the end, it's the board that must take the pulse of the community and determine what rules are appropriate and instruct the managing agent to enforce them as necessary.

Setting the Rules

"The board has the task of setting the rules and policies and the management company has the responsibility of implementing and following through with those decided upon by the board," says Mark Levine, the vice president of business development for New York-based property management firm Excel Bradshaw Management Group, LLC. "The board often has an idea of where they would like to go with the policies that they will set in place and being that managing agents manage multiple properties and have a wider-view of how such rules are actually implemented and enforced, we can lend guidance to the whole process based on other experiences."

Actually bylaws and house rules are not one in the same. Bylaws usually conform to how the board or the association operates as a corporate entity and the specific powers and duties therein. House rules and regulations usually relate to use restrictions on the part of residents.

And there are numerous "experiences" that call into question that validity of a rule or a resident's or tenant's willingness to adhere to said rules. These include pet policies, noise complaints and issues such as whether smoking is allowed in common areas, or not at all. "The goal of any rule is to allow a great number of people living in close quarters to live peaceably together. Good rules also make or save the building money at the same time and the best rules allow for all of this and for amenities that benefit the lives of the residents," says **Adam Leitman Bailey**, founder and partner of the real estate law firm **Adam Leitman Bailey, P.C.**, with offices in Manhattan and Rockland County.

"Setting rules for smoking and noise have been quite effective," he says. "Banning smoking in common areas such as hallways and requiring measures to be put in apartments to stop the spread of smoking has been beneficial to many buildings."

There are other examples of beneficial rules, **Bailey** says, including regulating hours for piano playing, holding parties, and moving in and out of buildings. And then there are the rules that are considered unreasonable or biased. “Rules do not usually work when they benefit one or two board members over the interests of the building,” says **Bailey**. “For example, allowing parties on the roof may be good for the building but very bad for penthouse owners with terraces. This is a common problem in buildings where there is no winner.”

Can Good Rules Go Bad?

In most cases, the common house rules included in the governing documents are by and large deemed “good” by the board and residents. ██████████, an attorney and partner with New York-based law firm ██████████, explains that some existing rules are “antiquated” and require periodic revisiting. “When a new board comes in they might have to adopt new rules,” he says. “Most rules serve a purpose and I am drawing a blank as to what might be considered a bad rule.”

██████████ says that a unit smoking ban is an example of a questionable rule because it is could be considered an “infringement” on a shareholder’s rights. A rule that might be considered a “good” rule is yearly bed bug inspections, but this too is somewhat open-ended. “It is difficult to enforce compliance because this is usually done once a year and requires entrance into the unit,” he says.

██████████, an attorney and partner with the New York-based law firm ██████████, says a “good” rule is one which is supported by all residents and serves a legitimate corporate purpose, i.e., promoting issues such as safety, preservation of the building and/or quality of shareholder life.

“A bad rule is one where you either cannot get buy-in by the residents, have difficulty in enforcement or where the rule is potentially counterproductive to being able to sell apartments,” says ██████████. “While a bad rule can vary from building to building, possible examples can include an absolute prohibition of pets or an absolute prohibition of smoking in individual apartments.”

As ██████████ noted, often times a board will have to revisit existing rules and determine if there are any changes required due to new legislation. In some cases, a rule might simply be outdated and require removal. In the latter case, these rules are rarely enforced and a general sense of apathy sets in for residents, the board and the managing agent. “The board of directors or managers have the ability to strictly or loosely enforce the rules. The key to a well-run building is understanding the needs of the residents and listening and hearing the problems between the residents or with management or the building employees,” Bailey says. “Although buildings are corporations, and they should run like an efficient business, board members should have and display empathy for their fellow residents. Most of the hundreds of the buildings we represent have very good standards of

conduct.”

Enforcement and Removal

When rules are ignored or otherwise overlooked, there are ramifications, which can happen immediately or gradually over time. To this end, house rules that go unenforced can compromise the overall operation of the building. “Whether it’s allowing pets to enter in the front door and soil the carpeting in the lobby or unabated noise complaints between two neighboring apartments, the failure to act upon and to penalize those who are breaking the rules can be detrimental for the physical and social components that make up the community,” says Levine. “Lawsuits can be levied against the board for inaction on various issues, so it is in everyone’s best interests that all of the rules are followed and violators penalized.”

While ██████ says boards operate in a “mini-democracy,” he adds that board members can be voted out. This can be an issue if a board insists on drafting and enforcing rules that a resident or residents deem unfair, illegal, or otherwise infringe on their use and enjoyment of the building.

“Shareholders always have the ability at an annual or special meeting of shareholders to vote to amend house rules and, thereby by vote of the shareholders, to overrule decisions of the board. Further, house rules adopted by a board also cannot overrule proprietary lease provisions which can only be amended by shareholders,” says ██████. “Where there is a runaway board, shareholders always have the opportunity to vote in new board members at the next annual meeting. Most house rules can be changed by either the board or the shareholders.” He adds that certain rules can only be changed by the shareholders. “Houses rules specifically adopted by the shareholders cannot be overruled by any future board.”

As the case often is, one or two residents might find issue with a rule or two, and continually break them, which forces the board’s hand and causes them to react. Boards should be proactive and deal with an issue promptly before the conflict escalates. “The penalties range from monetary fines to an eviction, as per the building documents. The board should not throw out arbitrary amounts for different violations of the house rules,” says Levine. “The fine structure should be readily available in the house rules so that each and every shareholder who receives them acknowledges and understands that for each rule that is broken, the fine will be X amount of money.”

Levine says there should be a sliding scale for enforcing any breach of the house rules. For example, the first offense should be a \$50 penalty, the second offense, \$100, while the fourth offense might be a \$500 penalty plus eviction for violating the proprietary lease provisions or similar rule. “Depending on how serious, they could have different fine structures, such as an illegal sublet, which might be a \$2,000 fine plus removal of the illegal subtenant.”

█ says documentation is critical when dealing with a repeat offender. “If the rules are being ignored whether it is excessive noise, pets or lack of carpeting on the floor, there has to be substantial communication between the board and the managing agent, and everything has to be well-documented.”

For many well-intended boards and managing agents, determining at which point to involve an attorney is often confusing. “Most boards spend much less money on a problem when they get the attorney involved early on to make sure the board is following the proper protocol and its own governing documents,” says **Bailey**.

And he adds that cooperatives often have an edge on condominiums when addressing issues via the courts. “Cooperatives have much more power as they can use landlord-tenant court to address their problems in fast proceedings called a summary proceeding. Condominiums are limited to state Supreme Court where a resolution can take years.”

Remember, whatever your board’s approach to rulemaking and rule-breakers is in your building, professionals stress that establishing a sound, rational set of fair and enforceable rules is always best and the easiest way to promote harmony in your building community for all concerned.

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