

HUDACK LAW

L. Joseph Hudack, Esq., CCIM, MCR
980 Montecito Drive, Suite 209, Corona, CA 92879
(714) 351-3236 | Joseph@HudackLaw.com | HudackLaw.com

HOA CC&Rs or HOA Rules – Which to Amend?

By L. Joseph Hudack, Esq., CCIM, MCR
Attorney and Broker

The ownership and use of property located within a homeowners association ("Association") is governed by several different documents including (1) declaration of covenants, conditions and restrictions ("CC&Rs"), (2) Articles of Incorporation, (3) Bylaws, and (4) rules and regulations adopted by the board of directors ("Rules", collectively the "Governing Documents").

Of these documents, two are most commonly used by a Board in dealing with owners: (1) CC&Rs, and (2) Rules. CC&Rs are a contract between the owners of property and the Association which are recorded in the county recorder's office and apply to every owner of the property. The Rules are different in that they are not recorded but are also a set of guidelines used to clarify and give guidance to owners.

The treatment by the Courts of law for these two types of documents is also different. Because of the recorded nature of the CC&Rs, the Courts and Legislature have presumed that the CC&RS are reasonable and thus must be enforced, unless the challenger of the CC&Rs enforcement can prove otherwise. Rules do not have this presumption because they are adopted by the board of directors and are subject to change as the members of the Board change. Thus, in a Court of law, the Association needs to prove the Rules are reasonable before the Courts will enforce the restrictions.

Therefore, making amendments to the CC&Rs for changes in restrictions on the use of property, carries more weight with the Court than do Rules reflecting the same changes. While making changes to either the Rules or CC&Rs is an acceptable method of modifying restrictions on the use of property, the better recommended approach is to amend or restate the CC&Rs if the Association can achieve the necessary voting requirements.

About the author: L. Joseph Hudack has spent the last 28 years working in the Real Estate Industry doing transactional real estate for companies such as Walmart, Dial and Fluor Corporation. He has experience drafting, negotiating, executing and closing purchase and sale, lease and sublease, and lease terminations. In conjunction with general counsels, he has been responsible for the lease compliance and interpretation, property management, and budgeting for a portfolio of properties exceeding \$400 million in book value. In addition to his work for others, Mr. Hudack has owned and operated a real estate development and construction company; and consulted for nationally recognized companies such as Home Depot and Rubbermaid on their real estate needs. Mr. Hudack obtained the CCIM and MCR designations and is a licensed real estate broker in California. In 2015, Mr. Hudack completed his J. D. with Magna Cum Laude honors and is admitted to practice in California. Mr. Hudack has a passion for homeowner's association law and helping homeowner's with issues related to their homes. Mr. Hudack can be reached at Joseph@HudackLaw.com or through his website www.hudacklaw.com.