

HUSCHBLACKWELL

RENTAL CONTRACT

Agreement made this _____, day of _____, 20____,

between _____

hereinafter called "First Party"), residing at:

d _____

AS, both parties wish the integrity and clarity of the First Party's ideas and statement in
work to be maintained:

DESCRIPTION OF PROPERTY. Lorem ipsum dolor sit amet, consectetur adipiscing elit. Mauris ut erat vitae
mentum pretium. Aenean nec enim ullamcorper libero semper accumsan sit amet at eros. Praesent rhoncus dian
feugiat nisi adipiscing a. Quisque cursus porttitor metus vitae tincidunt. Vivamus dignissim nunc id faucibu

Condominium Rules for Property Managers: Mom & Dad had it Right (Kind of)

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A. The Big Picture (Mom & Dad are in Charge – Period)

1. All Rules are Valid, unless:
 - a. Rule itself Violates the law. (Think *Big* to *Small*)
 - (1) Constitution: race, religion, sex ...
 - (2) Fair Housing (familial status)
 - (3) Ch. 703 – e.g., Not allowed to vote if violated rule in last 6 months. This would violate sec 703.10(4) Wis. Stat., which only allows prohibiting voting if Bylaws so provide with an unpaid lien.
 - (4) Rule not Properly Passed under Association Documents
 - b. No Due Process OPPORTUNITY for alleged violator
 - c. Fine Excessive
2. Property Managers Role:
 - a. Make sure Rules were properly passed in the first place;
 - b. Make sure Rules are reviewed by Attorney;
 - c. Make sure you are willing to enforce the Rules that are written;
 - d. No Fine without Form
 - e. Make sure the fines are Reasonable
 - f. Make sure that the Board is either the entity instituting the fine (most common) or the entity deciding the hearing, but NOT both. (Due (Process)); and
 - g. Follow your Documents.

B. Rules of the Past (Go Play in the Road)

1. *Shelley v. Kraemer*, 68 S.Ct. 836 (1948) – Attempt by member of Association to enforce restrictive covenant against occupancy or ownership of property by people of the Negro race.
Decision in this case:
 - a. Actions of state courts and judicial officers in their official capacities are actions of the state within the 14th Amendment
 - b. Enforcement of the restrictive covenant by the state court constituted acts of the state within the 14th Amendment,
 - c. By granting judicial enforcement of the restrictive covenants, the state denied the petitioners (African Americans) the equal protection of the laws, and therefore, that action cannot stand.
2. Excessive Fines Clause of the 8th Amendment. *Browning-Ferris Industries, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257 (1989).
 - a. Only applies to fines payable to the government, not to punitive damages between purely private civil litigants;
 - b. Based on decision in the case you could make fines as much as Board or documents stated

C. Which Rules Rule – Sec. 703.30 (4) (Dad’s the Boss...)

1. Constitution
2. Statutes
3. Declaration
4. Bylaws
5. Rules

D. Amending the Rules (Because I say so...)

1. Declaration Rules.
 - a. **703.095 Wis. Stat. Modification and correction of recorded condominium instruments, amendments and addenda.** A recorded condominium instrument, amendment or addendum may only be modified by recording an amendment, addendum or correction instrument, or by removal from the provisions of this chapter under §703.28(1). The register of deeds may not record a correction instrument if it does not refer to the instrument being corrected and may not record amendments and addenda unless they are numbered consecutively and bear the name of the condominium as it appears in the declaration.
 - b. **703.09 Wis. Stat. Declaration**

(2) Except as provided in sub. (4) and §§703.093, 703.13(6)(c) and (d) and (8)(b), and 703.26, a condominium declaration may be amended with the written consent of at least two-thirds of the aggregate of the votes established under sub. (1)(f) or a greater percentage if provided in the declaration. An amendment becomes effective when it is recorded in the same manner as the declaration. The document submitting the amendment for recording shall state that the required consents and approvals for the amendment were received. A unit owner’s written consent is not effective unless it is approved in writing by the first mortgagee of the unit, or the holder of an equivalent security interest, if any. Approval from the first mortgage lender or equivalent security interest holder, or the person servicing the first mortgage loan or its equivalent on a unit, constitutes approval of the first mortgagee or equivalent security interest holder under this subsection.
2. By-Law Rules.

§703.10 Wis. Stat.

(5) Amendment. The bylaws may be amended by the affirmative vote of unit owners having 67% or more of the votes. Each particular set forth in sub. (2) shall be expressed in the bylaws as amended.
3. Rule Rules.

Usually simply by the Board, but they frequently conflict with Statutory provisions, Declaration Rules or Board Rules

 - a. Parking.
 - (1) Private property owners can post no parking signs which are enforceable by the local police. Sec. 346.55(4) Wis. Stat.;
 - (2) A motor home, although not expressly prohibited, fell within the “natural meaning of the term camper” and therefore the fines were upheld. *Schwartz v. Banbury Woods Homeowners Association, Inc.*, 675 S.E. 2d 382 (N.C. App., 2009).

- (3) Court required removal of Driveway for violation of covenants. *Fox v. Madsen*, 12 So. 3d 1261 (Fla. App., 2009).
- (4) Parking Police are likely needed.
- b. Pets.
 - (1) Make sure the restrictions make sense;
 - (2) Emotional support animals can qualify under the Fair Housing Act as a reasonable accommodation, so make sure that you seek supporting documents. *Overlook Mutual Homes, Inc. v. Spencer*, 2009 U.S. Dis. LEXIS 105100 (S.D. Ohio, 2009); and *Hawn v. Shoreline Towers Phase I Condominium Association, Inc.*, 2009 U.S. Dist. LEXIS 24846 (N.D. Fla., 2009).
- c. Pools. Watch out for Fair Housing issues.
- d. Children.
 - (1) Rule prohibiting objects of any sort outside unit entrance doors may give rise to a Fair Housing Act discrimination claim. *Bloch v. Frischolz*, 2009 U.S. App. LEXIS 24917 (7th Cir., 2009).
- e. Nuisance/Pains.
 - (1) There is always someone.
 - (2) Industrial car lift, sandblasting, and use of a compressor for spray painting to work on cars, because of the noise and fumes, constituted a nuisance in violation of the covenants. Court ordered defendants to cease all activities constituting a nuisance. *Westgate v. Laumbach*, 966 A. 2d 349 (Del. 2009).

E. Advising Unit Owners of Amended Rules – (If I told you once I told you a thousand times ...)

- 1. Notice to Owners
 - a. A rule that is not published is not likely to be enforced by a court. *Coventry Square Condo. Ass'n v. Halpern*, 181 N.J. super. 93, 436 A.2d 580 (1981).
 - b. Best Practice. Deliver rules by as many avenues as possible. *Reinventing the Rules*, Trigiani, 2002 Community Association Press, pg. 37.
 - (1) Handbooks
 - (2) Newsletters
 - (3) Websites
 - (4) Flyers
 - (5) Postings
 - (6) Resale Packages
 - c. Send the Rules to all new Buyers, highlighting those rules that are most commonly violated or in dispute.
- 2. Common sense

F. Enforcement of Rules (Go to your Room and stay there until ...)

1. Complaint form
 - a. Your new mantra on rules: “No fine without the form”
 - b. Require at least:
 - (1) Name and/or unit number of the violator;
 - (2) Name and unit number of the complaining party;
 - (3) A brief summary of the violation and the specific rule the complaining party believes is violated; and
 - (4) Names, address & phone number of witnesses (to the extent they know).
2. Sample form (handout)
3. Fining by:
 - a. The property manager
 - b. The Board
 - c. Other
4. When to fine
 - a. Before Opportunity to be Heard? Risk is that court will say that it should have been after – (Compare though with parking tickets)
 - b. After Hearing or Opportunity to be Heard
 - (1) Slightly Slower but safer process;
 - (2) Connecticut Court held that association should furnish the unit owner with “notice of the violation, notice of the date and place of hearing and the opportunity to be heard and present evidence and witnesses on his behalf.” *Fishman v. Vantage Point Association, Inc.*, 2009 Conn. Super. LEXIS 328 (2009) unpublished.
5. Amount of Fine(s)
 - a. Reasonable
 - b. Follow Documents
 - c. Progressive
 - d. Any Unit Owner or resident who has been accused of violating the Condominium Documents or been fined may demand that the matter be heard by a Grievance Committee. Such demand must be in writing and provided to the Board of Directors within 14 calendar days of the notice of the violation or fine. If no demand is made within 14 calendar days, then the finding of a violation and/or fine shall be final. If a demand is timely made, the matter shall be submitted to the Grievance Committee within seven (7) days. The decision of the Grievance Committee shall be final and non-appealable.
6. Keeping notes/records
 - a. Phone Calls on the subject
 - b. Correspondence on the subject;
 - c. Photographs of any violations (preferably date stamped; and
 - d. Notes of any oral discussions with the violator, witnesses or complaining party

7. Problems that Arise

a. Lack of Evidence

- (1) No Photographs;
- (2) No Documents;
- (3) No Warnings;
- (4) No Evidence of Rules be distributed to All

b. Lack of any credible witnesses

c. Illegal Rules

- (1) Condominium rules are necessary and will be enforced as long as they are reasonable. *Validity and Construction of Condominium Association's Regulations Governing Members' Use of Common Facilities*, 72 ALR.3d 308.
- (2) The board administers and interprets the bylaws and regulations which establish the responsibilities of the unit owners. These documents will be construed strictly to insure that buyers get what they think they are getting. *Vinik v. Taylor*, 270 So.2d 413 (Fla. App).
- (3) A condominium association is not at liberty to adopt arbitrary or capricious rules having no bearing on the health, happiness, and enjoyment of the various unit owners. *Hidden Harbour Estates, Inc. v. Norman*, 309 So.2d 180 (1975 Fla. App)
- (4) Board exceeded its authority under state statute where it allowed a unit owner to build a carport in common parking area as carport encroached on rights of other members to use common area. *Preston v. Bass*, 13 Ark App 94, 680 SW2d 115 (1984)

d. Voting at Meetings – What is the Rule

§703.10(4) Prohibiting voting by certain unit owners. The bylaws may contain a provision prohibiting any unit owner from voting at a meeting of the association if the association has recorded a statement of condominium lien on the person's unit and the amount necessary to release the lien has not been paid at the time of the meeting. **(So make sure that you stay current even if you dispute some action of the Board).**

e. Excessive Fines & Late Fees

- (1) Fines and late fees must be reasonable in amount.
- (2) Late fee that is equivalent to 255% of the initial assessment, the court held that the late fee was unreasonable and unenforceable. *Hidden Groge Condo. Ass'n v. Crooks*, 744 N.E.2d 305 (Ill. App. Ct. 2001)
- (3) Court may reduce late fees that it finds to be excessive or unreasonable in amount. *In re Barcelli*, 270 B.R. 837 (Bankr. S.D. Ohio 2001)

G. Grievance Committee (You Need to Talk to Us...)

1. Why you need one
 - a. Get rid of court process
 - b. Less Expensive than court
 - c. Decision is final and non-appealable
2. How to Run one
 - a. Due Process Requirements
 - (1) Right to question accuser
 - (2) Right to Defend
 - (3) Right to have an attorney represent?
 - b. Different Parts of the Meeting
 - (1) Testimony Phase
 - (2) Decision Making Phase

H. Defenses that are Raised (You can't blame your sister for this one ...)

1. Arbitrary Application
 - a. In *Coventry Square Condo. Ass'n v. Halpern*, 181 N.J. super. 93, 436 A.2d 580 (1981), the court held that it would not enforce a rule requiring an owner to collect a \$225 security deposit from a tenant where the association:
 - (a) did not provide notice of the rule to the members;
 - (b) did not seek to regulate owner-occupants in a similar manner; and
 - (c) admitted that it wanted to have the benefit of a part of the owner's security from the tenant
 - (2) In *Coventry Square Condo. Ass'n v. Halpern*, 181 N.J. super. 93, 436 A.2d 580 (1981), the court held that it would not enforce a rule requiring an owner to collect a \$225 security deposit from a tenant where the association:
 - (a) did not provide notice of the rule to the members;
 - (b) did not seek to regulate owner-occupants in a similar manner; and
 - (c) admitted that it wanted to have the benefit of a part of the owner's security from the tenant.

Reasoning: The court held that the rule was unreasonable because it created a separate class of unit owners and it was therefore arbitrary.

- (3) In *White Egret Condo., Inc. v. Franklin*, 379 So.2d 346 (Fla. 1979), the court held that an age restriction was arbitrarily enforced, where other young children lived in the complex, but that rule was only being enforced against this unit owner. **(I don't believe the FHA would allow such a rule under any circumstances at this time).**
- (4) Where a developer and association did not enforce restrictions uniformly and did not set reasonable parameters for approval, association's disapproval of outbuildings was arbitrary and unenforceable. *Wood Moor Homeowners' Ass'n v. Bolden*, 2004 Ohio 843 (Ohio App. 2004).

2. Selective Enforcement
 - a. See, White Egret Condo., Inc. v. Franklin, 379 So.2d 346 (Fla. 1979) above.
 - b. Where the developer failed to enforce a rule, but the Association, after taking over control, consistently enforced the rules, there was no selective enforcement. Ladner v. Plaza Del Prado Condo. Ass'n, 423 So.2d 927, 930 (Fla. Dist. Ct. App. 1982).
 - c. The implementation of a "uniform policy" to enforce a rule **prospectively** is not selective enforcement. Chattel Shipping and Investment, Inc. Brickell Place Condo. Ass'n, Inc., 481 So.2d 29 (Fla. Dist. Ct. App. 1985).
3. Waiver
 - a. This is very similar to Selective Enforcement, so you would want to analogize to those cases.
 - b. When waiver is claimed, it should be for the same or substantially similar conduct. When the waiver defense is being advanced for a use or action that is substantially different in its effect from the prior violation, the waiver claim will not succeed. Sharstown Civic Ass'n, Inc. v. Pickett, 679 S.W.2d 956, 958 (Tex. 1984)
4. Changed Conditions
 - a. Generally, the source of the changed conditions does not matter as long as the change frustrates the purpose of the restriction. Natelson, *Law of Property Owners Associations* §5.5.3 (1989)
 - b. Court allow nonresidential use in some undeveloped parcels due to changes in the surrounding area. Meyerland Comunity Improvement Ass'n v. Temple, 700 S.W.2d 263 (Tex. App. 1985)
 - c. A builder may deviate from initial restrictions if nature of community has change in such a way that the initial guidelines are no longer enforced or applicable. Heldman Terrace Property Owners Ass'n, Inc. v. D.J.T., Inc., 2001 WL 574944 (Ohio Ct. App. May 25, 2001)
5. Estoppel
 - a. According to one court, the elements needed for Estoppel are the following:
 - (1) full knowledge of the facts;
 - (2) unreasonable delay in asserting an available remedy; and
 - (3) an intervening reliance by and prejudice to another.Woodmoor improvement Ass'n, Inc. v. Brenner, 919 P.2d 928, 931 (Colo. Ct. App. 1996)
 - b. When a community association makes specific complaints about a covenant violation, even without taking substantive action to enforce, the defense of equitable estoppel is not available. Barker v. Jeremiasen, 676 P.2d 1259, (Colo. Ct. App. 1984)
6. Violation of a Constitutional or Statutory Right
 - a. Requirements
 - (1) Otherwise legal conduct is prohibited; and
 - (2) the conduct prohibited would be constitutionally protected if the regulation were imposed by a government.

- b. Fine is Excessive. *United States v. Halper*, 490 U.S. 435 (1989)
 - (1) Facts: The lower court awarded a civil penalty against Mr. Halper for violation of the false claims act. He submitted 65 false claims at \$9 each. The penalty was \$2,000 per violation or \$130,000. The Supreme Court struck down the civil fines as "punitive."
 - (2) Factors for determining if fine is excessive *BMW of North America, Inc. v. Gore*, No. 94-896 (US Supreme Court 1996)
 - A. the reprehensibility of the defendant's conduct;
 - B. the ratio between the penalty and the actual harm suffered by the plaintiff; and
 - C. the relative severity of the civil or criminal penalties imposed for the defendant's actions.
- c. Case Law
 - (1) *Shelley v. Kraemer*, 334 U.S. 1, 18 (1948) holding that state action existed when a court enforced racial restrictions.
 - (2) When dealing with individuals with disabilities, an association must make reasonable accommodations to amend an otherwise valid restriction or limitation. *Canady v. Prescott Canyon Estate Homeowners Ass'n Board of Directors*, 204 Ariz. 91, 60 P.3d 231 (2002)
 - (3) Limitations on the number of children allowed in a unit may violate the Fair Housing Act. See, *Hamad v. Woodcrest Condo Ass'n*, 328 F.3d 224 (6th Cir. 2003).
- d. Defense. An individual, by buying into a condominium, may relinquish a statutory protection through its contractual agreement with the Association.
 - (1) *Midlake on Bg Boulder Lake Condo. Ass'n v. Capucco*, 449 Pa. Super. 124, 673 A.2d 340 (Pa. Super. Ct. 1996), where the court held that "the mere fact that a business is subject to state regulation does not itself convert its actions into that of the state." *Id.* at 129, 673 A.2d at 642. The court found that "[one] of the fundamental precepts which we recognize, however, is the individual's freedom to contractually restrict, or even give up, those rights." *Id.* At 130, 673 A.2d at 342.
 - (2) *Goldberg v. 400 East Ohio Condominium*, 12 F. Supp. 820 (N.D. Ill. 1998)
 - (3) *Knolls Condo. Ass'n v. Harms*, No. 92971 (Ill. Supreme Ct. November 21, 2002)

I. War stories/Examples (Back when I was a kid...)

1. Leaking water
2. Can you limit the number of keys you give unit owners (e.g. No more than 4). Probably yes, except for Fair Housing Issues. Lady employed 6 aids to assist her with daily functions and for 16 years had a sufficient number of keys. Extra keys was a reasonable accommodation for her. *Stross v. The Gables Condominium Association*, 2009 U.S. Dis. LEXIS 52918 (W.D. Wash., 2009)

J. Practice Tips

1. Write short simple rules. See the following Community Association Institute Pamphlets on this topic:
 - a. *Drafting Association Rules*. (Fourth Edition) Gurdon H. Buck, ©2002 Community Association Press.
 - b. *Reinventing the Rules*. Lucia Anna Trigiani, ©2002 Community Association Press.
 - c. *Be Reasonable (How Community Associations Can Enforce Rules Without Antagonizing Residents, Going to Court, or Starting World War III)*, Kenneth Budd, ©1998 Community Associations Institute.
2. Utilize the services of a Good Attorney