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CONDOMINIUM & REAL ESTATE LAW

Top Reasons to Amend Bylaws

&

Best Practices on Enforcing Bylaws



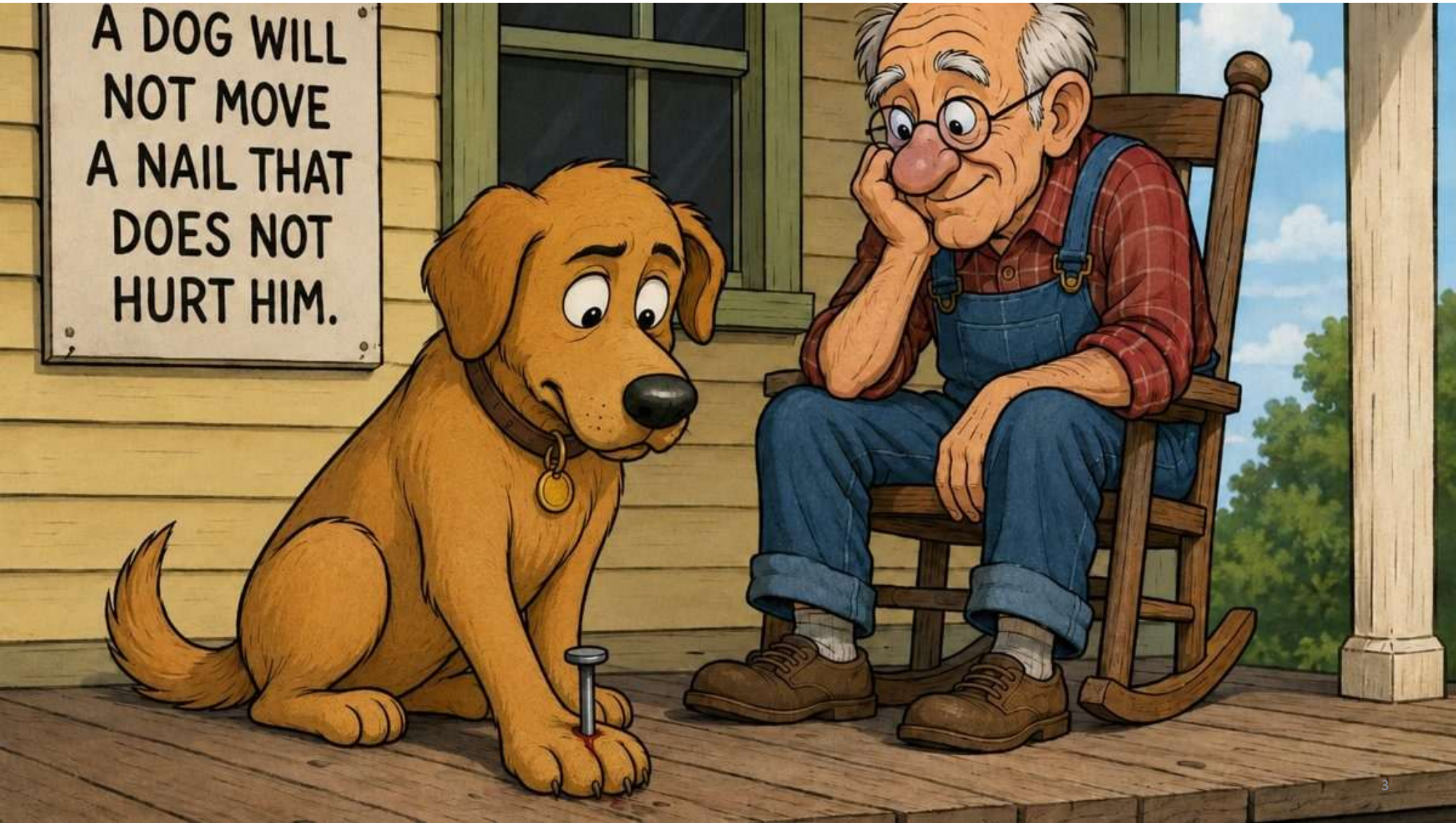
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PART 1 · AMENDMENTS

Top Reasons to Amend Bylaws

How amendments work and why most associations need them.




A DOG WILL
NOT MOVE
A NAIL THAT
DOES NOT
HURT HIM.

THE PROCESS

How to Amend Your Documents

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1	2	3	4	5	6
Review	**Draft**	**Educate**	**Vote**	**Mortgagees**	**Record**
Audit the documents	Plain English	Owner meeting & FAQ	Owners approve	Condos, if required	Register of Deeds

Condos

- 2/3 of co-owners
- Mortgagees: 90 days — silence = yes

HOAs

- Follow the Declaration
- No amendment clause = unanimous

Board Only

- Non-material changes
- Discriminatory covenants

WHY AMEND?

Top Reasons to Amend

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1

Developer Leftovers

Written to protect the builder

2

Outdated Law

Pre-2002 condo documents

3

Insurance

Doesn't match maintenance

4

Pets

What's a “household pet”?

5

Rentals

Airbnb didn't exist in 1985

6

Fair Housing

Old rules that discriminate

SCENARIO · PETS

Which of These Is a “Household Pet”?













SCENARIO · PETS

Poultry Loving Pete

Pete is a Millennial who is into alternative pets. He is unhappy with his job and decides that a pet hen will make him happy. He has not been diagnosed with depression. The declaration contains the following language:

> ***Household pets.*** *No animals, birds[,] or poultry shall be kept or maintained on any lot, except recognized household pets which may be kept thereon in reasonable numbers as pets for the pleasure and use of the occupants but not for any commercial use or purpose.*

? Can Pete have a pet hen? What if Pete had a diagnosis?



ANSWER · PETS

Maybe — and "Maybe" Is Expensive

- Courts read vague pet language broadly — some have ruled that a chicken or goat can be a household pet
- No Michigan case defines a "household pet"
- With a diagnosis, fair housing law may require an accommodation — decided case by case

THE AMENDMENT FIX

- Define "household pet"
- List what's allowed
- Board approval, number & size limits

INSURANCE

The Insurance Squeeze

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91%
saw premiums go up

17%
saw premiums double or more

23%
moved to surplus lines carriers

20%
were turned away by a carrier

All In $$$

Association insures everything

Walls In $$

Owners insure upgrades & contents

Bare Walls $

Owners insure everything inside

Source: Community Associations Institute data, via micondolaw.com (July 2026)

SCENARIO · INSURANCE

Grilling Gary vs. Angry Andrew

Grilling Gary starts a fire on his deck, which is a limited common element. The fire spreads and burns down the deck of his neighbor, Angry Andrew. It then spreads to Andrew's unit, burning part of the general common element wall and his kitchen, which has a custom-installed Northern Tennessee red oak parquet floor.

The Association insures the common elements and the units "as originally built, excluding upgrades." Owners must maintain the interiors of their units.



? Who pays — the Association, Gary, or Andrew?

ANSWER · INSURANCE

It Depends — And That's the Problem

- Here, the Association insures what owners maintain — except for upgrades
- Who can prove what's “original” vs. an “upgrade”?
- Insurers fight, repairs stall, owners get angry
- “No-fault” insurance will typically decrease the Association's insurance costs

THE AMENDMENT FIX

- Insure what you maintain
- Primary-carrier clause
- Consider “bare walls” — no-fault, often cheaper

SCENARIO · RENTALS

Revenge of the Renters

Serene Acres has 100 units, and 30 of them are currently rented as long-term rentals. The long-term renters don't maintain the property and have caused a lot of noise issues.

The condominium bylaws require anyone renting to comply with the Michigan Condominium Act, and the board wants to restrict further rentals.



? Can the Association rely on the Condominium Act to ban further rentals?

ANSWER · RENTALS

MCL 559.212

- A co-owner must disclose a rental 10 days before renting
- A co-owner must give the Association a copy of the exact lease to review for compliance with the condominium documents, plus the executed lease
- If there is no written lease, the co-owner must provide the occupants' names and address, the rent and due dates, and the term

THE AMENDMENT FIX

- Minimum lease term
- Ban listing on Airbnb / VRBO
- Define “rent,” “lease” & “license”
- Rental cap (2/3 vote)

RENTALS

Practical Considerations

- Set a percentage of units that can be rented (normally 10–20%)
- Keep it under 1/3 of the units so you can get 2/3 co-owner approval (MCL 559.190)
- 2/3 mortgagee approval is also required (MCL 559.190a)

GRANDFATHER CLAUSE OPTIONS

1. A co-owner can rent until the existing lease expires
2. A co-owner can rent until they sell the unit or stop renting or offering it for rent

RENTALS

Common Exceptions to Rental Caps

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- Death
- Divorce
- Financial hardship
- Medical purposes
- Relocation for employment
- Other extenuating situations approved by the board



Exceptions will keep the "What If Guy" from voting against a rental cap!

SCENARIO · FAIR HOUSING

The Streets of Sonoma

Sonoma Bay HOA had a covenant stating: “All persons under 18 must be in their home or back patio after sunset. There will be no loitering on the street.”

The Association argued the rule was necessary for crime prevention and safety. Parents argued there was no evidence the children had committed any crimes, or that parents could not supervise their children after sunset.



? Was the covenant enforceable as written?

ANSWER · FAIR HOUSING

No — Fix the Rules Instead

- Rules targeting kids = familial status discrimination
- The court found no evidence that children were inclined to commit crimes or that parents couldn't supervise them at night
- Remove any discriminatory restrictions related to protected classes

PROTECTED CLASSES

- Race, color & national origin
- Religion
- Sex
- Disability
- Familial status

MICHIGAN ALSO PROTECTS

- Age · Height & weight · Marital status
- Sexual orientation & gender identity
- Source of income

RULES & REGULATIONS

Rules vs. Amendments

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	Amendment	Rule
Who approves?	Owners	Board
Recorded?	Yes	No
New rights or duties?	Yes	No
Speed	Slower	Faster

GOOD USES FOR RULES

- Architectural standards
- Fine & enforcement policy
- Collection policy
- Solar energy policy

Rules fill in the details. They can't rewrite the documents.

HOMEOWNERS' ENERGY POLICY ACT

Solar Panels

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2024	2025	April 1, 2026	30 days
Passed	Effective	Solar policy deadline	Silence = approved

You Must

- Adopt a solar energy policy
- Post it & share it (on your website, if you have one)
- Respond within 30 days

You May Still Regulate

- Common areas & shared roofs
- Height & angle on the roof
- Frame & wiring color
- Above the fence line

HOMEOWNERS' ENERGY POLICY ACT

Energy-Saving Improvements

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Can't ban them. Can't require approval.

Heat pumps	**Clotheslines**	**Rain barrels**
Reflective roofing	**Energy-efficient windows**	**EV chargers**

Gray areas: pergolas, awnings, window film, artificial turf — and owners can sue for attorney fees.

PART 2 · ENFORCEMENT

Best Practices on Enforcing Bylaws

The enforcement process, your options, and the violations boards see most often.



THE PROCESS

The Enforcement Process

1. **Document** Photos, dates, witnesses
2. **Confirm** Is it really a violation?
3. **Notify** Letter with a cure date
4. **Hearing** Before any fine
5. **Escalate** Fines & attorney letter
6. **Litigate** Injunction, damages, fees



Be consistent. Selective enforcement invites waiver defenses.

YOUR TOOLBOX

How to Enforce the Governing Documents

- Fines
- Liens
- Money damages
- Injunctive relief
- Recovery of attorney's fees — is your provision specific? Does it cover pre-litigation fees?
- Bylaw enforcement & collection policies



SCENARIO · FINES

Inflatable Santa in July

Ned puts up a 12-foot inflatable Santa and holiday lights at his site condo. The Association's rules require all holiday decorations to be removed within 30 days after the holiday. Ned keeps them up until July.

The manager emails: “Remove it or it's $100 a day. You may request a hearing.” Ned doesn't request one. Santa stays. Six months later, Ned “owes” $18,000.



? Can the Association collect the $18,000?

ANSWER · FINES

Not Yet — No Hearing, No Fine

- Condo fines require notice AND a hearing (MCL 559.206)
- “You may request a hearing” isn't enough
- Ned can skip the hearing — but you still have to hold it

BEST PRACTICE

- Violation notice with a cure date
- Schedule the hearing — date & time
- Written decision
- Document everything

SCENARIO · COLLECTIONS

The Protest Payer

Mo is mad that the Association hasn't fixed the dead landscaping on the general common elements outside his unit. He stops paying assessments “in protest,” moves to Florida, and rents his condo to a tenant who pays on time every month.



? What can the Association do?

ANSWER · COLLECTIONS

Plenty — Start With the Rent

- No “repair and deduct” — Mo still owes his assessments
- Condos have a statutory lien
- Rent diversion: the tenant pays the Association
- Foreclosure by advertisement is faster & cheaper

BEST PRACTICE

- Adopt a collection policy
- Send accounts to counsel early
- HOAs: confirm your documents allow a lien

MCL 559.208 (lien & foreclosure) · MCL 559.212 (rent diversion)

SCENARIO · INJUNCTIONS

Short-Term Renters, Long-Term Problems

Tranquil Acres Condominium Association was formed in 1985 and has 25 units. The bylaws permit only "residential use" and prohibit "commercial use," but they don't specifically prohibit rentals.

Over the past two years, investors bought 10 units that are regularly listed on Airbnb. Tranquil Acres has turned into Party Acres.



? Can the Association ban short-term rentals?

ANSWER · INJUNCTIONS

STRs Are Commercial Use

- Residential use restrictions
- Commercial use restrictions
- Express restrictions
- Illegal activity clauses
- Nuisance

REMEDIES

Fines aren't a great remedy — most owners will pay the fine and keep renting. An injunction stops the renting.

SCENARIO · RENTALS

Larry's Nephew's Band

Larry moves to Arizona and rents his condo to his nephew's band, The Noise Complaints. He doesn't tell the Association, and the lease never mentions the bylaws.



? Did Larry break the rules? What can the Association do?

ANSWER · RENTALS

MCL 559.212 — The Band Can Be Evicted

- Owners must disclose a lease 10 days in advance
- Tenants must follow the condo documents
- The Association can sue to evict the tenant and seek damages

BEST PRACTICE

- Leasing addendum
- Rental registration
- Rent diversion if dues go unpaid

SCENARIO · INJUNCTIONS

Good Fences Make Good Neighbors

Franky the Fence Lover moves into a new HOA. He never reads the recorded restrictive covenants, which ban fences, and the HOA never gave him a copy.

The restrictions include an architectural control process for any improvement: if the HOA doesn't respond within 30 days, the improvement is deemed approved. Franky builds the fence, and 60 days after it's built, the HOA sues him to take it down.



? **Will Franky have to take down the fence?**

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The Fence Must Be Removed

- Recorded restrictions give constructive notice
- Fences aren't permitted — the ACC has no discretion
- No application was submitted
- Laches can be a defense — act sooner rather than later



SCENARIO · SMOKING

Smoke Signals

Sandy has smoked since she was 18. Her neighbor April has asthma and complains that Sandy's smoke drifts into her unit and makes it hard to breathe. The bylaws are silent on smoking but have a nuisance restriction.

The board installs air purifiers in the HVAC system but says there's nothing else it can do. It even proposes an amendment banning smoking, but it isn't approved by 2/3 of the co-owners. April sues the Association for not enforcing the nuisance restriction.



? Has the board violated the bylaws?

ANSWER · SMOKING

Probably Not — Unless the Bylaws Ban It

- A little smoke isn't a nuisance unless the documents ban it
- A rule can't create a brand-new restriction
- Air purifiers and an amendment vote may be enough for April

BEST PRACTICE

- Amend to ban smoking
- Meanwhile: seal gaps, add ventilation

Davis v Echo Valley Condo Ass'n, 945 F3d 483 (CA 6, 2019)

SCENARIO · FAIR HOUSING

Steve's Emotional Support Chickens

Steve's condo documents don't permit any animals or pets. Steve asks to keep Fluffy, Mr. Tickles and four other emotional support chickens. He has a letter from his primary care physician saying he needs six emotional support chickens.

The board says six is unreasonable and denies the request based on the bylaws.



? Did the board properly deny the chickens?

ANSWER · FAIR HOUSING

No

- HUD is no longer looking into alternative pets as a policy decision
- The court said the denial was arbitrary
- The Association needed an expert to refute a valid doctor's letter

BEST PRACTICE

- Written accommodation policy
- Interactive process
- Call counsel before denying

WRAP-UP

Hirzel's Enforcement Best Practices

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1. **Enforce the documents as written**
   If the language doesn't fit, amend it
2. **Be consistent**
   Selective enforcement invites waiver defenses
3. **Follow your own process**
   Notice & an opportunity for a hearing before fines
4. **Document everything**
   Photos, dates, letters and board minutes
5. **Put it in writing**
   Enforcement, fine, collection & fair housing policies
6. **Call counsel early**
   Especially for accommodation requests & litigation

Questions?

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