



Your Governing Documents Won't Save You

The hierarchy of documents and the fair housing laws that override your HOA's rules

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Agenda

- ▶ **Part 1** – The hierarchy of authority
- ▶ **Part 2** – Fair housing: the law that overrides your documents
- ▶ **Part 3** – Protecting the board



Part 1: The Hierarchy of Authority

YOUR DOCUMENTS ARE NOT THE TOP OF THE
FOOD CHAIN.

Show of Hands

**Who thinks the declaration is the
highest authority governing your
association?**

Not the Top of the Food Chain

- ▶ The declaration is a contract among owners, not a constitution
- ▶ Federal law and Iowa law govern the association whether the documents mention them or not
- ▶ **If the declaration says one thing and the statute says another,** the statute controls

The Pyramid, Top to Bottom

**Federal law (Fair Housing Act, ADA, FCC
OTARD, bankruptcy)**

**Iowa law (Iowa Civil Rights Act, Ch. 499B and 504,
other statutes)**

Articles of Incorporation

Declaration / CC&Rs

Bylaws

Rules and Regulations

Board policies and resolutions

Higher beats lower. Always.

The Core Rule

- ▶ **A lower document cannot override a higher one**, even if it says it does
- ▶ A rule that contradicts the declaration is unenforceable
- ▶ A declaration provision that contradicts the Fair Housing Act is unenforceable

It Does Not Matter

- ▶ How long the provision has been there
- ▶ How many boards enforced it
- ▶ Whether anyone ever objected

Rules That Fit vs. Rules That Conflict

▶ Fits inside the declaration

- ▶ Declaration allows pets; rule requires leashes and cleanup
- ▶ Declaration allows leasing; rule requires a copy of the lease
- ▶ Declaration sets architectural review; rule sets the submission form

▶ Conflicts with the declaration

- ▶ Declaration prohibits fences; rule authorizes fences
- ▶ Declaration is silent on leasing; rule caps rentals
- ▶ Declaration allows two pets; rule allows one

The “Most Important” Thing Above Your Declaration

- ▶ **Fair housing law** applies to every association in this room
- ▶ It overrides pet restrictions, occupancy rules, age limits, and enforcement decisions
- ▶ Enforced by HUD, the Iowa Civil Rights Commission, and private plaintiffs who recover attorney fees



Part 2: Fair Housing

THE LAW THAT OVERRIDES YOUR DOCUMENTS.

You Are a Housing Provider

- ▶ **The association is a housing provider** under the Fair Housing Act, even though it sells and rents nothing
- ▶ Rules, enforcement, common areas, services, and how the board responds to requests are all covered
- ▶ Directors, managers, and the management company can be named alongside the association

“But the City Does It”

- ▶ A municipality has police powers and different legal exposure
- ▶ The Fair Housing Act treats you like a landlord, not like city hall
- ▶ **A city curfew on minors in parks** is not authority for a rule barring children from the common area after 8 p.m.

Protected Classes

▶ **Fair Housing Act (federal)**

- ▶ Race
- ▶ Color
- ▶ Religion
- ▶ National origin
- ▶ Sex
- ▶ Familial status
- ▶ Disability

▶ **Iowa Civil Rights Act adds**

- ▶ Creed
- ▶ Sexual orientation
- ▶ Retaliation is independently actionable
- ▶ Complaints to the Iowa Civil Rights Commission within 300 days
- ▶ Local ordinances (Des Moines, Iowa City, others) may add more

Scenario 1: The Pool Rule

Rule 14: “Children under 14 may not use the pool unless accompanied by an adult.”

A single mother with a 12-year-old swimmer complains. The board says it is a safety rule and the city pool has the same one.

Answer: No

- ▶ **Familial status** protects households with children under 18
- ▶ A rule that singles out children is discrimination on its face, regardless of intent
- ▶ “The city does it” is not a defense. Neither is “we've always had it”

Children: What You CAN and CAN'T Do

▶ CAN

- ▶ Regulate conduct: “no running on the pool deck”
- ▶ Require supervision of anyone who cannot swim
- ▶ Set hours, noise limits, and guest limits for everyone
- ▶ Offer a “lap swim” hour open to anyone swimming laps

▶ CAN'T

- ▶ “Children under 12 must be accompanied”
- ▶ “No children in the clubhouse”
- ▶ “Adult swim”
- ▶ Occupancy limits tighter than local code or two per bedroom

HOPA: The Only Way to Exclude Children

80%

of occupied units must have at least one resident 55 or older, with published intent and age verification every two years

Show of Hands

**Who has received an emotional
support animal request?**

Scenario 2: The ESA Letter

The declaration limits pets to 25 pounds. An owner moves in with a 70-pound dog and emails an “ESA certificate” from an online registry.

The board wants to fine and demand the dog leave.

Answer: The Certificate Is Meaningless. The Request Is Not.

- ▶ Any communication linking an animal to a disability is an accommodation request. No magic words
- ▶ The board may ask for reliable documentation of a disability-related need; it may not demand a form, a diagnosis, or medical records
- ▶ Fining or demanding removal before the process runs is the fastest route to a claim against the Association

Two Different Laws

▶ ADA “service animal” (public places)

- ▶ Dogs only (plus miniature horses)
- ▶ Individually trained to perform a task
- ▶ Applies to businesses open to the public
- ▶ Emotional support alone does not qualify

▶ FHA “assistance animal” (housing)

- ▶ Any common household animal
- ▶ No training required
- ▶ Includes emotional support animals
- ▶ Test is disability plus disability-related need

What the Law Actually Requires

- ▶ **No training, certification, or registry.** Cats, birds, rabbits, and other common household animals qualify
- ▶ **Breed, size, and weight limits do not apply** to an approved assistance animal, and no pet fees or deposits
- ▶ **Denial only if** this specific animal is a direct threat or would cause substantial damage, and no lesser accommodation works

Handle the Request in Five Steps

- ▶ **1. Recognize it** as an accommodation request
- ▶ **2. Acknowledge in writing** within days; delay is denial
- ▶ **3. Request documentation** only if the disability or need is not obvious
- ▶ **4. Engage** before saying no; propose alternatives if there is a real problem
- ▶ **5. Decide with counsel**, document it, and keep the file confidential

Beyond Animals: Accommodations vs. Modifications

▶ **Accommodation (change a rule)**

- ▶ Association bears the cost
- ▶ Reserved parking near the entrance
- ▶ Waiving a guest limit for a live-in aide
- ▶ Extended cure periods; accessible meetings

▶ **Modification (change the property)**

- ▶ Owner generally bears the cost
- ▶ Ramps, grab bars, lever handles
- ▶ Association may set reasonable specifications
- ▶ Cannot refuse; can require licensed work

The Enforcement Line

▶ CAN

- ▶ Fine, lien, and enforce against anyone who violates the documents
- ▶ A disability does not excuse a noise violation
- ▶ A family with children still owes assessments

▶ CAN'T

- ▶ Enforce because of protected status
- ▶ Enforce more aggressively against someone in a protected class
- ▶ Skip the accommodation analysis when a disability is raised

Two Things That Keep This Accurate

- ▶ **The accommodation duty:** if the violation is connected to a disability and the owner asks, you must consider an accommodation before enforcing
- ▶ **Disparate impact:** a neutral rule applied evenly can still violate the FHA if it disproportionately burdens a protected class without a legitimate justification

Scenario 3: The Neighbor

An owner screams racial slurs at the minority family across the street, harasses their visitors, and tells other residents she runs the HOA.

The declaration prohibits nuisances and offensive activity. The board sends her three cease-and-desist letters over two years. It also forecloses on her for unpaid assessments.

What the Board Did

2 years. 3 letters. 0 enforcement actions.

Except the foreclosure for assessments, which proved the board knew how to enforce when it wanted to

What It Cost

\$262,500

paid by the HOA and its management company to settle, on top of \$150,000 in damages against the harasser

The Duty to Intervene

- ▶ **24 C.F.R. § 100.7(a)(1)(iii)**: liable if you knew or should have known, had the power to correct it, and failed to act promptly
- ▶ **Power is measured by your documents.** Nuisance, “noxious or offensive,” and “no violation of law” clauses are likely enough
- ▶ **No clause reaching the conduct, no duty.** *Morris v. West Hayden Estates* (9th Cir. 2024)

Climb the Ladder Until It Stops

- ▶ Written anti-harassment policy and a complaint procedure
- ▶ Warnings, then notices of violation and fines
- ▶ Mediation; suspension of privileges
- ▶ Injunction; law enforcement
- ▶ **Do not stop partway up.** And do not skip to self-help: removal requires a court order

Four Questions When a Complaint Lands

1. Is a protected class involved?
2. Did we know, or should we have known?
When?
3. What do our documents let us do?
4. What did we actually do, and is it in writing?

Watch List

- ▶ **Group homes:** a residence for people with disabilities is a single-family use; single-family covenants cannot exclude it
- ▶ **Shifting federal enforcement does not make you safe.** Private plaintiffs and the Iowa Civil Rights Commission do not change with administrations
- ▶ **Deadlines:** two years for a private FHA claim; 300 days for an Iowa Civil Rights Commission complaint

A conference room with a large table and chairs, viewed through a window with a red overlay.

Part 3: Protecting the Board

PROCESS IS WHAT PROTECTS YOU WHEN THE
CLAIM ARRIVES.

Show of Hands

**Who has read the discrimination exclusion
in your D&O policy?**

Does Your D&O Policy Cover This?

- ▶ Many policies exclude discrimination claims, cover defense only, or cap the limit at a fraction of the policy
- ▶ Many define “claim” as a lawsuit, so a HUD or Iowa Civil Rights Commission complaint may not be covered
- ▶ **Ask your agent, in writing:** covered claim and limit; individuals and manager covered; defense inside or outside limits; administrative proceedings covered

The Accommodation Policy in a Nutshell

- ▶ **Enforce normally** until a request comes in
- ▶ **Recognize the request.** Any link between a rule and a disability counts
- ▶ **Route it to counsel the same day.** No board member responds on the merits
- ▶ **Respond in writing, promptly,** and decide with counsel: “reasonable” is a legal question
- ▶ **Document everything,** including the reasons for any denial

No Policy Prevents a Claim

- ▶ Anyone can file with HUD or the Iowa Civil Rights Commission for free
- ▶ **What a policy does:** gives you a defensible record when the claim arrives
- ▶ Investigators look at how fast you responded, what you did, and whether it matched how you treated everyone else

Board Members: Three Rules

1. Stay out of the owner's medical details
2. Stay off social media and reply-all
3. Stay off the record until counsel has weighed in

The Short List

- ▶ **Reasonable accommodation and modification policy** with intake and counsel referral
- ▶ **Assistance animal policy** that mirrors HUD guidance
- ▶ **Enforcement and fining policy** with notice, cure, hearing, applied the same way every time
- ▶ **Anti-harassment policy** covering resident-on-resident conduct
- ▶ **Governing document audit** to find the rules that would not survive this hour

Thank You!

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