

Judicial Deference: another reason to stay out of court

We continually preach to homeowners, “stay out of court, it cost too much, it’s your limited resources against the HOA’s unlimited legal and financial resources and if you lose you could end up paying court awarded legal costs of the HOA (thousands of dollars)”. There is no good alternative until [an out-of-court dispute resolution process is implemented within the State HOA Office.](#)

Here is another reason to avoid court: judicial deference. In other words as described below, the court generally will not interfere with the governance and authority of HOA Boards.

Judicial Deference Relative to Operating Rules.

The principle of “judicial deference” means that courts will defer to the business judgment and decisions of an association’s board of directors concerning the business of the association so long as the directors do not have a conflict of interest and their decisions are made in good faith and in what the director believes to be the best interests of the association. Operating rules that are properly adopted by an association are generally afforded judicial deference when they are challenged in court proceedings.

To ascertain the required procedures for the adoption, amendment, or repeal of operating rules within a given association, one must be familiar with both the statutory

requirements for the adoption of rules that are contained in the state statutes that apply to the association, and the provisions contained in the association's governing documents (CC&Rs / Declaration, Articles of Incorporation, and Bylaws) relative to rules. While it is important for individual board members to understand the process of adopting, amending, and repealing rules, such action should only be undertaken with the guidance or assistance of legal counsel who is familiar with the applicable state statutes and provisions contained in the association's governing documents.