

## HOA's restriction on pool use is legal

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*Q. My neighborhood HOA limits the number of people from a single household who can use the pool to five persons at one time. The HOA distributes five pool bands per household regardless of the number of people living in the house. Additional bands are \$200 per season. My husband and I are both on the property deed, and we have four minor children. This seems discriminatory and illegal for our family to have to pay extra for the six of us to be inside the pool gate at one time. This restriction was not disclosed to us at the time of purchase, but was on a private section of the HOA website for property owners only. We did read the HOA's governing documents and this restriction was not in the general rules and regulations.*

The N.C. Planned Community Act gives HOA boards the right to adopt rules and regulations and to "regulate the use, maintenance, repair, replacement, and modification of common elements."

Limiting the number of pool bands for each household was most likely a measure to avoid overcrowding. The board is within its discretion in enacting such a regulation. Unless the regulation was intended to be discriminatory, my opinion is that it is enforceable.

Discrimination against homeowners with children is a violation of the Fair Housing Act. However, the pool regulation you have described does not appear to discriminate against families with children. It simply limits the number of persons from a particular household who can use the pool simultaneously, and it applies to all households, whether or not there are children in the household.

While it is advisable for copies of rules and regulations to be distributed to owners after adoption by the board, the fact that the regulation was not provided to you prior to your home purchase does not necessarily make the regulation unenforceable.

### Follow up

My recent column dealt with the issue of HOA boards levying fines against owners without prior written notice for violations of the CCRs and the opportunity for the owner to be heard before the board.

COLUMNISTS »

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One reader asked if a fine could be levied if the owner does not appear for the hearing. The answer is yes, as long as the owner was provided with written notice of the violation and the opportunity for a hearing. The owner's presence at the hearing is not required for the board to make a determination of whether a violation occurred and whether fines should be levied.

I strongly recommend that HOA boards send a notice of hearing to the owner by both regular mail and certified mail, return receipt requested, to the owner's last known mailing address.

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