

Backyard Event Rentals: Problems Posed for Homeowner Associations

In the Dirt: A Real Estate Legal Update

By Elizabeth Lum on April 6, 2023

Homeowners may wish to engage in backyard event rentals to earn supplemental income. For example, some homeowners may rent out their pool and backyard space for parties.

While this might seem like a clever opportunity for homeowners to make an extra buck, such backyard event rentals will likely cause tension between homeowners and their HOA or community management entity.

Potential Liability Issues

Although the HOA would likely not be liable for injuries sustained by a guest during a party *on a resident's property*, they may be liable for injuries sustained in common areas as guests enter or explore the community.

Additionally, if an accident occurs and the homeowner does not have adequate insurance, it is likely that a litigious guest may try to sue the HOA instead.

HOAs who wish to know how it can regulate short-term rentals should view our previous article. This information also applies to backyard event rentals.

Concerns Related to Property Damage

With all short-term rentals, there is risk that a guest will damage common areas. Short-term guests are often less cognizant of an HOA's rules and, since they do not have a stake in the community, are more likely to misuse common areas.

HOAs are generally responsible for the maintenance and repairs of the common areas, so they will want recourse for any damage caused by non-residents.

HOAs are advised to review their governing documents to confirm whether they may charge offending homeowners for the cost of repairing damages caused by their short-term guests. HOAs may also consider adopting a precautionary provision mandating that homeowners accompany their guests within certain portions of the community.

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HOA Regulation of Backyards and Other Conduct

HOA declarations often contain rules which regulate the conduct of its members. For example, an HOA may restrict the use of fireworks or other noisy instruments that may be irritating to other residents. Some HOAs may have other restrictions that regulate short-term rentals more generally. For example, an HOA may impose a minimum or maximum rental length or restrict renter turnover time.

HOAs should be aware that if such restrictions are not included in the declaration, adding an amendment may be difficult. However, an HOA may be able to rely on other restrictions contained in their governing documents, such as a prohibition on using property for commercial purposes or in a manner that causes a nuisance within the community. HOAs may be able to enact reasonable rules and restrictions regulating short term rentals based upon an obligation to maintain the health, safety and welfare of the communities which they govern.

Municipal Regulation

HOAs may also rely on outside sources of regulation to restrict short-term rentals. For example, the city's applicable noise or nuisance ordinance may also assist in preventing loud activity caused by short-term renters.

Many cities also have ordinances related to parking which may discourage large gatherings associated with short-term renters. For example, cities may mandate that cars only park on residential streets for a certain amount of time.

Read More: Municipal Regulation of Short-Term Rentals

Potential Safety Issues

Frequent backyard event rentals may also increase the potential for safety-related issues, especially for those living in a gated community.

Event rentals may involve the wide distribution of a community's gate code to strangers. In some states and under some circumstances, an HOA may risk liability if it fails to keep the premises safe. HOAs should consult an attorney to determine how to best protect its community when short-term renters are frequent visitors.

Special Concerns Related to Pool and Backyard Rentals

Event rentals involving pools may bring about other complications for HOAs. An app called "Swimply" which allows for homeowners to coordinate short-term rentals of pools or other back yard improvements encourages homeowners to lease port-a-potties to ensure guests have restroom access.

The use and delivery of port-a-potties may be unsightly and obnoxious for surrounding homeowners, and if temporary structures or outbuildings are restricted, may violate the HOA's governing documents

HOAs should consult an attorney to verify that their covenants are broad enough to protect against the dangers of backyard events and other short-term rentals. HOAs should also be aware of evolving technologies which may incentivize homeowners to use their space for such backyard rentals.

****This blog was written with assistance from law clerk Adrianna Northrop.**

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