

Private Requirements for Short-Term Rentals

In the Dirt: A Real Estate Legal Update

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Short-term rentals of property, including, rentals for as short of time as on an hourly basis, are increasing in frequency around the country. The character of a community can be dramatically altered by such rentals and cause concerns for homeowners related to property values, security, and peace of mind.

Homeowner Associations (“HOAs”) are created to protect their owners’ interests and property values, including amenities in the subdivision, by enforcing property restrictions and rules – rules that may be violated by unruly short-term renters. Lenders desiring to protect their security interest in their collateral share an interest with owners in the preservation of the subdivision and management of short term rentals and benefit from the enforcement of these rules by HOAs and through proper drafting of their loan documents can take advantage of the HOAs authority with regard to short term rentals. Owners that are leasing their homes share the property concerns of non-landlord owners and lenders in preventing disorderly conduct by renters and by properly drafting their leases can also benefit from the enforcement of restrictions by HOAs. In short, each of these entities may institute various safeguards in their own documents to prevent negative impacts associated with short-term rentals from getting out of hand.

Restrictions by HOAs:

HOAs have an incentive to restrict short-term rentals because risks associated with rented properties of members may be shouldered by the entire community, while any benefits are reaped only by the individual property owners. HOAs are responsible for maintenance of amenities, common areas, and in some cases portions of the individually owned lots. In addition to the direct maintenance costs that could result, short-term rentals could lead to a decrease property values due to noise, renter behavior, or lack of maintenance resulting from non-presence of the owner.

Subdivision covenants, declarations or indentures, may be drafted in a manner that restricts short-term rental of property in the development. Some residential use provisions that might help prevent or restrict rentals are provisions prohibiting commercial activity out of their residence – thus prohibiting rentals of the home’s swimming pool for a pool party or the home for a wedding reception. The extent to which those provisions are helpful depends upon their language

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and should be carefully evaluated in this context. HOAs should also ensure that their restrictive covenants involving short-term rentals are non-ambiguous because if a covenant is ambiguous courts will often decide that the covenant does not apply and thus the HOA is unable to prevent the unwelcome activity from taking place in the neighborhood .

Covenants and restrictions that are set out in a declaration, carry a presumption of validity and run with title to the property. However, if restrictions against short term rentals are not present in the declaration, no enforcement or regulatory activity by the HOA may take place. Accordingly, in such case the HOA or its management company should consider amending the declaration to regulate short term rentals and provide for protection for owners. Depending upon the terms providing for amendment of those documents, it might be difficult to obtain the required approval. If an amendment is required, it would be wise to obtain legal advice.

Read More: [Common Considerations for Homeowner Associations Regarding Short-Term Rentals](#)

Restrictions by Lenders:

Lenders, concerned about the security for their loans, may also restrict use of the property for short-term rentals during the term of their loan. Some lenders may prohibit short-term rentals entirely, especially if the loan agreement provides that the property is being held as security for a loan to purchase the borrower's primary residence. If the borrower's residence is instead principally used for short-term rentals when the borrower agreed otherwise, the borrower may be held in default under their loan and the lender may take action including acceleration of the loan, foreclosure, or other available remedies. On the other hand, a lender might agree to allow a use of the property for rental purposes if certain conditions are met, such as providing the lender with a copy of the lease, limiting the duration of such rental arrangements, requiring professional management or a rental service, the purchase of additional insurance, or requiring that renters meet certain conditions including the purchase of liability insurance and payment of additional deposits.

Restrictions by Landlords:

Landlords often impose restrictions on their tenants, such as prohibiting assignment or subleases, requiring liability or renter insurance, and making security deposits. The lease should provide that a copy of the lease will be provided to the HOA, that a violation of the restrictions is a default under the lease, allow the HOA enforcement rights against the tenant, and limit occupancy associated with the property. Stipulations of this nature, taking into account all possible consequences of the lease and other owners in the subdivision, should be part of the lease agreement. Clear and enforceable remedies for failure to abide by those conditions should also be provided in the lease, including fines,

retention of the security deposit, and termination of the lease with corresponding eviction as permitted by law.

Homeowner associations, lenders, owners, landlords and other interested parties documenting or attempting to provide restrictions on short-term leases would be wise to consult an attorney for legal advice prior to taking action to regulate such agreements.

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

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