RESTRICTING RENTALS
in Community Associations

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If you have been following the trends in the housing market over the last several years, you no doubt understand that:

(1) there is a current housing shortage; and

(2) this shortage has caused both home prices and rents to skyrocket.

The housing market has also experienced a significant increase in investors purchasing single-family homes, and units in condominium and homeowners associations in order to rent those homes, in some cases on a short-term basis. As a result, nearly one-third of all American home sales in 2021 were to investor-owners with no intention of living in that home.[i] Put this all together and these trends have caused considerable problems for potential first-time homebuyers and those seeking to secure federally backed mortgages.[ii] And as can be expected, these trends have also caused additional difficulties for community associations.

An April 2022 survey[iii] conducted by the Foundation for Community Association Research found that 64% of those who responded said that their association prohibits short-term rentals (rentals less than thirty (30) days); however, only 20% of respondents said their associations limit the number long-term rentals within their community, while another 20% stated they have no rules restricting rentals in their communities. Of those surveyed, 62% said investor-owners do not maintain their units to the expected standards of the community. In addition, the survey found that 73% of tenants living in community associations are not familiar with the association's governing documents, which, of course, can cause challenges to association boards in terms of rule enforcement and protection against property damage, and increased maintenance.

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As a result of these trends and the problems created many association boards are now asking whether they can put restrictions in place to limit or even ban rentals in their community associations (both short and long term). The answer to that question – with certain caveats – is yes.

As a general rule, most association governing documents (specifically, master deeds and declarations) include provisions that allow owners to rent their units with certain basic restrictions. Those restrictions may consist of: (1) minimum lease terms, which can require a lease of no less than one (1) year, but can also be for shorter periods, such as no less than six (6) months; (2) specific lease requirements, including that the lease must be for the entire unit, copies of the lease must be provided to management, and all leases are subject to the terms and conditions of the association's governing documents and rules and regulations; and (3) provisions related to violations of those documents, which may lead to the required eviction of the tenant by either the owner or the association when certain conditions are met.

However, due to the above-referenced increase in investor-ownership, community associations are seeking to enforce stricter requirements for rental units. In some cases, associations have proposed amendments that require all new owners to personally occupy the unit for a period of time following the initial purchase (sometimes as much as twenty-four (24) months). Another method to enforce stricter rental requirements is to cap rental capacity, usually allowing no more than 25%-30% of the units in an association to be leased at one time.

An association can enforce these types of rental restrictions within a community if authorized by is governing documents. That is the case even if the original governing documents did not contain such restrictions but have been properly amended by the owners to enact those restrictions. This was the issue in the case of *Cape May Harbor Village and Yacht Club, Inc. v. Sbraga,* where an owner in a small community challenged an amendment to the declaration approved by the owners that totally prohibited rentals.[iv] The court held that this amendment was valid and rejected the owner's argument that since rentals were permitted by the declaration when she bought her home, the owners could not now amend the declaration to prevent renting. However, in the decision, the court also applied a reasonable standard, concluding that based on the facts of this case, the owners had a reasonable basis for adopting this specific amendment.

As such, it is important to remember that whether a rental restriction will be deemed valid is determined both by the proper language of the governing documents (or amendment thereto), as well as the reasonableness of the restriction. This is evident from an "older" case that foreshadowed today's short-term rental issues, *In the Matter of 560 Ocean Club.*[v] In that case, an investor-owner in a condominium near the shore challenged the legality of a regulation enacted by the association's board that required leases to be at least ninety (90) days during the summer months but only thirty (30) days in the winter months.

The court struck down the regulation, holding that the board's action in restricting short-term rentals was invalid since there was no proper amendment to the association's master deed. The court further found that adopting such a restriction by rule or regulation effectively "confiscated" the owner's property interest acquired when it purchased its units in contravention of the Condominium Act.

Two separate questions that arise regarding associations that limit or restrict rentals is whether an association can charge an owner requesting to rent their unit an additional fee related to the rental and whether an association can require an owner and their tenant to execute a lease rider. Concerning charging an additional fee, the answer is yes, *if* that fee is both reasonable and related to the actual costs of the association's review of the rental. This issue was specifically decided in the case of *Chin v. Coventry Square Condominium Association,* where the court held that the Condominium Act authorized an association to charge a fee to owners renting out their units to cover the costs of association review of the rental transaction and inspection.[vi]

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However, the court further determined that any such fee must be reasonable (in that it should be reasonably related to the actual costs of the association's review and inspection).

Likewise, association governing documents will most likely provide authority to allow boards to adopt reasonable rules and regulations concerning rentals. If not already required by the association's documents, rules and regulations adopted by the board can include requiring owners to: (1) provide a copy of an executed lease; (2) follow specific move-in/move-out requirements; (3) require any tenants to comply with the association's governing documents and rules; and (4) require the owner and any tenants to execute a lease rider, which may include other specific requirements such as an assignment of rents.

In conclusion, while restrictions can be adopted to either limit or even ban rentals in community associations, those restrictions must be contained in the association's governing documents, be reasonable, and conform to the applicable law. If your association is considering adopting any type of restriction on rentals, adopting a rental resolution, or charging an additional fee to any investor-owner, you should first discuss the legal requirements and procedures for these rules and restrictions with association counsel. ■

END NOTES:

i Amanda Mull, *The HGTV-ification of America* (The Atlantic – August 19, 2022) – https://www.theatlantic.com/technology/archive/2022/08/hgtv-flipping-houses-cheap-redesign/671187/

ii Fun fact – the word "mortgage" has its derivation from a French law term meaning "death contract" or "death pledge," whereas the pledge ends (dies) when either the repayment obligation is fulfilled or the property is taken through foreclosure. See "Mortgage Loan," https://en.wikipedia.org/wiki/Mortgage_loan#cite_note-2 (citing Coke, Edward, *Commentaries on the Laws of England).*

iii See Foundation for Community Association Research – Snap Survey (April 2022) – https://foundation.caionline.org/wp-content/uploads/2022/06/SnapSurveyRentals.pdf

iv 421 N.J. Super. 56 (App. Div. 2011).

v 133 B.R. 310 (D.N.J. 1991).

vi 270 N.J. Super. 323 (App. Div. 1994).