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Community Associations Newsletter

The Short-Term Rental Debate Rages On...

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The debate over the benefits and drawbacks to short-term rentals of properties located within community associations in the DC Metro area is in full swing. Within the past year, we have seen a significant uptick in the number of inquiries received from clients on how to handle this hot-button issue, which has coincided with the proliferation of many convenient and well-known on-line platforms related to short-term rentals. This increased activity has led many jurisdictions in the DC Metro area to consider the adoption of new laws to regulate short-term rentals.

One of the purported benefits of this rental activity is that homeowners can bring in significant income from a short-term renter who may stay for only a few days or even a month, without having to lock in to a long-term lease. The commitment level is low between the parties and therefore the perceived risk of damage to property or loss of income from a bad long-term tenancy relationship can be avoided. In some cases, the rental activity even permits co-habitation with host and guest, which is the more traditional bed-and-breakfast concept. Most homeowners looking to engage in this activity seek a new stream of income to help them during a financial crisis of some sort.

Some homeowners have even suggested intangible and non-financial benefits to the short-term rentals, including meeting new people and feeling a sense of community with the short-term renter population. Even neighbors of short-term tenants have mentioned the pleasure of meeting new faces and new personalities.

That being said, the drawbacks of this activity can be serious. A short-term tenant may not be as invested in the long-term preservation of community amenities or the rented property's condition, and therefore the related use will reflect that perspective. Further, short-term tenants are rarely familiar with, nor have significant concern for, the community association rules regarding various issues such as waste disposal, amenity rules, and parking. Also, because of their short-term occupancy, enforcement of these rules against a tenant is next to impossible for the association. We have also heard concerns about renters utilizing the communities like hotels, expecting concierge services from the associations' staff or even neighbors. Many neighbors have complained to our association clients about the fear and safety concerns related to not knowing the persons coming and going on a regular basis from

2 Rees Broome, PC

their neighbors' homes. For condominiums specifically, short-term rentals could jeopardize a condominium association's eligibility for Fair Housing Administration certification. Additionally, if short-term rental activity violates local ordinances and/or regulations, the association may be at risk for liability exposure and increased insurance rates.

The starting point for any association faced with a short-term rental issue is to evaluate the legal documents for the association to see if it addresses such activity. The legal documents will often help the association to define "short-term" by describing required minimum lease terms. Some documents may also contain less objective standards, which may indicate that short-term, hotel, or transient uses of the property are prohibited. In that case, it may be possible or even required for the association to consider adopting further regulations to help clarify the definition of short-term, hotel or transient use. In addition, it is important to familiarize yourself with the local jurisdiction where the property is located as there may be regulations which require licensing or prohibit certain types of rental activity. Associations should also be aware of the potential insurance and liability implications associated with short-term rental activity in the community.

Your legal counsel should monitor applicable case law for your jurisdiction to help guide your enforcement efforts on this issue. Courts across the country have recognized the enforceability of the short-term rental restrictive covenants in a number of contexts, including original covenants and amendments thereto. Indeed, our firm has

experience in litigating these cases and we have obtained a number of favorable outcomes for our clients, to not only stop the prohibited conduct but recover related attorneys' fees and costs.

In our experience, enforcement procedures related to short-term rental activity can be challenging and should be approached from many angles. We have counseled our clients in many cases to utilize reasonable, lawful and creative approaches to communicating and enforcing the rental prohibitions, against both the owners and the tenants, such as parking suspensions, amenity access deactivations, and posting of appropriate signage in key locations. If the owner is motivated enough, he or she can attempt to hide the activity or make acquiring proof of the conduct extremely difficult. If a case ends up in litigation, the matter of proof can become critical and therefore documentation and confirmed evidence of the violation are important. Many times, the cooperation of the neighbors in obtaining such proof will be needed and this can present a complicated and awkward enforcement process for many association clients.

Our recommendation is always to conduct reasoned investigations and analysis into these matters, and to seek legal guidance on the association's restrictive covenants and applicable law before acting. This issue is certainly rapidly evolving across many jurisdictions and we expect more case law and regulations to come our way in the future. If your community would like to review its options in addressing short-term rentals, please feel free to contact any of our Community Association attorneys for guidance