

THE RENTERS ARE (STILL) COMING, THE RENTERS ARE (STILL) COMING!

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A couple of years ago, I wrote an article with a similar title, alerting Minnesota community associations to increasing concerns with non-resident owners. Many community associations responded by implementing rules and regulations or adopting governing document amendments to regulate, restrict or eliminate rental units from their communities. This article updates Minnesota community associations on the concerns with non-residents owners and reviews the options available for addressing any problem areas.

There are a variety of options available to restrict or regulate leasing within community associations, depending on the desired end result. The available options range from implementing rules and regulations to regulate leasing and govern occupant activity to amending a community association's declaration to restrict or limit or prohibit leasing of community association units.

Implementation of Leasing Rules and Regulations

A community association's bylaws and applicable Minnesota law generally provide authority to the board of directors to adopt rules and regulations regarding the operation of the community association. The board of directors typically maintains implied or express authority to regulate the use, maintenance, repair, replacement and modifications of common elements and units. With this authority, the board of directors may establish and levy fines for violations of the community association's rules and regulations.

A community association's board of directors may therefore create rules and regulations specifically addressing leasing and imposing fines for violations of those rules. These rules could include requirements that (i) owners provide certification that the owner completed a background check on the prospective tenant (using a professional company specializing in providing such services); (ii) owners register the property with the community association as a rental property, and provide and maintain current contact information for both the tenant and owner; (iii) owners include language in any lease that it is subject to the terms of the community association's governing documents (articles of incorporation, bylaws, declaration, and rules and regulations), and a violation of any of the governing documents constitutes a violation of the lease; (iv) the community association is not required to address any maintenance issue or other issue unless such issue is raised by the owner of the property (except in the case of an emergency), and that the community association is entitled to assess an administrative fee whenever a tenant directly contacts the community association (except in the case of an emergency); and (v) move-in/move-out may be conducted only during specified times and upon prior written notice to the community association, and the parking of moving trucks and related vehicles may be regulated.

Fines for violation of any of these types of rules could be significant, and will vary depending on the type of property and general community standards. For example, a fine for failing to provide certification of a background check could be \$500.00; the fine for failing to register a rental property could be \$250.00. The fee assessed each time a tenant directly contacts the community association (except in an emergency) could be \$100.00. Many community associations charge a move-in/move-out fee of \$200.00 to compensate the community association for damage to the common elements (damage to hallways/elevators in a multi-story condominium, and damage to sod, curbs, doorways, etc., in a townhouse community), but the fee should be equally assessed against owners of owner-occupied and non-owner-occupied units; some community associations assess a separate fine (\$100.00 or more) for failure to notify the community association in advance of a move-in/move out event.

Imposing such fees and fines may be sufficient to curb the number of units leased in the community association, or at least to encourage a bit more investigation on the part of the leasing owners to ensure their tenants are unlikely to violate the governing documents, thereby minimizing the fines and fees assessed to the owner.

In general, homeowner approval is not required to adopt rules and regulations. The board of directors is wise to seek homeowner input on any proposed rule, but this is generally not required. A community association attorney can offer a template of a rules and regulations manual, and will be able to review the proposed rules and regulations manual to ensure that it is consistent with the declaration and bylaws.

Amendment of Declaration to Restrict or Prohibit Leasing

A more permanent (and more involved) approach to addressing rental units in the community association involves an amendment to the declaration to restrict or prohibit leasing. Such an amendment could prohibit leasing entirely (effective as of the date the amendment is recorded in the county property records), or could limit or prohibit leasing, subject to certain exceptions, including any or all of the following:

- An exception “grandfathering in” units that are subject to a lease as of the date the amendment is recorded. This “grandfathering” could apply (i) for the balance of the lease term, (ii) for as long as the unit is leased (whether under the current lease or a new one), (iii) for as long as the current owner owns it, or (iv) to any unit leased as of the date the amendment is recorded, without regard to any change in ownership.
- A hardship exception, by which an owner could apply to the board of directors for a waiver of the general prohibition on leasing in the event extenuating circumstances should merit a waiver (*e.g.*, long term military deployment, long term absence to care for ill family member or to receive medical treatment).
- An exception permitting ownership by an estate planning trust or permitting short term corporate ownership following relocation of the owner.

- An exception permitting leasing to family members

The declaration amendment may also provide that leasing is prohibited as of a date sometime in the future (*e.g.*, ninety days after the date the amendment is recorded), so that owners currently leasing their units would have the opportunity to notify tenants of the change and make appropriate arrangements.

In order to amend the declaration, a community association must follow the amendment procedures in its current declaration and Minnesota law, as applicable. In general, a community association must obtain the consent of a percentage of homeowners (typically more than a majority and in rare situations this could be as high as unanimous consent). Once the necessary homeowner consent is achieved, many community associations are required to obtain consent from a majority of first mortgage holders, but this obligation may be limited by the declaration language. With all required consent received, a community may then file the declaration amendment with the county and thereafter enforce the new requirements.

Community associations must remember that owners of owner-occupied and tenant-occupied units may oppose restrictions or prohibitions on leasing for a variety of reasons. Given the time, effort and expense of a declaration amendment project, community associations will be wise to ensure support for any declaration amendment before starting the process. If the support is present, a community association can justify the time, effort and expense in pursuing the project, but continuing homeowner support is key to achieving a successful conclusion to the project. A community association can maintain homeowner support by keeping them involved in the process: regularly seeking input on document drafts and conducting at least one informational meeting before a vote is taken.

If your community association is experiencing issues with non-owner occupants, seek out experienced legal counsel to guide you through the decision on whether your community association should adopt rules and regulations to regulate leasing or amend the declaration to restrict or prohibit it.

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