

Out Out Damn Renters!

Let's face it, most of us have been renters for at least a brief period of time in our lives. The concept of "renting" or the status of being a "tenant" or "renter" is not necessarily a bad thing. If it were, we all must consider ourselves, in some respects, less than desirable. In short, it is not fair to label all renters as "trouble." With that said, there is no other topic that causes as much concern as renters. Consequently, I have often been asked whether an association can ban or limit rentals.

Whether we like it or not, ownership generally carries a greater sense of responsibility than renting (I am mindful of the last time I rented a car for a trip to Las Vegas . . .). Renters are typically more transient than owners and tend to be younger than those who are "putting down roots." Further, everyone reading this article can probably recall a late night party at a rental unit, or even a visit from the police to quiet things down. Again, such incidents are not limited to the rental environment, but I think we will agree that there can be frequent and common problems associated with a rental environment.



I believe that reasonable rental restrictions may be adopted and enforced in Utah. First, however, the association should ask itself whether the renter problems can be cured by behavior modifying policies rather than rental restrictions. If so, using a strict fining schedule may encourage owners to be more selective when approving renters because no owner likes being repeatedly dinged with fines. Surprisingly, many problems associated with renters can be cured by this approach.

There are other legitimate reasons why associations may be concerned about a growing renter population. If rentals remain unchecked, the association could ultimately find itself paying higher apartment

-based insurance rates rather than rates applicable to a community association. Moreover, the underwriting requirements of some institutional lenders require that no more than a certain percentage of homes be rented at any given time. If this threshold is exceeded, then the secondary mortgage market will not purchase the loan, thereby reducing the pool of potential buyers.



When the courts have become involved, they have recognized that regulating the number of renters within a community protects the "character, harmony and stability" of the association. When I am approached to help an association draft rental restrictions, it is always for one, if not all three, of these reasons.

Boards must understand that the law favors the free use of property. This means that restrictions on the use of property (such as rental restrictions) are disfavored under the law and this opinion has been expressly articulated by the Utah Supreme Court. Unless a restriction is reasonable, unambiguous, and serves a legitimate purpose, it will likely be held invalid if it is challenged. If these three criteria are met, however, a rental restriction should be enforceable.

Some restrictions aimed at renters have been held unenforceable, however. Restrictions that deny renters the use of the common facilities (swimming pool, tennis courts, clubhouse, etc.) and restrictions that attempt to charge owners who rent a higher assessment than owners who don't rent (often termed use fee, maintenance fee, or privilege fee) have been deemed null and void and should not be considered. This is sometimes difficult for a board to comprehend. Common sense tells us that if rentals cost the association more money through increased maintenance or administration, then those owners who rent should

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have to pay more. The courts disagree, however, because they see it as a form of discrimination when owners who rent have to pay more, or are treated differently than a non-renting owner.

There are other useful options besides capping or completely banning rentals.

Options to help control problematic rentals include placing a “rental cap” on the number of units that may be non-owner occupied at any given time, or completely banning rentals altogether. Other useful options include: 1. requiring that a unit be owner-occupied for a specific period of time before it can qualify as a rental, 2. requiring minimum lease terms and that the owner use an association approved lease agreement, and 3. limiting the number of units a single owner or entity can own. Which options to use should only be determined after consultation with your attorney and after a risk assessment is made.

In my opinion, having surveyed the legal climate in Utah for several years now, completely banning rentals is the most risky option by far. The remaining options serve the purposes of protecting the character, harmony and stability of the association and, if instituted properly, should be enforceable.

It is important to consider the existing owners who rent. It is my opinion that if a rental restriction is adopted, all current owners who are renting must be permitted to continue to rent until they sell their unit. Moreover, there must be hardship clauses in any such rental restrictions which may result in a permissible rental despite your association’s policy.

While it’s possible that a board is authorized to adopt rules that restrict the leasing of units, I advise that any restriction affecting an owner’s ability to rent their unit be done through a declaration (CC&Rs)

amendment, rather than by board rule. Please consult your attorney for further discussion for the difference between these two procedures.

A common concern is investors purchasing homes in which they have no intention of ever residing. Properly adopted restrictions can greatly reduce this problem. Such restrictions require owner occupancy of a home for a specific period of time before it is eligible to be rented and limit the number of units that a single entity can own.

The reality is that you will have renters in your community. Treat them with respect. Get to know them. Do not discriminate against them with respect to services, amenities or assessments. Note, however, that both the absentee owner and their tenants do not get the right to use the common facilities simultaneously. Typically, all benefits of ownership (other than voting) are transferred to the tenant, and the owner is divested of such rights during the period of tenancy.

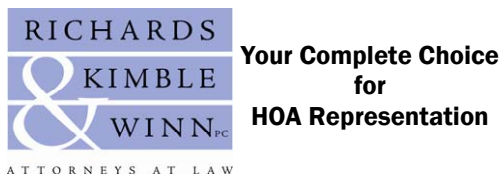
There are several steps that a community can take to help reduce the transient, and sometimes unpleasant, atmosphere that is attributable to renters. The above-referenced strategies should only be adopted after close review of your community’s needs and problems. While the renter “problem” will never go away entirely, changing your governing documents and your preconceived notions about renters will go a long way toward making your community strong and more livable.



Require minimum lease terms and that the owner use an association-approved lease form.

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