

WHAT IS A SINGLE-FAMILY?

It will come as no surprise to the readers of this Newsletter that boards are often confused about the “single family” restriction contained in their CC&Rs. Clearly, most Declarations are drafted to restrict occupancy to “single families.” For example, a provision such as: “the use of each living unit shall be limited to a single family” is not uncommon. As you know, the problem arises when a lot of people (either related or not) begin to occupy and reside together in a single residence.

Many Boards have attempted to find the following uses as violating this single family restriction: (1) day care centers; (2) living arrangements of unrelated individuals; and/or (3) living conditions that are simply “too crowded” given the size of the living unit.

In many respects, such concerns are justified. Noise issues increase. Moreover, additional rule and covenant violations may

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occur simply because there are more people subject to the rules. Parking becomes a problem with a limited number of available parking spaces often disappearing overnight. Common amenities, such

as clubhouses and pools, are now being used by “strangers.”

I desire that all readers take one issue to heart: In most cases, without the Board even realizing it, the problem is not one of unrelated individuals living together (even if they are numerous); the real problem is found

in behavioral issues. It is modifying this behavior, in most cases, that will resolve these problems rather than attempting to enforce a single family restriction.

Nevertheless, we must all face the reality that most CC&Rs limit occupancy to “single families.” Inevitably, therefore,

someone must dare to define a family. Frankly, I dare not. I thought of attaching a picture of my four kids, my wife and myself all posed neatly together to this article (o.k., I would have if my scanner was

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working properly). Fifty years ago, this may have been the quintessential “single family.” However, today, things are different. Most people do not even have a conceptual background against which a traditional family can be defined.

Boards take note and, in turn, save some money on legal fees. In most cases, an association’s ability to prohibit unrelated individuals from living together is limited. How then do we address high levels of occupancy within a single living unit when “we know” that those living together are not a single family?

First, one option is to adopt fair and reasonable rental restrictions. Boards must use caution prior to adopting any such policy and should have frequent consultation with its attorney prior to implementing any such policy. This may be a useful tool, however, and has been addressed in prior issues of this Newsletter.

Second, I mentioned a moment ago that I dare not define a single family. Fortunately, I do not have to. Your local municipality will most likely have done it for you. Most zoning ordinances in Utah contain a provision similar to the following (I'm only paraphrasing – consult your local city code):

“A family consists of any number of individuals related by blood, marriage or adoption, or up to four (4) unrelated

individuals living together as a family unit.”

“if related by blood, marriage or adoption, then theoretically, an unlimited number of individuals would be considered a “single family” under the law.”

If, and only if, you can produce evidence that a code violation exists, then an attorney should be consulted about attempting to control

such occupancy. Remember, if related by blood, marriage or adoption, then theoretically, an unlimited number of individuals would be considered a “single family” under the law.

Third, Associations obviously desire to avoid claims of discrimination. I cannot tell you how much time I spend defending Associations that have alleged to discriminate based on the Fair Housing Act's provisions regarding “familial status.” Such claims typically arise because the Board (not the attorney) has determined that more than a single family is residing within a living unit. Let's avoid this far too common trend.

Lastly, there may be options to explore such as occupancy restrictions based on density and size of units. These standards are

typically set forth in buildings codes and are based on square footage of the living unit, etc. Fire codes may also set standards.

In summary, the best strategy to handle an occupancy concern is to attempt to modify the offending behavior. If that cannot be done, then some other mechanism that does not involve the definition of family is the approach that I suggest. Finally, utilize your local municipality's definition of family if there is a real problem that cannot otherwise be controlled.

I've made a fundamental decision in my practice and it has resulted in tremendous personal satisfaction. I have found meaning to ‘community association living.’ I firmly believe that restrictive covenants serve an important and necessary purpose. They protect property values and must be enforced to ensure a certain standard and quality of living environment.

However, trumping it all (just like the “Rook” card, the way may family plays the game), it is the Board's obligation to first create and then maintain a sense of community and friendship amongst all members and occupants. Granted, this is not always easy and sometimes simply not possible. That is when I get involved.

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However, I am of the philosophy that the way in which your covenants are enforced (not just the single family restriction discussed herein) will set the tone for your community for decades to come.

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Your successor Board members will follow your established enforcement trend. You may or may not end up in my office. In any event, there is always a cold beverage in the refrigerator for anyone who stops by.

As always, I wish your communities the very best as we head into this holiday season. I look forward to addressing additional issues in future volumes of this valuable Newsletter.

By John D. Richards, Esq.

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