

RENTAL RESTRICTIONS

Over the past few years, there has been a dramatic increase in the number of rental properties in Arizona. Unfortunately, in some instances, tenants do not follow association rules and restrictions and do not maintain the rental property as well as owner occupied properties. Association boards and managers frequently contact our office to request information on implementing rental restrictions in their associations. Set forth below are suggestions for implementing rental restrictions.

RIGHT TO RESTRICT RENTALS UPHELD

On December 22, 2005, the Arizona Court of Appeals made an important decision regarding an association's ability to restrict rental properties in a community association in the case entitled Vales v. Kings Hill Condominium Association. In this case, the Court upheld an association's amendment to its CC&Rs prohibiting owners from renting their units in the association as soon as the first of the following was to occur:

- (1) sale of the unit by the owner(s) of the unit at the time the amendment was recorded;
- (2) death of the owner(s); or
- (3) if the owner(s) at the time of adoption of the amendment ceased to rent or lease their unit for more than three consecutive months.

Arizona law was previously unsettled regarding an association's ability to restrict or eliminate rental properties in an association.

It is important to note, however, that it is now very difficult for condominium associations to implement a prohibition on rentals within a condominium association since A.R.S. Section 33-1227 (D) requires unanimous consent of all owners prior to enacting a prohibition of rentals within the community

To obtain a full copy of this case:
www.cofad1.state.az.us/opinionfiles/CV/CV040816.pdf

MEMBERSHIP APPROVAL

It is important to note that in most cases, in order to implement a rental restriction, an association will need to obtain the requisite approval of the membership to amend its CC&Rs.

GRANDFATHER CLAUSE

It is our opinion that associations considering adopting a rental restriction should proceed forward with a proposed amendment against future owners. Accordingly, a proposed amendment to the Declaration regarding rental restrictions should contain a grandfather clause that grandfathers all current owners. The clause should state that the grandfathered owners' right to rent their units/lot shall expire upon the transfer of the title (sale) of a lot/unit.

MONITOR RENTALS WITH LANDLORD/TENANT REGISTRATION

Our firm recommends that associations monitor rentals in the association by proposing an amendment to an association's CC&Rs, which requires the owner of a unit/lot to register his/her/its tenant with the association. The owner should provide the association with his/her/its current address, the tenant's contact information, other relevant information (such as tenant's vehicles and license plate numbers), a copy of the current lease and the dates of commencement and termination of the lease.

The association should also require a statement signed by the tenant indicating that the tenant has received a copy of all association documents and that the tenant agrees to comply with the associations rules and CC&R restrictions.

NOTIFY RENTAL OWNERS REGARDING LIABILITY FOR TENANTS

The association's CC&Rs are a contract between the owner of the unit/lot and the association. Therefore, it is important for the association to notify owners of the property (landlords) of their responsibility regarding their rental unit/lot and their liability for the failure of their tenant(s) to comply with the association's governing documents. Associations should consider levying fines against the owners for violations by their tenants or, in more serious situations file a lawsuit against owners when the association's documents are not being followed.

LANDLORDS MUST REGISTER RENTAL PROPERTIES WITH COUNTY

On August 6, 1999, the Arizona legislature enacted the Residential Rental Property Registration law. Pursuant to A.R.S. Section 33-1902, an owner of a residential property located in Arizona is required to file a notification form with the county where the residential property is located. The notification form contains the following information: the property owner's name, address and telephone number; the street address of the residential property; and the year the property was built. Owners who do not comply with this requirement after notification and a ten (10) day grace period are subject to a civil penalty of \$1,000 plus \$100 per month for every month the owner is not in compliance with this notification requirement.

To obtain a rental property notification form, go to:
<http://www.maricopa.gov>

Click on Services, Forms & Applications and scroll to
Residential Rental Property Registration Form

Associations may also verify owners who have registered by
going to: <http://www.maricopa.gov>

Click on Services, Forms & Applications and scroll to
Residential Rental Property Search