



COMMUNITY ASSOCIATIONS



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Leasing Within Community Associations



By: [Joel A. Hilgendorf, Esq.](#)

While teaching a recent class to Boards of Directors of various community associations, many questions were raised regarding leasing within communities and the ability of associations to regulate and/or restrict rentals. These are issues that many communities return to again and again. It was suggested that it would helpful for many communities to have some of the questions and answers set out here.

Q: Can a community association prohibit or limit the leasing of units in the community?

A: Yes. For many years, Minnesota courts have recognized that a community association has the right to prohibit or limit the leasing of units in the community.

Q: Isn't that unfair to persons who bought their unit as a rental unit?

A: In Minnesota, the buyer of a property located in a community association is given 10 days to review the governing documents and an absolute right to back out of the transaction during that 10 days if they do not want to be subject to those governing documents. The courts have reasoned that, because purchasers have an opportunity to review governing documents before buying a unit, and because governing documents contain provisions indicating that they can be amended at any time, then owners who go ahead and purchase a unit have been put on notice that governing documents can be later be amended at any time to prohibit leasing.

Q: How does an association prohibit or limit the leasing of units in the community?

A: Leasing of units is a property right. Therefore, if leasing is currently permitted, the community's Declaration of Covenants must be amended in order to prohibit or limit the leasing of units.

Q: How does an association amend its Declaration of Covenants?

A: The procedure required to amend the Declaration of Covenants varies from association to association, but typically involves obtaining approval from a percentage of the membership and, sometimes, from a percentage of mortgage holders. The association's existing Declaration of Covenants will describe the particular procedures for amending the Declaration of Covenants, and the association should seek assistance from the association's attorney before making any attempt to amend the Declaration.

Q: Can the association prohibit or limit leasing by amending its rules and regulations?

A: No. The association rules and regulations can typically be amended very easily by a resolution of the association's board of directors. Therefore, although it may be tempting for the board to attempt to restrict leasing via a board action, the association can only prohibit or limit leasing by amending its Declaration of Covenants.

Q: Can the association regulate leasing via its rules and regulations

A: Yes. If leasing is permitted within the association, even on a limited or restricted basis, the Board, via rules and regulations, can regulate the manner in which units are leased. Examples of leasing regulations are requiring that all leases be in writing, requiring that all tenants be provided with a copy of the governing documents, requiring that an owner perform a background check before executing a lease, etc.

While these questions cover some of the basic leasing issues that boards tend to return to on a frequent basis, they are not intended to be legal advice, nor to comprehensively cover the entire spectrum of leasing issues that any particular board may encounter. If your Association has questions about a leasing issue that you are facing, you should seek legal counsel.

H&J Announcements

H&J Adds New Attorneys ...

Russell "Mick" Spence, Jr. has joined the firm as a partner in the Business & Corporate practice group. He litigates and counsels entertainment, intellectual property and business clients in a wide variety of legal matters. Combining his passions for creativity, commerce, advocacy and success, Mick has established a reputation as the go-to attorney for both creative talents and entrepreneurial businesses. We look forward to his complimentary practice strengthening the business services we provide, while expanding our growth to benefit both existing and new clients.

Joshua R. Ward has also joined the firm as an associate and is a member of the IT & eCommerce and Business & Corporate practice groups. He obtained his JD from William Mitchell College of Law where he served on the Editorial Boards of the *William Mitchell Law Review* and *Cybaris: An Intellectual Property Law Review*.

This newsletter provides general information on legal matters, and should not be relied upon as legal advice. A qualified attorney must analyze the relevant facts and apply the applicable law to provide specific legal advice. If you require legal advice or want additional information regarding the services we offer, please contact David Hellmuth at 952-941-4005 or dhellmuth@hjlawfirm.com



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