

How and When to Implement HOA Rental Restrictions

By Josh Hurst Updated on August 11, 2022

Generally speaking, when you own a home, it means you can do whatever you want with it. But of course, there are a few common-sense legal limitations, as well as some restrictions that come with membership in a homeowners association. One of the most notable restrictions that a homeowners association can impose is a restriction on short-term rentals.

This issue has become increasingly salient over the past decade, as platforms like Airbnb create new incentives for homeowners to turn their residences into rental properties. For HOAs looking to maintain safe communities, and to safeguard property values, imposing restrictions on rentals may be a necessity. But what should your HOA Board know about rental restriction policies? First and foremost, you'll want to consult with your HOA attorney or with a community management company for guidance.

Why Limit Rentals in Your HOA?

There are a number of reasons why your Board might impose and enforce a rental restriction policy. We've already noted the main one, and that's keeping property values high. Simply put, HOAs want to sustain community standards, and that can be hard to do when renters are constantly parading in and out.

This is just one of several reasons to consider a ban on rentals, or at least some guidelines for how and when property owners can rent. Some additional reasons include:

- Limits on property rentals can help keep the association's liability insurance rates in check.
- Restrictions on rentals can also increase the likelihood that lenders will provide loans for new properties in the community. (If a high

percentage of homes are being used as rental properties, real estate lenders will be much more hesitant to get involved.)

- Rental limitations can also increase stability in the community, as there will be a lower turnover of residents.
- Renters may not follow the rules of the community, or care about upkeep and maintenance standards as much as homeowners. This can lead to an increase in compliance violations.

These are just a few of the reasons why a homeowners association may determine that restricting rentals is an appropriate course of action. The question is, what options do HOAs have for these rental restrictions?

How Can an HOA Limit Rentals?

There are multiple ways for an HOA to limit the ability of homeowners to rent out their properties. Two of the most common approaches are caps and lease restrictions.

Rental Caps

A rental cap places a limit on the percentage of properties within the community that may be rented at any given time. Each HOA Board can determine the appropriate percentage, but the standard number is 20 percent.

This usually works with the Board approving rental requests on a first-come, first-serve basis. If the community has already reached its cap for rentals, homeowners who apply may be placed on a waiting list. This approach may also involve a policy stating that, before renting a property, the owner must reside in the community for X number of years.

This is a great way to discourage outside investors from snatching up properties just to rent them out, without actually making any kind of investment in the community itself.

Lease Restrictions

Another way for HOA Boards to limit rental activity is by imposing lease restrictions. These include provisions that must be included with any lease agreement offered by a property owner.

One common lease restriction is a minimum lease period, often 30 days. This discourages vacation rentals, and helps minimize turnover within the neighborhood.

A lease restriction can also be used to enforce the community's standards, as outlined in the HOA covenants. In other words, it can give the property owner the right to evict renters who don't comply with the community's expectations.

Can the HOA Screen Prospective Tenants?

Another common approach that HOAs consider is screening, or vetting, prospective tenants. This method is often employed to help the association avoid any renters who may be detrimental to the community.

This usually works with the HOA Board requiring that all homeowners submit a renter's application for their review, before any lease agreements can be finalized.

There are a couple of important points to make about tenant screenings. The first is that they actually aren't legal in every state. You'll certainly want to get legal counsel before you move forward with any type of tenant screening policy.

Even if your state does allow for some type of tenant screening, you'll want to proceed with the utmost caution. Note that the Fair Housing Act, a federal law, prohibits discrimination in housing based upon race, color, religion, sex, familial status, national origin, or disability. Even if you have no intention of discriminating based on these criteria, you could still wind up with legal trouble if there arises any indication that your policies have a disproportionate impact on protected classes.

So, while the temptation to screen tenants is understandable, you'll always want to tread lightly. And again, we highly recommend seeking legal advice before instituting any tenant screening policies.

Does the HOA Have to Disclose its Rental Restrictions?

Another common question: Do HOA communities have to disclose their rental limitations to potential buyers?

Again, you'll want to check state laws, which can vary, but as a rule of thumb, HOAs should include rental restrictions as part of their public declarations. In other words, you'll generally want to make sure that anyone who's looking to buy a property in your community is aware of the limitations on rental rights.

How Can the HOA Enforce Rental Limitations?

Actually enforcing the rental regulations that you have on the books can be tricky. After all, tenants who are renting a property are not technically members of the HOA and are thus not bound to the same covenants and rules. So, since the HOA is often limited in their ability to evict a renter, all enforcement actions must be directed to the homeowner/landlord.

This may mean imposing fines or taking other disciplinary actions that are outlined in the community's governing documents. In extreme cases, the Board may even consider a lawsuit against the homeowner in question.