

OWNERS VS. RENTERS

CONDO ASSOCIATIONS WEIGH THE PROS AND CONS OF ADOPTING NO-LEASE RESTRICTIONS

In today's tough economic times, the debate between those who want condo units to be available for rental, and those who want to eliminate rental units, will likely be mistaken for an argument between Packers and Bears fans. Feelings run high, and so does the decibel level at Association meetings.

Condominium Associations, since the late '80's, have been adopting By-Laws, or Rules and Regulations which seek to eliminate rental units, and forbid absentee ownership.

The proponents of owner-occupancy-only maintain that renters have a negative effect on the value of the development. Renters are perceived as not having a long-term commitment to the property, and therefore, will generally not take as good care of it as those owners who occupy their own units. Renters are also accused of not being willing to pay for long-term or other capital improvements to the Common Elements, because they just don't focus on the need to invest for the long-term.

In today's world, however, there are sound reasons to allow for owners to rent their units. For example, many condo units are owned and used for "second home" or vacation home purposes, and in many situations, that means their owners are making two mortgage payments – one on their residence and the

other on the condo unit. But when people lose their jobs or find that they must accept alternate employment in a distant city, a restriction prohibiting those folks from renting their condo unit, could bring about their economic ruin. If you are not permitted to rent your unit, this situation “chokes off” any possibility of using rental income to pay the mortgage and/or association dues. This can bring about the undesirable result of having the property go into foreclosure.

Lenders and mortgage insurers also have a role to play in all of this in as much as most like the idea of having at least half the units occupied by owners, not renters, to meet their underwriting standards and other laws and regulations. In today’s economic “mess,” many owners and lenders want to maintain their option to rent out their units, rather than trying to sell them. For those lenders who are concerned about “taking back” a property on a foreclosure, their ability to rent those units out after they take them back is important. Hence, lenders often find themselves in the “schizophrenic” position of both favoring and opposing owner occupancy rules proposed by the Association.

As Condominium Associations have begun the process of amending their organizational and operating documents to limit, or even prohibit, leasing of units, the legality/constitutionality of these no-renter modifications has been challenged repeatedly. Examinations of these challenges show that the right of

owners to modify their governing documents has been consistently upheld by the Courts. However, the Courts will very carefully scrutinize whether all procedures have been followed exactly, and the required votes/consents have all been obtained. Often, the type of super-majority required to change a declaration is nearly impossible to attain, and the Courts will not sanction rules which have not been properly adopted.

Association Boards of Directors will be dealing with this debate for some time to come. Blaming renters for numerous types of problems within the development is a very common topic for discussion at association meetings. In some cases, it is absolutely true. However, in other situations, a “balancing approach” seems to be the more logical way to work things out. For example, some Associations have solved the balancing test by allowing for rentals where the minimum term of the tenancy is more than one month, thus allowing for a more stable group of renters who will more likely stay, renew their leases, and become part of the community, and will care for it.