

WISCONSIN SUPREME COURT RULES NO-LEASE RESTRICTIONS ARE VALID

The Wisconsin Supreme Court has recently ruled that unless a Condominium Declaration explicitly creates a right of unit owners to lease their units restrictions on the ability of owners to rent their units may be enacted through the adoption of By-Laws. These restrictions, according to the Court, can even go as far as prohibiting rentals altogether.

The ruling of the Supreme Court in *Apple Valley Gardens Association vs. MacHutta*, (filed March 27, 2009), means that the most effective way to protect the right of a unit owner to rent their unit is to have an express provision in the Declaration which permits and authorizes such rentals. Otherwise, By-Laws could be adopted to restrict rentals – even after the Condominium has been occupied for several years.

The Apple Valley Gardens Condominium, which was the subject of the Supreme Court case, was built in 1979. Years later, in 2002, the Condominium Association amended its By-Laws to prohibit the rental of units. The defendant in the case, Gloria MacHutta, a unit owner, leased her unit notwithstanding the new by-law, and the Association brought suit against her. She lost!

The decision of the Supreme Court held that as long as use restrictions do not conflict with the Declaration, or with state or federal law, they are valid and enforceable. It found that the Apple Valley Gardens Declaration contained no explicit, implicit, or inherit right of a unit owner to rent their unit. Therefore, the Court said that the new restriction prohibiting rentals, contained in the By-Laws, did not conflict with the Declaration.

WHAT DOES THIS MEAN TO YOU?

■ **As A Condo Buyer:** You need to carefully examine the Declaration and other condo documents BEFORE you buy, so that you will know whether or not you could rent your unit if you needed to. If the Declaration does not guarantee you that right, the Supreme Court ruling says the Condo Board could restrict that right, or even prohibit rentals.

■ **As A Condo Owner:** You need to be familiar with the rules applicable to your unit. If neither the Declaration nor By-Laws say anything about rentals, you are free to do so. However, you will have to stay informed on any plans to regulate rentals that your Board may be discussing now that the Supreme Court has ruled.

■ **As A Condo Board:** The Supreme Court has given you a “road map” to follow when it comes to regulating unit rentals. As long as the Declaration itself does not specifically permit the right to lease a unit, the Board is free to follow the rules to establish restrictions (such as establishing a minimum term), or to prohibit rentals at all.