

# The Do's and Don'ts of Rental Caps and Other Rental Restrictions

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# **Rental Restrictions: How to Best Create Dissent and Animosity in Your Homeowner Association**

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## **Tired of Board Service? Adopt a Rental Restriction Resolution and Be Removed Lickety-Split**

# Today's Focus

- Explain rental restrictions
- Discuss rationale
- Discuss (debate) pros and cons
- Nuts and bolts
- Provide sample provisions

# Keys to Presentation

- Understand board's role
- Understand board's authority
- Understand board's limitations (laws)
- Understand purpose and content of the restrictions

# Overview

- What are rental restrictions?
- Why adopt?
- Federal lending policies
- Lease terms
- Review applicable statutes
- Discuss legal process
- Discuss practical considerations
- Pitfalls
- Q&A



# Rental Restrictions

- The “What”
  - Rental Cap
  - Rental Type
  - Tenant Screening
  - Lease Approval
  - Registration
  - Compliance/Enforcement

# Rental Restrictions

- The “Why”
  - Rationale
    - \$\$\$
    - Community
  - Federal lending policies
    - Fannie Mae (Federal National Mortgage Association); VA, FHA, etc.
    - 70% - 80% owner-occupied ratio

# Rental Cap

- Rental Cap or Ceiling
  - Limits the number of non-owner occupied units
  - Ordinarily a percentage of total units
- Hardship exception 
- Grandfather clause 

# Rental Type

- Period of lease (min / max)
- Use of property
- Number of tenants
- Subletting or assignment
- Lease requirements
- CC&R compliance

# Tenant Screening

- Tenant screening company / report
  - Consumer credit report
  - Verify applicant's employment
  - Rental history
  - Public records check
    - Sex offender
- Association DO NOT obtain access to info; only require landlord owner to do so

# Lease Approval

- Compliance with procedural steps
- If renewal, track record
- Lease meets all requirements
- Lease would not break the rental ceiling
  - Waiting list
- Mortgagee or institutional lender exception
- Hardship consideration

# Tenant Registration

- Contact info
- Identification of all occupants
- Automobile info
- Updating for new occupants
- Move-in and move-out dates

# Compliance / Enforcement

- Owner ultimately responsible for any and all damages and misconduct of tenant
  - Indemnification and hold harmless
- Hearing board
- Require owner to commence unlawful detainer action
  - Two violations within 1-year period
  - Association has right as attorney-in-fact to conduct action against tenant

# Rental Restrictions

- The “How”
  - Via Declaration Amendment
    - Condominium: RCW 64.34.264
    - HOA: Look to Declaration itself
- The “Beware”
  - Applicable Statutes
    - Residential Landlord and Tenant Act: RCW 59.18, *et seq.*
    - Fair Housing Act: 42 U.S.C. 3601, *et seq.*
    - Privacy Act: RCW 9.73, *et seq.*
    - Fair Debt Collection Practice Act: 15 U.S.C. 1601, *et seq.*

# Legal Process

- Board Resolution
- Vote by Association
- Recorded with county
- One-year statute of limitations on challenge to validity of the amendment (RCW 64.34.264(2))

# Practical Considerations

- Start early and utilize a comprehensive plan
  - Engage homeowners at inception
  - Utilize a committee
  - Rely upon factual data in lieu of emotions
  - Use all available resources (real estate agent, mortgage broker, banking or other industry homeowner allies)
  - Actively and constructively engage opponents
- Use vote by mail—stretch voting period
- Door-knock campaign

# Pitfalls

- Rule or Bylaw and not in Declaration
- Board drafting unilaterally
  - Lack of inclusion of homeowners
- Fail to record the amendment

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