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The Dos and Don'ts of Rental Caps and Other Rental Restrictions

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Rental Restrictions: How to Best Create Dissension and Animosity in Your Homeowners Association



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Rental Restrictions: Limiting Your Inalienable Right to Free Choice



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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

Keys to Presentation

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



Rental Restrictions

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

Rental Restrictions

- The “Why”
 - Rationale
 - Property Values
 - 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
- CC&R acknowledgement

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

- Rental Cap via Rule or Bylaw and not in Declaration
 - Other restrictions *may* be via rulemaking
- Board drafting unilaterally
 - Lack of inclusion of homeowners
- Fail to record the amendment



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Questions?

