

SHORT-TERM RENTAL

Guidance and Suggested Language for Amending Covenants

Covenants remain in force. Several homeowners associations (HOAs) have asked whether the County's short-term rental ordinances supersede the covenants, conditions, and restrictions applicable to their neighborhoods. The answer to that question is provided in the Code of Virginia, § 15.2-983, which authorizes the county to regulate short-term rentals:

Nothing in this section shall be construed to supersede or limit contracts or agreements between or among individuals or private entities related to the use of real property, including recorded declarations and covenants, the provisions of condominium instruments of a condominium created pursuant to the Virginia Condominium Act (§ 55.1-1900 et seq.), the declaration of a common interest community as defined in § 54.1-2345, the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or any declaration of a property owners' association created pursuant to the Property Owners' Association Act (§ 55.1-1800 et seq.).

Short-term rental may be considered residential use, rather than commercial use. Many HOAs have covenants that require property to be used only for residential uses, or that prohibit commercial use of property. If an HOA is relying on such broad language to prohibit or control short-term rental of dwellings, it should seek specific legal advice from a licensed attorney. In reviewing one community's covenants, the Supreme Court of Virginia held that a requirement that property may not be used "except for residential purposes" was not specific enough to prohibit nightly and weekly rental of the property (*Scott v. Walker*, 2007).

Covenants limiting short-term rentals. The following is an example of language that could be adapted to a community's covenants, conditions, and restrictions to prohibit short-term rental of dwellings (state law defines "short-term rental" as 30 days or less):

Leasing Provision. General. Single Family Residential Lots may be rented only in their entirety; no fraction or portion may be rented. All leases shall be in writing and shall be for an initial term of no less than six months, except with the prior written consent of the Board of Directors. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within ten days of execution of the lease. The Owner must make available to the lessee current copies of the Declaration, Bylaws, and the rules and regulations available from the Board for a reasonable fee. The Board may adopt reasonable rules regulating leasing and subleasing.