

UNDERSTANDING COMMUNITY ASSOCIATION LEASING RESTRICTIONS

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It has become common for associations to add leasing restrictions to the covenants. The most typical limitation is to restrict the total number of homes that can be rented at any one time. The Georgia courts have ruled that associations have the authority to amend the covenants in this way, and have also approved enforcement of these provisions through the use of fines.

There are several reasons for this trend. First, many neighborhoods want to retain the character of an owner-occupied subdivision as opposed to a rental community. Sometimes tenants are less invested in their surroundings because they lease rather than own. This can result in a greater enforcement problem for the Association and even cause a depreciation of property values. Secondly, absentee owners can be difficult to locate, and therefore impossible to communicate with regarding participation in voting and maintenance issues.

Another consideration is Section 8 renters. (See article on Section 8 leasing.) Those who qualify for Section 8 assistance are issued coupons that they can use to rent in whatever subdivision they choose. The landlord turns in the coupons for cash.

Leasing caps usually vary from 5% to 15%, along with any hardship exceptions as allowed in the discretion of the Board. Examples of hardship exceptions include; active military deployment, recent death of a spouse, terminal illness, and inability to sell at fair market value after a certain period of time. Some associations ban all rentals aside from hardship exceptions.

An important issue is grandfathering provisions. There are three typical variations to grandfathering: *Active Leases*. Any leases in effect when the restrictions are filed on the deed records are allowed to continue until such time as the lease expires or until the current tenants no longer occupy the home. *Owners Who Are Leasing*. An alternative is to grandfather the owners who are currently renting rather than just grandfathering the lease. This gives the owner the right to rent numerous times outside the restrictions until there is a transfer of title. The future owners would then be subject to the leasing restrictions. *All Current Owners*. This encompasses all owners in the subdivision at the time the restrictions are filed on the deed records, whether or not they are leasing. Any future owners would be controlled by the leasing restrictions. This is the least common approach. It is either used in very small subdivisions or when the Board feels it is the only way to obtain the amount of votes required to pass the leasing restriction amendment.

Under Georgia law, covenants should be subject to the Georgia Property Owners Association Act ("POA") in order to add provisions that are more restrictive than those in the original covenants. Therefore, if the association's covenants are not already under the POA, the amendment will have to include adding the POA. If the Association does not, then the Lots of the owners who did not vote for the leasing restrictions will not be subject to them, and neither will the subsequent purchasers. Condominiums do not have this concern because they are usually already subject to the Georgia Condominium Act, which allows restrictive amendments.

Some owners are opposed to leasing restrictions because "*The association should not be able to tell you what you can do with your property.*" Using this logic, the association should also not be able to require pre-approval for additions or improvements to your house, etc... One of the main purposes of an association is to help protect the quality of life and property values through the enforcement of the covenants. Leasing restrictions are thought of by many to be helpful in this regard.

In addition, any leasing amendments would have to be voted in by a majority of the homeowners (usually two-thirds or more) before they can take effect. In other words, the final say is with the homeowners, and they are the ones who will be subject to the consequences of passing or defeating any proposed restrictions.

The above article is not a substitute for consulting with legal counsel in your State regarding the specific fact situation.