

# Your HOA's Short-Term Rental Ban May be Illegal

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Short-term rental restrictions are popping up in planned communities and condominiums throughout Arizona at an alarming rate. While exactly what constitutes "short-term" may vary from one association to another, with prohibitive periods ranging from 30 days to in some cases one year, the bans are real and they are having a disastrous impact on owners. In some cases, these bans are being adopted by board edict; in others, a large number of homeowners band together. In both cases, it is very likely that new rental restrictions are unlawful regardless of the number of owners who support them.

There are several arguments for why new rental restrictions are invalid even in cases where a majority or super-majority of members votes to enforce the ban. The Arizona Condominium Act, for example, provides that an amendment to a declaration "shall not create or increase special declarant rights, increase the number of units or change the boundaries of any unit, the allocated interests of a unit or the uses to which any unit is restricted, in the absence of **unanimous** consent of the unit owners." A rental restriction is the classic type of use restriction that would seemingly require such unanimous consent.

In addition, the Arizona Court of Appeals in *Dreamland Villa v. Raimey* held that amendments to declarations must be with unanimous consent if they "unreasonably alter the nature of the covenants" and that "any amendment must be directed at, and is limited by, the scope of restrictions and *cannot create new obligations not previously mentioned*. Associations cannot "use the Declaration's amendment provision as a vehicle for imposing a new and different set of covenants, thereby substituting a new obligation for the original bargain of the covenanting parties," the *Dreamland Villa* court held that an amendment that "would unreasonably alter the nature of the covenants," such as those having a "substantial and unforeseeable" impact on owners, must be disallowed because "such servitudes [cannot] be imposed non-consensually under the generic amendment power."

Such amendments are also often arbitrary and unreasonable. Courts have recognized that associations must act reasonably and cannot enforce restrictions or take acts that are arbitrary, unreasonable, or selective. Their rulemaking powers are limited to the adoption of "reasonable" rules and they do not

have the power to adopt rules that “restrict the use or occupancy of, or behavior within, individually owned lots or units.”

We believe that the law is clear that new rental restrictions cannot be adopted with less than unanimous consent of all members. Associations, however, are coming up with creative ways to try to circumvent this unanimity requirement, passing rules regulating who can and cannot use the common areas such as pools or boat docks (surprise: short term renters are the ones being denied these rights).

If you are the victim of a rental restriction or have questions, call today for a consultation. In many cases, you have to act swiftly to prevent the new rental restriction from being enforced. If you do not, you could lose the right to do so