

What's Wrong with the Proposed Desert Mountain Rent Restrictions?

By Dennis J. Legere, Arizona Homeowners Coalition

Your board of directors has proposed a change to your CC&R's that would prohibit most short-term leases of DM homes. Several DM owners asked me to weigh in on this proposal. I'll do that. But first, let me explain where I stand.

I don't give legal advice. I'm not an attorney. I'm a retired nuclear engineer. Since retiring, I've made it my life's work to protect the rights of owners in Arizona HOAs. And I've been successful. With Arizona Senator Farnsworth (Mesa), I founded the [Arizona Homeowners Coalition](#). We're a group of 5 registered lobbyist and nearly a hundred home owners. We both write and support legislation to help HOA members. Several of the bills we wrote or supported are now state law. I give talks at HOA meetings throughout the state and don't take a dime for any of my work. That may help explain why we're so effective.

I've read very carefully both the proposed DM use restrictions and the DMMA governing documents. What follows is my opinion on what's wrong with DMMA's latest attempt at rent restrictions.

Setting a Trap. The proposal would prohibit "ineligible renters" from leasing DM homes for less than 30 days. The entire concept of ineligible renters offends me and should offend you too. *It's an absolute trap* – giving management discretion to exclude nearly anyone they want on the basis of personal relationships, opposition to board policies, or simply to harass and intimidate owners. "Shut up and do what I say or we're going to start making trouble for any guest you try to get through the front gate." On that basis alone, DM owners should distrust this proposal. HOAs have too much discretion already – like government but without the limits imposed on every public body. Your HOA doesn't need another set of owner sanctions.

Protect the Brand. The video by Board President Rick Sherman makes a case for rent restrictions. Mr. Sherman touts the "brand" of Desert Mountain as something owners need to protect. I agree. The president of every organization (including our federal government) has a duty to protect and defend the founding documents. Desert Mountain's existing CC&Rs are Desert Mountain's "brand". These CC&R's have no restriction on short term rentals. The March 12 proposal would completely change the "brand" of Desert Mountain. Most DM owners bought property believing they had the right to select guests of their choice. It's the Board that's proposing to change the Desert Mountain "brand."

Don't Give Away Your Rights. Appendix E of the Desert Mountain CC&R's sets two conditions on rentals but says nothing about rental periods. Sections 1.1.15 and 1.2.2 describe what an owner has to do when renting. No permission is required. Selecting guests is entirely your privilege. It's a right given to owners exclusively by the existing CC&R's. The March 12 proposal would take that right out of your hands and put it in the hands of the DMMA Board.

No matter who is renting, short term or long term, the Board already has authority to hold owners accountable. If tenant behavior affects use or enjoyment of the common area or your home, Sections 1.1.15 and 1.2.2 give the Board ample authority to take action. If anyone, tenant, owner or guest, threatens security or tranquility, the DMMA Board has ample tools available to restore order – without restricting owner rights.

Ask yourself, "Do we Desert Mountain owners want or need more restrictions on our property rights?" Remember, this is not just about your home today. It's about both your home as long as you own it and every future buyer of your home.

Major Decision. I've read hundreds of CC&Rs for Arizona HOAs. But none I've seen make changing the CC&Rs such a casual affair. Section 5.0 allows DMMA to change any use restriction unless 10% of members object in writing within 45 days. Think about that for a second. It means DMMA can withdraw property rights from every Desert Mountain owner without consent and without further notice if 10% don't bother to complain.

In my opinion, any change adopted using Section 5.0 would be unconscionable and may even be in violation of national public policy.

No private organization should have the right to take what's yours without your consent. That means unanimous consent of owners. At the very least, a majority vote should be required. Fortunately, the Major Decision proposed on March 12 has landed in a community fully alert to what's happening and with organized opposition. The Major Decision won't be approved without an affirmative vote by two-thirds of a quorum of at least 25% of owners. Even an affirmative vote by two-thirds of members is probably less than the minimum required by public policy. If adopted, validity of the March 12 proposal might have to be settled in a court of law with the help of experienced attorneys.

Here's Why. Law in most states and Arizona law for condo HOAs prohibits new use restrictions without unanimous consent of the owners. The Arizona statute is Title 33, Chapter 9, Section 1227: *Except to the extent expressly permitted or required by other provisions of this chapter, an amendment shall not . . . change . . . the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.*

This language is in the Condominium Act, not in the Planned Community Act. So there's a technical loophole the Desert Mountain Board is trying to squeeze through. But I feel Arizona law may require unanimous consent in all HOAs, even planned community HOAs. Section 6.10 of the *Restatement of Law Third on Property, Servitudes* supports that position. A decision by an Arizona appellate court would be required to settle this issue. But clearly, an Arizona court has ample grounds for deciding that changes in HOA use restrictions require unanimous consent, even in planned communities.

I'm not advocating a law suit. Too many Arizona HOAs have been burdened by wasteful litigation. Much better if common sense prevails. Let the informed, intelligent members of your magnificent Desert Mountain community decide the issue. Once rent restrictions at DM are only a bitter memory, DMMA can go back to caring for the common area and owners can go back to being good neighbors.