



COMMUNITY RESOURCE

INSIGHT & EDUCATION FOR COMMUNITY ASSOCIATIONS

MARCH
2019

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NEW MEMBERS**

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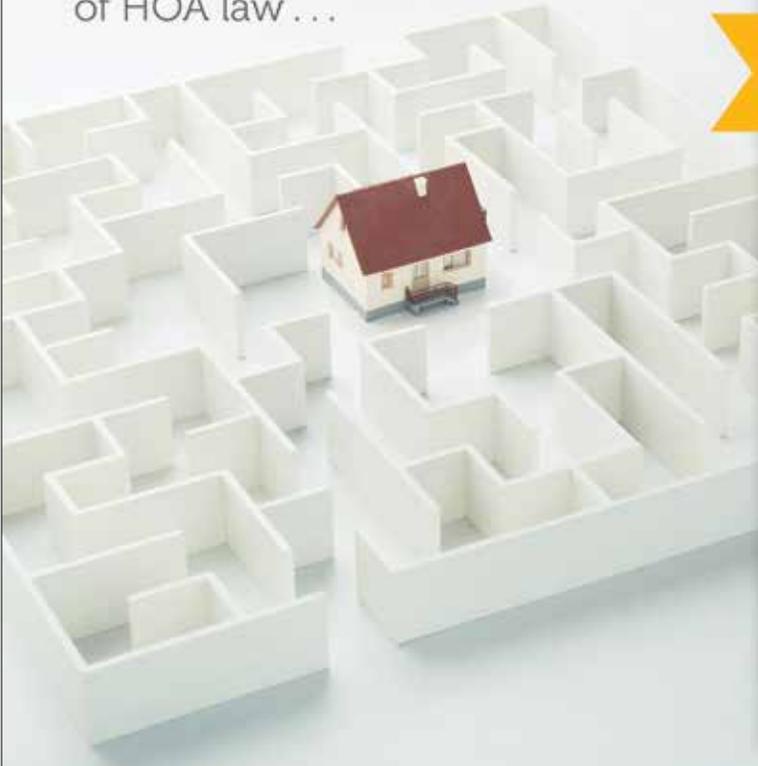
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Message

FROM THE PRESIDENT

SUZANNE MURRAY | CHAPTER PRESIDENT

CAI - Central Arizona Chapter

We are excited to announce that we will be holding the PCAM case study at Desert Ridge Community Association this year. The case study will be held November 14th, 15th. In order to apply for the case study, you must complete and pass all 200 level courses, as well as earning your CMCA and AMS. Now is the time to accomplish that goal! We continue to drive education as it is one of our top priorities in making our industry great.

Thank you to all of our sponsors this year! We are a healthy and growing chapter, with continued growth year over year. Our membership is currently at the largest it has ever been.

The Legislative Action Committee (LAC) is currently in full action and meeting weekly. The committee works very closely with the lobbyist and volunteers in working on proposed legislation. There is much time spent at the capitol during this time of year as well as on the phone and I wanted to extend a sincere thank you for everyone that is involved in this effort.

I appreciate all you do as homeowners leaders, members, and volunteers to make the communities we live and work in better and for all of us.

All the Best,

Suzanne Murray

CAI CENTRAL ARIZONA CHAPTER PRESIDENT

480-772-6230 | Suzanne.murray@fsresidential.com

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Cody Miller	MB Outdoor Services	Business Partners
Mr. Kelly Good	Urban Tactical Security Inc.	Business Partners
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Mr. Robert J. Petrisin, RS	Strategic Reserves	Chapter BP
Mr. Darin Macari	Yellowstone Landscape	Chapter BP
Dee Nortman	DC Ranch	Manager Membership
Mr. Carmello Musarra, CMCA	FirstService Residential	Manager Membership
Amber Orduno	CCMC	Manager Membership
Mr. Robert Kersten, CMCA	Amcor Property Professionals, Inc.	Manager Membership
Mr. Matthew Blickensdorf	CCMC	Manager Membership
Ms. Sheila Marie Borneman, CMCA	CCMC	Manager Membership
Ms. Christal Bromley	CCMC	Manager Membership
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Ms. Leanne Blue	FirstService Residential	Manager Membership
Mrs. Sharon Gordon	Apache Wells Homeowners Association	Volunteer Leader
Ms. Julia Anderson	Rio Crossing HOA	Volunteer Leader
Mr. J Ray Harwood	Rio Crossing HOA	Volunteer Leader
Mrs. Stephanie Hernandez	Rio Crossing HOA	Volunteer Leader
Mr. Andres Montoya	Rio Crossing HOA	Volunteer Leader
Mr. Ryan Van Patten	Rio Crossing HOA	Volunteer Leader
Mr. Jim Conner	Sun Village Community Association	Volunteer Leader
Mr. Walt Price	Sun Village Community Association	Volunteer Leader
Toni Hoyle	Meadow Vista	Volunteer Leader
Orson Jones	Meadow Vista	Volunteer Leader
Cindy Simmers	The Pueblo Homeowners Association	Volunteer Leader
Mr. Bill Horton	Sun Village Condominium Association	Volunteer Leader
Mrs. Fraydele Massey	Sun Village Condominium Association	Volunteer Leader
Ms. Jane Preslar	Sun Village Condominium Association	Volunteer Leader
Mr. Mark Trafton	Sun Village Condominium Association	Volunteer Leader
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CANSTRUCTION

EVENT RECAP

This year CAI Central Arizona Chapter and Open Doors Charity invited Business Partners and Management Companies to work together in our CANstruction event to showcase their creative skills and make structures entirely out of canned goods and perishable food items! This competition benefited the St. Mary's Food Bank whose goal is to provide hunger relief to low-income individuals and families throughout Arizona.

From sand castles to pencils these teams took up to two hours to create some incredible structures all while helping provide food for people in need! Team PMG Services was the winner of the competition, when they wowed the judges with their structure of Groot from Guardians of the Galaxy, honorable mention went to team CHBD Can Open Doors with their structure of a popular children's book "The Very Hungry Caterpillar".

After judging was over everyone had the chance to admire the canned structures while enjoying hot dogs and sodas provided by our Event Sponsor Service Direct Landscaping. With amazing events like this one, we will constantly strive to give back to our communities. CAI Central Arizona Chapter sincerely thanks our event sponsor Service Direct Landscaping, and the CANstruction teams for putting on an amazing event!



Groot from Guardians of the Galaxy
by First Place Champions PMG Services Team



Monopoly themed "Can't Pass Go"
by Kasdan LippSmith Weber Turner LLP Team



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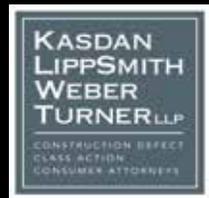
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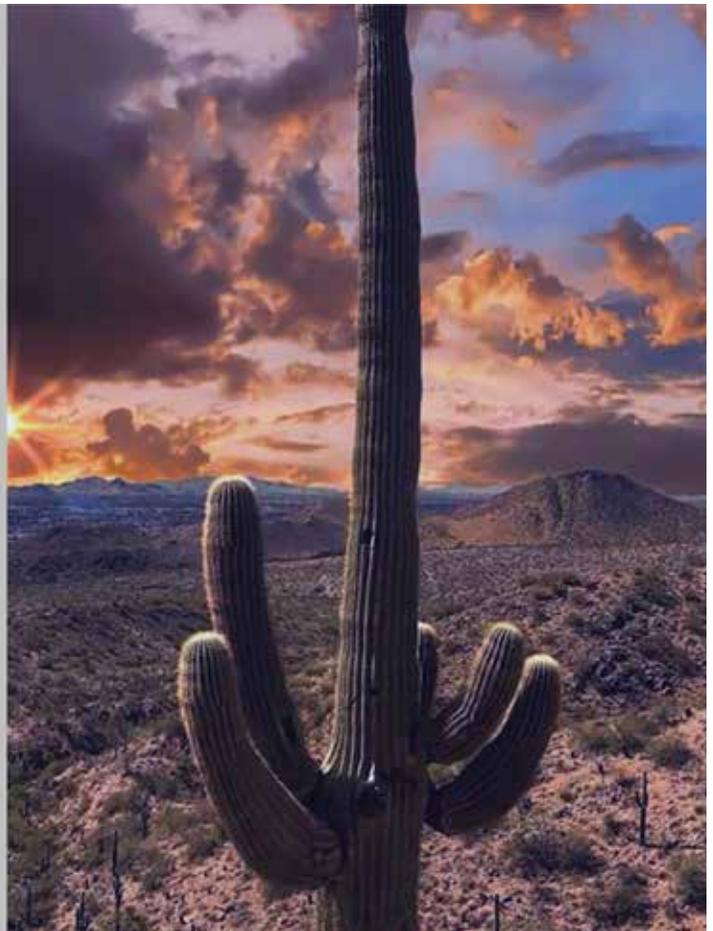
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SHORT TERM RENTALS



WHAT YOU NEED TO KNOW

Short Orders:

The short-term rental business is booming.

By Marvin J. Nodiff

Short-Term Rentals:

Can they be stopped?

By Quinten T. Cupps, Esq.

Short Term Rentals:

Here to stay.

By Mark Sahl, Esq.



Short Orders

The short-term rental business is booming. Can an influx of transient weekend tenants be good for communities?

How can associations protect their own well-being?

By Marvin J. Nodiff

Reprinted with permission from the November/December 2018 issue of *Common Ground*™ magazine, the flagship publication of Community Associations Institute (CAI). www.caionline.org

LIKE ANYTHING IN an ever-changing society—satellite dishes, the Great Recession, and drones—community associations adapt to changes in the economy and technology. But how should association leaders deal with the latest economic innovation: home-sharing?

Through online platforms Airbnb, HomeAway, and Vacation Rental by Owner (VRBO), home-sharing or short-term rentals started as a means for homeowners to earn extra income by renting a room or their entire home for a few days or weeks. It's blossomed into a full-grown business for some. Owners in Los Angeles can earn more with short term rentals in just 83 nights than with an entire one-year lease, according to a 2016 report from Inside Airbnb, a website that monitors listings through the short-term rental service.

The home-sharing innovation raises questions for condominiums, cooperatives, and homeowners associations across the country. Are short-term rentals (30 days or less) good for associations or a community disrupter? Will investors, attracted by higher revenue, purchase multiple units or homes in associations and become commercial operators?

Residential or Commercial?

Home-sharing has experienced phenomenal growth in recent years. Since its start in 2008, Airbnb has grown from a site listing

air mattresses, sofas, and rooms available for rent in U.S. cities with overbooked hotels to more than 4 million rooms, apartments, and houses worldwide in 191 countries, according to Business Insider. The company made \$2.6 billion in revenue in 2017.

Its popularity isn't limited to tourist destinations. In the St. Louis area alone, VRBO and Airbnb list several hundred "hosts." (See "Sharing Spike" sidebar, right.)

Some demographics follow the original notion of home-sharing: That the homeowner/host welcomes a guest to rent a spare room. Based on a recent Airbnb survey, seniors 60 and older are the fastest growing demographic as a share of hosts. Women constitute nearly two-thirds of senior hosts. Additionally, senior women earn the highest satisfaction ratings of any gender or age demographic and are more likely to offer a private room in their homes than younger users. This demographic seeks to supplement their retirement income to afford to remain in their homes and to maintain an active lifestyle. Senior hosts—living in the home while guests rent an individual room—are more compatible with community associations.

But most short-term rentals are not for individual rooms. Data collected by online news site Curbed shows that most of the listings are for entire homes, which is the case in Los Angeles, New Orleans, and Seattle. According to Curbed, "Instead of a host welcoming a visitor into a guest bedroom, most tourists are renting out homes with lockboxes ... without ever seeing the homeowner."

One example is St. Louis, which does not limit short-term rentals. During a recent Washington University graduation weekend, a large house on a quiet residential street was advertised on Airbnb as "sleeps 16." According to reports, 25 guests and five vehicles arrived.

With some exceptions, such as senior hosts renting a room within their homes, Airbnb's version of home-sharing is a business model that provides a revenue stream for a huge corporate entity. As economist Thomas L. Friedman notes in *Thank You for Being Late*, Airbnb is now bigger than all the hotel chains combined, even though it doesn't own a single bed.

Despite the warm and fuzzy notion of home-sharing, Airbnb is a commercial activity with the primary purpose of generating revenue. On residential streets, it's like dropping a hotel into a neighborhood. And every time a home is converted to short-term rental, a community loses its most important asset: neighbors.



SHARING SPIKE

The recent growth of short-term rentals is attributable to several factors:

- ▶ They offer residential property owners supplemental income by renting their dwellings to others while they're out of town and incurring little or no additional expense.
- ▶ They motivate commercial operators to acquire residential property for the sole purpose of short-term rentals.
- ▶ It is easy to use through online services, such as Airbnb, VRBO, and HomeAway, which promote their platforms through aggressive advertising programs.
- ▶ It is promoted by lenders through refinancing programs. By partnering with Quicken Loans, Citizens Bank, and Better Mortgage, for example, homeowners can now count income from renting their properties on Airbnb when refinancing their mortgage. The initiative has government backing from Fannie Mae.

Short-term rentals can create tension between “host” properties and neighboring residents with a steady stream of strangers, noise, parties, and parking that can undermine the quality of residential communities. Such activities can directly affect community associations and yield adverse results. Replacing owner-occupant homeowners with transient weekend tenants can adversely affect marketability and resale value of nearby dwellings.

While online platforms like Airbnb and VRBO clearly are commercial entities, some court cases deem that the individual homeowner renting a room or their home isn't a commercial use. In a recent Texas case, an owner moved from his home in a San Antonio community association but retained ownership and used the property for short-term rentals. Over five months, he rented the home for about 102 days, with guests staying from one to seven days— some rentals involved several families and as many as 10 people at one time. The association notified the owner that short-term rentals were commercial in nature and imposed fines. The owner ignored the fines and filed suit.

The association's applicable covenant states that lots could be used solely for residential purposes, and no business could be conducted that was noxious or harmful. The Texas Supreme Court found “residential use” involved activities generally associated with a personal dwelling. Further, the covenants did not define “business” or impose time limits on occupants. Reversing the court of appeals, the court held that so long as the renters used the

home for a residential purpose, no matter how short-lived, such activities did not violate the covenant.

Valuing Ownership

No level of government understands and appreciates the value of homeownership more than community associations. Fostering homeownership and owner occupancy should be the cornerstone for policy in dealing with short-term rentals. Each community association should be able to decide what short-term rental policy works best for their particular community. A condominium in a mountain town might find that allowing short-term rentals works well for the community, but a family-oriented, single-family home community in the suburbs might find them undesirable.

Homeownership is well-recognized as a source of personal financial stability and equity. But it also builds social capital and contributes to our society by fostering civic involvement as residents sink roots in their communities. In “Incentives and Social Capital: Are Homeowners Better Citizens?” in Chicago Working Paper in Law & Economics, the authors find that homeownership builds social capital with community benefits:

- Homeownership creates incentives for households to improve the quality of their communities since community quality is capitalized into the value of their homes.

- Increased length of tenure encourages investments in community since homeowners will consume the benefits of community over a longer time.

- Homeowners have a greater sense of community and are more likely to invest in gardening and upkeep of their property. In addition, homeowners are 15 percent more likely to vote in local elections, 10 percent more likely to know their U.S. representative by name, 9 percent more likely to know the identity of their school board head, and 6 percent more likely to work on solving local problems.

- Social capital fosters communication by developing a common language with neighbors and builds trust through shared activities.

While residents have a personal self-interest in owning a home to build financial equity, homeownership and owner occupancy provide numerous societal benefits for the entire community that would be undermined by short-term rentals.

Government's Role

Cities can provide an important legal backstop for community associations to protect residential neighborhoods based on zoning, building codes, and health and safety regulations.



CAI's Government and Public Affairs Committee has developed the following public policy regarding short-term rentals.

- ▶ CAI encourages policymakers to engage industry stakeholders, including community associations, on this issue.
- ▶ Further, CAI believes crafting regulation should always take place in an open and transparent manner, providing the opportunity for comment by all interested parties.
- ▶ A board of directors, with input from homeowners, is in the best position to decide whether short-term rentals are appropriate for their community and is the appropriate governing body to craft suitable policies. This is assuming the association's governing documents allow or could be amended to permit short-term rentals to reflect the preferences of homeowners.
- ▶ CAI supports short-term rental regulation that is consistent with the association's governing documents, federal, state and local law and serves to protect and preserve the ability of community association homeowners to manage their affairs.
- ▶ CAI opposes governmental regulations that would intrude upon community associations' board of directors' autonomy to serve the best interest of the association. Short-term rental regulation should not impair association contractual covenants and take decision-making authority away from community association homeowners. This degrades the very core of community association governance, which is based on private contractual obligations of the community's homeowners.

» View more public policies and sample legislative language on short-term rentals at www.caionline.org/publicpolicies.

A recent report by The McGill University School of Urban Planning found that Airbnb has created a new class of rental housing in New York City in which short-term rentals occupy a gap between traditional residential rental housing and hotels.

The National League of Cities (NLC) also observed in a 2015 report that sharing economic services presents cities with an overarching challenge: being receptive to innovation while protecting the best interests of the community.

Considerations include neighborhood concerns, public safety, tourism, access, equity, impact on hotels, impact on housing, job creation, and revenue. Each city must tailor an approach based on its unique demographics and needs.

Cities across the country are taking varying approaches. Some react to bad behavior by guests, others take a regulatory approach by requiring permits and insurance, and some seek revenue from taxes and fines. (See sidebar “Metro Methods,” right.)

Several cities in St. Louis County have stated that short-term rentals conflict with their “sense of community.” The city of Hazelwood, Mo., for example, adopted an ordinance stating, “The short-term rental of all or a portion of residences is not in keeping to the stability, shared commitment and sense of community that give Hazelwood its exceptional quality, and that such rentals conflict with the neighborhood environment that makes both our single-family and multifamily areas special, welcoming and desirable.”

Community associations and cities are closest to and most familiar with the demographics of their communities and unique needs of residents. They are best positioned to exercise their respective authority through zoning and regulations.

However, as reported by NLC, “We see many instances where state-level politicians work to usurp the will of people in cities both through preemption and Dillon’s Rule (narrow local governing authority provisions). As a result, the work of city leaders and the mandate of the people is undermined.”

Advocated by Airbnb, state preemption would override local governments’ and community associations’ zoning and regulatory authority. These measures would redefine short-term rentals as “residential” rather than “commercial.”

According to NLC, five states—Arizona, Florida, Idaho, New York, and Wisconsin—have adopted some form of preemption as of February 2018.

For tax purposes, many cities treat short-term rentals in the same manner as hotels and motels, charging tax on room sales; however, identifying all hosts is a problem. Airbnb has been seeking voluntary agreements to

METRO METHODS

Major metropolitan cities and counties across the country have a wide range of regulatory approaches to dealing with short-term rentals. These are a few:

BOSTON: Requires that the host be an owner-occupant and present while guests are on premises. Host must register and certify with the city, among other things, compliance with condominium governing documents.

AUSTIN, WASHINGTON, D.C.; MADISON, PORTLAND, CHICAGO AND SAN FRANCISCO:
Require home-sharing companies include hotel taxes in their rates.

DENVER: Requires hosts obtain a business license and lodger’s tax ID, certify the property is the primary residence in a residential zone, carry insurance, have smoke detectors, pay the lodger’s tax, and obtain written permission from landlords, owners, and community associations.

ARLINGTON COUNTY, VA.: Requires owners to obtain “accessory homestay” permit. Owners must protect character of their neighborhoods, implement safety requirements, comply with zoning, building, fire, and other safety codes to protect public health and safety and property values.

SEATTLE: Limits new short-term rentals to two units per host, adding a tax, and requiring a license. The ordinance differentiates between downtown and other neighborhoods. The city council considered impacts on low-income housing and gentrification.

KANSAS CITY: Bans short-term rentals in “low density residential” areas with single-family dwellings. Where permitted, hosts must be owner-occupants with an option to obtain a special use permit.

SAN LUIS OBISPO, CA: Requires the dwelling to be owner-occupied to ensure the owner is involved in the homestay and to temper the likelihood that homes would be converted to short-term rentals. The owner’s presence is encouraged but not mandated due to difficulty of enforcement.



BEFORE YOU LIST YOUR HOME

Whether your community allows or prohibits short-term rentals, community association board members and managers should consider sharing the following guide with residents.

There are extra steps you must take when thinking about listing a space on a vacation rental website.

Check your community association rules. Make sure you have the most up-to-date version of your community rules. Search your community association governing documents for terms like short-term rentals, leasing, or vacation rentals to see if you have authority to list your home or if there is a process you must follow before listing your home or room as a rental. If you are unsure about whether you have the current governing documents, then make a written request to your association board of directors and ask for the current policy.

There are many communities, especially in vacation destination areas, where homeowners are seeking to list their home as a short-term rental. This becomes a conversation and a choice for the owners to determine a policy that is appropriate for the entire community. Likewise, there are also associations that thrive on a sense of community, one built on a foundation of long-term residents and neighbors who may determine, as a group, that visitors with no ties to the community may not be desirable for the community as a whole. Each association should have the opportunity to choose what is best for the character of their community.

Check your local laws. Specifically, check your local municipality ordinances. Many have laws regarding short-term rentals that may prohibit them, or they may require you register a rental to obtain permission. Many cities have restrictions. An easy way to check is to contact your local municipality via phone or you may do a web search. Most of these local ordinances are posted on the local municipalities' website.

Check your insurance requirements Contact your homeowners' insurance carrier. Check to see if your homeowner's insurance covers you for incidents related to offering your home as a short-term rental. After you have done your research, and you are sure you are complying with all laws and insurance requirements, then you can decide whether to offer your home or condominium as a short-term rental.

Share your community association rules. Share your community association's rules with the people who will be renting your home. They should know what to expect, and your neighbors should feel confident your "guests" will be treating their neighborhood like their home. Remember: be a good neighbor!

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resolve issues of tax treatment for its transactions and now has 20 such agreements with states. Under these agreements, Airbnb pays the taxes based on host transactions through its website. Implicit is that the promise of higher tax revenue will deter local regulations.

The McGill Report yields other significant findings with respect to the impact on rental housing in New York City.

The report reveals higher revenue from short-term rentals increases median rental rates for traditional long-term rentals for entire-home and apartment units. In doing so, Airbnb could remove long-term rental units from the market.

Short-term rental of individual apartment units creates “ghost hotels” and constitutes a new strategy to circumvent regulatory scrutiny. Commercial operators control large portfolios of entire-home and apartment listings: 12 percent of hosts earn more than 28 percent of the revenue. These findings can have significant impact on housing in community associations.

Short-term rentals also have an impact on hotels. Based on lower prices, Airbnb may pull tourists from hotels and motels, while not adding a net benefit to tourism or city tax revenue. And if tourism increases while hotel room sales decline, this net increase could be at the expense of community associations.

The Community Approach

From my perspective, community associations could take one of the following approaches with short-term rentals:

- Adopt an absolute prohibition of them. Ensure provisions of the governing documents are clear for this purpose.
- Allow short-term rentals on a limited basis. Require hosts to be present while the guests are there or limit to dwellings that are used by the owner as primary residence at least 50 percent of the year.
- Limit hosts and related persons or entities to two properties in the community.
- Regulate for health and safety by requiring hosts to demonstrate compliance with local governmental occupancy regulations, insurance, and inspections.

- Control behavioral issues by limiting the number of lodgers and prohibiting other commercial activities, such as weddings, receptions, and banquets.
- Require registration with a fee that covers administration and fines for violations that encourage compliance and provide effective enforcement.

Each community may want to take a different approach, which is why consulting with the association’s attorney is advised during this process. Whether your community allows or prohibits short-term rentals, board members and managers should share CAI’s guide for residents. See right.

Looking to the future, if state legislation preempts the authority of cities and associations, the homeowners would lose their autonomy and ability to control short-term rentals. Association leaders must join with local governments to strongly oppose such legislation.

While cities have powerful tools to control short-term rentals through zoning, building codes, and health and safety regulations, if they fail to act, or delay a response, the results could transfer burdens to association leaders. CAI’s public policy states that associations are in the best position to decide whether short-term rentals are appropriate for their community and boards are in the best position to craft suitable policies. (See “Policy Position” pg 12, for more.)

It’s important to remember, of all levels of government, community associations best understand the value of homeownership and the need to protect their own well-being.

Marvin J. Nodiff is a retired St. Louis attorney and a fellow in CAI’s College of Community Association Lawyers.

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Can Short-Term Rentals Be Stopped?

By Quinten T. Cupps, Esq.
Vial Fotheringham, LLP



One of the most frequently asked questions from our association clients over the last year or two is “What can we do about all of the short-term rentals in our community?” In a typical lawyerly fashion, we often respond with “it depends”. Unfortunately, the answer to this common question really does depend almost entirely on the language found, or not found, in your association’s CC&Rs. To further complicate the issue, the law was changed a few years ago making it more difficult for associations to regulate rentals and it does not appear that the state legislators will be reversing this trend any time soon. So, if your association is experiencing this problem, what can you do?

Start by reviewing your CC&Rs. According to current Arizona law, owners in an association are allowed to use their property as a rental property unless prohibited by the CC&Rs and owners are required to use their property in accordance with any rental time period restrictions found in the CC&Rs. Therefore, in order to limit or restrict short-term rentals, you will need to search the CC&Rs for any applicable language. Common language, which is typically found in the “Use Restriction” section of the CC&Rs, will either prohibit rentals all together or will require a lease agreement be in writing for a certain minimum term. The association will be limited by whatever language currently exists in the CC&Rs. Please also understand that any language restricting rentals found in a governing document other than the CC&Rs (i.e. Bylaws, Articles of Incorporation, etc.) is not enforceable.

Assuming you find language in the CC&Rs you can rely on, a violation of said language should be treated as any other violation of a restriction or rule in your community. Depending on the documents of your association, this may include sending notices of violation, imposing fines, suspending

certain rights of the owner, or filing a lawsuit if the violation persists. If you are experiencing short-term rental violations in your community, you will need to document the violations as best as you can. You should look for and save the rental ad from websites such as Airbnb or VRBO. You can document the frequent turnover of tenants on the property. You should also save any and all communications with the owner regarding the violation. Hopefully, these violations can be resolved without having to resort to litigation as these types of lawsuits can be difficult to win and are expensive for the Association.

What if your association’s CC&Rs does not adequately address the issue of short-term rentals? The association does have other options it may consider. First, Arizona law allows the association to demand certain information from the owners renting their property. The owner can be asked to disclose the name and contact information of the adults occupying the property, the time period of the lease, including the start end dates, and a description and license plate numbers of the tenants’ vehicles. In age-restricted communities, the age of the tenant can also be verified. Realistically, with short-term rentals this may not be feasible and may not be helpful. Nevertheless, the association should enact this policy for all rental properties in the community.

The association may also consider amending its CC&Rs. This option is more realistic for planned communities than condominiums as a condominium association will likely need the approval of 100% of its owners to insert or amend rental restriction language in its CC&Rs. Amending the CC&Rs can be a very difficult proposition due to the approval requirements, but if the problem with short-term rentals in your community is big enough, the option may be worth at least considering.

The association can also look to other restrictions in the CC&Rs that the owner and his or her tenants may be violating. It is very common with short-term rentals to experience problems involving traffic, parking, trash, noise, and other nuisances. Chances are your CC&Rs contains use restrictions that govern and or prohibit these issues. Associations can also look to see if an owner has registered the property as a rental with the county assessor. Failing to do so is a violation of Arizona law and may trigger language in the CC&Rs that requires owners to abide by the law. While enforcing these violations may not reduce the number of short-term rentals in your community, it may help with the negative repercussions of the underlying issue.

The current law certainly favors owners being able to freely use their property as a rental, despite the harmful impact short-term rentals can have on a community. Efforts can be made to try and change the law regarding rentals or change the law making it easier for associations to amend the CC&Rs. Residents of a community impacted by this problem can and should get involved in the legislative process. You can contact your local representative and make your concerns known. There is power in numbers.

The issue of short-term rental properties is plaguing many associations and meaningful solutions may not exist. However, if you are a member of your board of directors and your community is struggling with this issue, I would recommend you meet as a board and talk to your community manager and the association’s legal counsel to explore your options and see if the problem can be remedied.

Quinten T. Cupps is a partner at Vial Fotheringham, LLP whose practice focuses on representing homeowner and condominium associations throughout the state of Arizona as general counsel and in the areas of enforcement, collections, and civil litigation.

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Short-Term Rentals:

Unlike the visitors using them – vacation rentals are here to stay



By Mark Sahl, Esq. | Carpenter Hazlewood Delgado & Bolen

Vacation rentals or “short term” rentals have increased dramatically over the past decade, which is primarily attributable to the various websites that have offered a platform for this type of rental activity. These sites include Airbnb, VRBO, Homeaway, Flipkey, Tripping.com, vacationrentals.com, booking.com, and many others. According to recent statistics, Airbnb has over 4 million listings worldwide and VRBO has over 2 million listings worldwide. The number of homes listed on these websites has grown exponentially over the past few years and show no signs of slowing down. In fact, there are now television shows that document “house flippers” buying homes for the sole purpose of converting the home to a short-term rental.

It is clear that the shared economy has affected the hotel industry and many travelers have shown a propensity to stay in someone’s home rather than stay in a hotel. Those homes are often located in community associations. As a result, community associations cannot ignore this ever-growing trend.

While short-term rentals are popping up in just about every city in the United States, many states and cities treat short-term rentals differently. For instance, the state of New York prohibits the advertising of an apartment in a Class A multiple dwelling for rent for any period less than 30 days. Violation of this law could result in fines of up to \$7,500. The city of Coronado,

CA (near San Diego) prohibits owners from renting their homes for less than 26 days. Cities like San Francisco, Portland and many others enforce strict registration policies for owners of short-term rental homes. However, other states have enacted legislation that prohibits “short-term rental bans.” These states include Florida, Idaho, Indiana, Tennessee, Wisconsin, and Arizona. As you may remember, the Arizona legislature passed SB1350 in 2016, which became A.R.S. 9-500.39. This law provides that municipalities may not prohibit vacation rentals or short-term rentals. However, this law does not apply to community associations in Arizona (unless the community association was previously relying on a municipal ordinance to restrict short-term rentals).

If a community association wishes to regulate or restrict short-term rentals, it must ensure that rental restrictions are present in its CC&Rs. Pursuant to A.R.S. 33-1260.01 (condominiums) and A.R.S. 33-1806.01 (planned communities), “a member may use the member’s property as a rental property unless prohibited in the declaration and shall use it in accordance with the declaration’s rental time period restrictions.” It is important to note that the term “declaration” includes not only an association’s CC&Rs, but also any amendments to the CC&Rs. See A.R.S. 33-1202 and A.R.S. 33-1802. Accordingly, if the association’s CC&Rs do not contain short-term rental restrictions and the Board/

homeowners wish to regulate/prohibit short-term rentals, a CC&R amendment must be recorded.

If a community association’s CC&Rs (or any amendment) contain short-term rental restrictions (i.e. no rentals for periods of less than 30 days), those restrictions can be and must be enforced. See *Johnson v. Pointe Community Association, Inc.*, 205 Ariz. 485, 73 P.3d 616 (Ct. App. 2003). But how can associations ensure that short-term rental restrictions are properly enforced? The good news is that the owners of these homes are actively advertising their violations! The bad news is that owners, in this author’s experience, have a habit of denying any wrongdoing. It seems convenient that most owners, when caught using their home as a short-term rental that is prohibited by the CC&Rs, are simply providing a place for their friends and families to stay when they are in town. Apparently these individuals have more family members and friends than anyone else that we have ever met. Board members and community managers must be vigilant in searching out these homes and keeping track of this evidence so that enforcement actions can be pursued.

If we step back from the legal issues for a bit, I think we need to ask ourselves an important, broad question. Do short-term rentals have positive or negative implications to associations? Let’s outline some of the “pros” and “cons” of short-term rentals in our communities throughout the nation.



Possible Pros of Short-Term Rentals

Increases in Property Value

Numerous studies have been conducted in the past few years regarding the “Airbnb effect” on property values. While no study reviewed by this author has conclusively determined the true effect of short-term rentals on property values, it has been reported that allowing short-term rentals generally increases property values. This is often based on the fact that short-term rentals lead to higher rents, and higher rents generally lead to higher property values. One study conducted in New York City found that property values increased between 3.5% and 65% (based on the location) because of the prevalence of short-term rentals.

Homeowner Flexibility

Allowing short-term rentals within a community allows the owners more flexibility with which to use their homes. If nothing else, it allows the owners to generate revenue, which can assist in making mortgage payments, property tax payments, and even assessment payments to the association.

Property Maintenance

The short-term rental market has become incredibly competitive. The photos included on the various websites mentioned above are often the most important factor when a prospective visitor chooses their rental property. Accordingly, it is often crucial that the owner properly maintains their short-term rental home/unit. While not a general proposition, owners of short-term rentals should be maintaining their property at a higher level than long-term rentals or even many owner occupied homes/units.

Possible Cons of Short-Term Rentals

Loss of the Sense of Community

The concern that we seem to hear the most about the prevalence of short-term rentals in a community is the feeling of “living next to a hotel.” Homeowners generally want to know and trust their neighbors. Most home buyers (who are not investors) are not usually

interested in having a different couple/family living next to them each weekend. The same can be said for the revolving door of different guests using the association’s pool, fitness center, clubhouse, and tot lot. Short-term renters aren’t likely going to attend your next pot luck or block party anytime soon, but they may use your facilities and their presence will be known to their neighbors.

Increases the Likelihood of Violations

Owners are provided (or should be provided) with a copy of the associations CC&Rs and Rules. While all owners may not choose to read or abide by those restrictions and regulations, they are at least aware of the restrictions. Are short-term renters being provided with a copy of the CC&Rs and Rules? Possibly – but unlikely. Even if the short-term guests are aware of the Rules, will this stop them from throwing that late night party, parking on the street, or giving out the gate code to their friends and family? Probably not. Furthermore, the act of renting the home/unit for less than 30 days may be a violation of the CC&Rs on its own. If this is the case, the owner (and often innocently, the renter) are actively violating the restrictions contained within the CC&Rs.

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Increased Number of Guests in the Community

While increasing the number of individuals visiting a community could be a good thing (as these individuals may come back and buy property in the future), it can also be a major problem that stems from short-term rentals. These guests may use and abuse the associations facilities/amenities in a different way than owners. More importantly, it is possible that an influx in short-term renters allowed in a community (and using the association's facilities) could eventually lead to an argument that the community should be subject to additional federal or state laws – like the Americans with Disabilities Act (“ADA”). The more that the association makes its facilities “indiscriminately open to the public” the more likely an association's facilities will be considered a “public accommodation” that must comply with the ADA. See *Nolan v. Starlight Pines Homeowners Association*, 216 Ariz. 482, 167 P.3d 1277 (Ct. App. 2007).

Affordability and Marketability of Housing

As addressed in the “pros” section of this article, the allowance of short-term rentals may increase property values within a community and even an entire city. However, increased property values often create affordability issues. While investors may not have a problem paying “top dollar” for a home, what about that young family that is looking to purchase their first home? What about that retired couple looking for a winter home? Additionally, allowing an unlimited amount of rentals (short-term or long-term) could make financing difficult or impossible for many prospective purchasers who rely on certain types of loans, like FHA loans.

Summary

There is no clear right or wrong in the short-term rental debate and there are pros and cons associated with the short-term rental trend. Each individual association, through its board of directors and homeowners, must determine whether allowing short-term rentals makes sense for the association. If the association's CC&Rs prohibit short-term rentals, then this provision should be either enforced or amended. If the association's CC&Rs do not contain short-term rental restrictions, the association must determine whether to amend the CC&Rs through a membership vote, or simply allow this practice after weighing the pros and cons discussed above. Short-term rentals are here to stay – do you want them in your community?

Mark Sahl is a shareholder with Carpenter, Hazlewood, Delgado & Bolen. Mark can be reached at 480.427.2800 and mark@carpenterhazlewood.com. The information contained in this article is not intended to be legal advice and is provided for educational purposes only.



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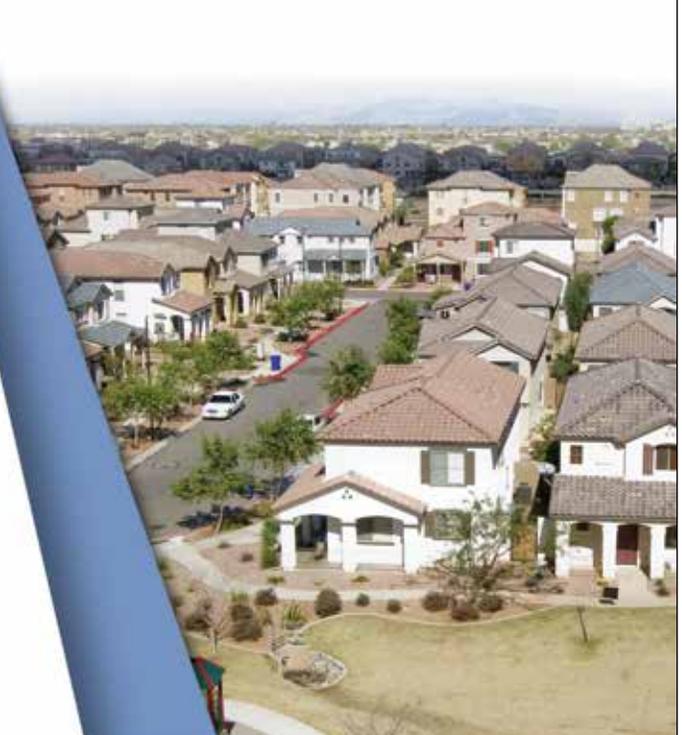
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