

RENTAL REGULATIONS, RESTRICTIONS AND ENFORCEMENT

I. Introduction – How did we get here?

- a. Past Experiences
 - i. Increased investor purchases during boom
 - ii. Poor, limited or no tenant screening by owners
 - iii. Homeowners wanted to prohibit leasing to limit investor purchases
- b. Current Experiences
 - i. Investors “walking away” from investment properties
 - ii. For some, continued poor, limited or no tenant screening
 - iii. More homeowners want to preserve right to rent in event of job transfer, etc.—but “only for themselves”
- c. Future Projections
 - i. Fewer investor units in short term – though some communities may see heavier investor activity than others
 - ii. Long-term rentals (by former homeowners who can no longer qualify to buy)
 - iii. Purchases on Contracts for Deed – this is NOT a rental situation

II. Regulation of Rentals

- a. Via rule
 - i. Do governing Documents permit regulation of rentals by rule?
 - ii. Input from homeowners—including landlords—important
- b. Does not require amendment of Declaration
 - i. More flexible than restrictions/prohibitions (rules more easily changed)
 - ii. Often can address most homeowners’ primary concerns via regulation (“quality tenants,” accountability, etc.)
- c. Must be consistent with Declaration
- d. Considerations
 - i. Non-discriminatory enforcement
 - ii. Cannot Expect Rental Units to “Carry the Association”
 - 1. Unreasonable fees not permitted
 - 2. Fees imposed on rental units only are suspect

III. Regulation of Rentals – Hoops to jump through

- a. Underlying purpose is not to *prevent* leasing, but to ensure that it does not change the ownership experience of the other residents.
- b. Considerations
 - i. May not discriminate regarding on the basis of a suspect classification:
 - 1. Minn. Human Rights Act, Sec. 363A.02: “... on the basis of race, color, creed, religion, national origin, sex, marital status, disability, status with regard to public assistance, sexual orientation, and familial status”

- 2. Fair Housing Act also applies (similar language to MHRA).
 - ii. Cannot impose restrictions that attempt to forbid rentals allowed by the declaration, without amendment of the declaration (see below).
 - 1. Unreasonable fees not permitted
 - 2. Fees imposed on rental units only are suspect
 - iii. Input from homeowners—including landlords—is important
- c. Regulation by rule or by amendment of the Declaration?
 - i. Minn. Stat. Sec. 515B.3-102(a) gives Association power to adopt, amend and enforce rules that are “not inconsistent with the articles of incorporation, bylaws and declaration, as follows:
 - 1. “regulating the use of the units, and conduct of unit occupants, which may jeopardize the health, safety or welfare of other occupants, which involves noise or other disturbing activity, or which may damage the common elements or other units
 - 2. “implementing the articles of incorporation, declaration and bylaws, and exercising the powers granted by this section
 - 3. “regulating the use of the common elements”
 - ii. To extent that “not inconsistent,” or, better yet, “implementing” governing documents, may regulate by rule, not amendment of declaration.
 - 1. Regulation by rule preferable, because:
 - a. More flexible than restrictions/prohibitions (rules more easily changed)
 - b. Often can address most homeowners’ primary concerns via regulation (“quality tenants,” accountability, etc.)
 - 2. Regulation through amendment to declaration if cannot regulate by rule
 - a. Declarations typically require approval of first mortgagees for restrictions on leasing;
 - b. New amendment to MCIOA assumes consent if no response.
- d. Typical provisions implemented through regulation of leasing (via rule):
 - i. Background checks
 - ii. Minimum length of lease
 - iii. Requirement of written lease, and copy to Association
 - iv. Entire Unit (not individual rooms or spaces) must be leased, unless the Unit Owner contemporaneously occupies the Unit.
 - v. Rental addenda required to written lease
 - 1. Fully advise renter of rules that bind all residents
 - i. Assignment of Rents for violation of rules.
 - ii. Requirement of compliance with municipal rental rules

IV. Restriction/Prohibition of Rentals

- a. Differentiation from Regulation
 - i. “regulation” allows all to lease, subject to certain conditions
 - 1. Examples

- a. Requirement to do background check on all tenants/occupants
 - b. Require use of “Association addendum” to lease
 - c. Require acknowledgement of tenant that it received governing documents and agrees to abide by them
 - d. Require use of “Landlord/Tenant Information Sheet so association has info on tenant (including vehicles, if appropriate) and info on landlord’s off site address, etc.
 - e. Use of waiting list in conjunction with leasing restrictions re number of units leased at any given time)
 - f. Require all communications re unit come from Landlord (not Tenant) except in emergencies – fine for violation
 - 2. **Can be adopted via rule** – do not require amendment of Declaration
 - a. Association records should reflect Board resolution adopting new regulations
 - b. Publicize new regulations to membership before they take effect
 - c. Effective date should be reasonable time after adoption date (i.e., 30 days)
 - ii. “restriction” limits those who may lease their units
 - 1. Examples – see below
 - 2. Can be adopted only by amendment to the Declaration
- b. Requirements for Adoption of Restrictions
- i. Consult amendment requirements in Declaration
 - 1. Homeowner consent
 - a. In writing
 - b. By vote
 - 2. Lender Consent – must be in writing
 - ii. Amendment must be recorded to be effective
- c. Options for restrictions (examples)
- i. Complete prohibition
 - ii. “grandfathering” of currently leased units
 - 1. Till current lease expires
 - 2. Till current owner sells unit
 - iii. Prohibition of leasing at some future date
 - iv. Limit Number/Percentage of Leased Units – easy to state, difficult to enforce
 - v. Lease term restrictions (*i.e.*, minimum 1-year term)
 - vi. Require ownership for stated period of time before eligible to lease
 - vii. Exemptions
 - 1. Hardship
 - 2. Family members
- d. Considerations
- i. Concessions

1. Allow some rentals in order to get consent from landlords
2. Try regulation first
- ii. Consider exemption for Association-owned Units (to allow for leasing of Units foreclosed upon by Association for non-payment of assessments)
- iii. No Panaceas
 1. Bad is bad, whether tenant or owner
 2. Bad owner harder to get rid of than a bad tenant

V. Lender/FHA Considerations - FH A Lending Guidelines updated June 30, 2011 to incorporate the March 2011 waiver regarding leasing restrictions

- a. FHA-insured financing may be used to purchase or refinance a condominium unit in a condominium project where the project's declaration contains provisions which restrict a unit owner's ability to lease their unit if the restrictions meet one or more of the following criteria:
 - i. All leases must be in writing and subject to the declaration and by-laws of the condominium project.
 - ii. The condominium association may request and receive a copy of the sublease or rental agreement.
 - iii. The condominium association may request the name(s) of all tenants including the tenants' family members who will occupy the unit.
 - iv. Unit owners are prohibited from leasing their units for an initial term of less than 30 days.
 - v. The condominium association may establish a maximum allowable lease term, e.g. six months, twelve months, etc.
 - vi. The condominium association may establish a maximum number of rental units within the project; however, the percentage of rental units may not exceed the current FHA condominium project owner-occupancy requirement. [*Currently, that maximum is 50%*]
 - vii. The condominium association may NOT require that a prospective tenant be approved by the condominium association and/or its agent(s), including but not limited to meeting creditworthiness standards.
- b. All other FHA requirements and policy guidance addressing restrictions on conveyance remain in effect. The regulations at 24 CFR 203.41 state that properties with FHA-insured mortgages shall be free of restrictions that prevent the borrower from freely transferring the property. The regulations use the term "legal restrictions on conveyance" to describe such restrictions and this term is broadly defined to include provisions in any kind of legal instrument that would cause a conveyance (including a lease) by the borrower to:
 - Be void, or voidable by a third party.
 - Be the basis of contractual liability of the borrower.
 - Terminate, or subject to termination, the borrower's interest in the property.

- Be subject to the consent of a third party (*i.e., the Association*).
- Be subject to limits on the amount of sales proceeds a borrower a borrower can retain.
- Be grounds for accelerating the insured mortgage.
- Be grounds for increasing the interest rate of the insured mortgage.

If the conveyance (leasing) could cause any of these things to occur, the property is considered to be subject to legal restrictions on conveyance and is usually ineligible for FHA mortgage insurance.