

SHORT TERM VACATION RENTALS

WHAT IS AN ASSOCIATION TO DO?

By Derick Fricke and Keith Ciceron, Esq.

San Diego has become a hotbed for short-term vacation rentals. The perfect weather and proximity to the shore makes San Diego County homeowners associations especially susceptible to dealing with vacation rentals. In fact, San Diego is the fourth busiest short-term rental market in the United States according to AIRDNA.CO:

San Diego Short Term Rental Statistics

Not counting North County and East County, there are 8,505 available rental listings in SD

81% of short term leases are 6 months or less, 60% are 3 months and less

There are 2,705 current single-listing hosts

26% of hosts have multiple listings

From 2010-2016 the cumulative listing number was 15,384

From 2016-2017, the number jumped to 22,092 – a one year 50% jump

The money to be made in the short-term rental market is staggering. A condo in the San Diego Marina District can earn an average of \$232 a night in rent. Further, with a 64% average occupancy, one can earn over \$4,400 a month in rental income. Based on these facts, this issue does not appear to be going away anytime soon.

The law in San Diego regarding short-term rental regulations is in flux. However, a short-term rental (e.g. Airbnb, VRBO) generally consists of a rental period of less than one month. The San Diego Municipal Code provides that if you rent your property or a portion of your property on a short-term basis, you must obtain a Transient (*con't. on next page*)



Occupancy Registration Certificate. The San Diego City Attorney's office is awaiting City Council's input on short-term rentals before it can effectively enforce the San Diego Municipal Code. There have been proposals from different city council members as to how to handle short-term rentals, but none have generated sufficient support to result in legislation. This leaves San Diego neighborhoods in a difficult position to prevent short-term rentals.

The good news is that there are options available to homeowners associations. The growing trend has been for associations to amend their governing documents to add specific rental restrictions with regard to short-term rentals. When amending the governing documents, it is a best practice to amend both your CC&Rs and Rules and Regulations to address short term rentals.

If your documents are more than a few years old, the CC&Rs likely do not specifically limit short-term rentals. If your association does decide to amend your documents, it is important to have specific language that units or homes in the community may not be used for time-share purposes, hotel-like operations, or other transient purposes. All lease agreements should be in writing and a copy should be provided to the association along with the names and contact information for the occupants. Further, the lease agreement should be for at least a one (1) month term. Additional provisions to consider in addressing short-term rentals include the following:

- The member transfers his/her common area rights to their tenant
- No subleases
- Tenant to comply with all governing documents and subject to same discipline and fines as member
- If member becomes 60 days delinquent in assessments, member must assign rental payments to the association
- Tenant shall carry renter's insurance
- Member gives the association the right to institute an unlawful detainer if tenant violates the supplemental lease agreement
- Tenant holds harmless the association
- Member, tenant and the association shall resolve disputes about the supplemental lease agreement with binding arbitration

After addressing short-term rentals in your governing documents, the next task is how to monitor your community for potential violations. In addition to watching activity in the neighborhood, associations are frequently checking vacation rental websites for active listings in their communities. If that is too time consuming, associations can utilize a third-party vendor that monitors short term rental listings in the community for a fee.

While many associations are amending their documents, restrictions on short-term rentals may not be so black and white. The California Court of Appeals' March 27, 2018 published decision in *Greenfield v. Mandalay Shores Community Association* overruled a trial court's ruling denying an owner's request for a preliminary injunction with regard to a homeowners association's ban on short term rentals. In that case, Greenfield challenged the association's ban on rentals of less than 30 days on the basis that it violated the California Coastal Act (Public Resources Code Sections 30000-30900) because the homes in the association were within a 1,000 yard coastal zone that was protected for beach access. The Court agreed that Greenfield made a prima facie showing to support their request to stay enforcement of the association's ban pending a trial on the merits. As such, the Court of Appeal overturned the trial court ruling and ordered the trial court to enter a new order granting Greenfield's preliminary injunction request. While the association could still prevail at trial, this ruling does underscore the potential issues involving short term rental bans for associations in coastal communities.

Short-term vacation rentals are a complicated issue, but they can be addressed if the proper procedures are put into place. It is best to consult your association's legal counsel when in doubt on how to best handle short-term rentals in your community.