Bond Case Briefs

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Short-Term Rentals - A Tale Of Two Cases.

Courts across the country have been hearing cases about short-term rentals of homes and condominium units, and there is not much consistency in the decisions made. Sometimes, it is the homeowners' association that is trying to enforce its covenants in a manner that prohibits short-term rentals, and sometimes it is a municipality trying to enforce its zoning ordinances. In the two cases discussed below, we have one of each—and in both cases, the language of the covenant and the ordinance made all the difference.

(1) HOA Seeking to Enforce its Covenants to Prohibit Short-Term Rentals of Homes

Facts. A homeowner advertised several properties he owned in a subdivision for short-term recreational use, placing ads on a local short-term rental website. In the ads, he described the properties as being available for "vacation rental per night," and listed the rental fees he would charge. The short-term rentals got the attention of the HOA due to other residents' complaints of occasional excessive noise, vehicles being parked on the street, and the renters' damaging the subdivisions golf course, to name a few. The HOA's Declaration of Covenants did not specifically prohibit short-term rentals, but it did say "No trade or business, or profession of any kind shall be carried out upon any residential lot nor shall anything be done thereon which may become an annoyance or a nuisance to the neighborhood." The Covenants also stated that the lots owned by this particular homeowner were to be "single family residential lots and shall be used only for residential purposes." By contrast, the Covenants allowed one of the lots (not owned by this owner) to be used for commercial purposes, including a hotel.

Court Rulings. The court dug in to the plain or common meaning of the words used in the Covenant and determined that a "residence" is a "dwelling place or abode of a single person or family unit;" or, defined another way, a "personal presence at some place of abode with no present intention of definite an early removal and with purpose to remain for undetermined period…" Using these definitions, the court ruled that using these lots for one-night, two-night, weekend, or weekly rentals cannot fit within the requirements of the residential use required by the Covenant. As such, the Court found that the short-term rentals violated the Covenant.

(2) Municipality Seeking to Enforce its Ordinances to Prohibit Short-Term Rentals of Homes

Facts. A number of homeowners within a municipality were renting out their lake homes as vacation houses for short-term intervals, typically for about a week in duration. At first, the municipality had a long-standing zoning ordinance affecting these homes that simply required that they be used as "single-family dwellings." The homeowners, wanting to continue their vacation rental practices, argued that as long as it was just one family renting at a time, they were following the single-family dwelling ordinance. The municipality then decided to stop all the guess work and amended the ordinance to explicitly prohibit short-term rentals. The homeowners filed suit against the municipality, arguing that they had a "prior nonconforming use" right to rent their homes short term, because the previous zoning ordinance allowed short-term rentals as long as it was to one family at a time.

Court Rulings. The court again analyzed the language of the previous ordinance to determine if there was really a right to rent the homes short-term—and just like with the other case, the devil was in the definitions. The court found that the definition of "single-family dwelling" under the ordinances came down to the definition of "family" within the ordinances, which was defined as "relationships of a non-transient domestic character," excluding those "whose domestic relationship was of a transitory or seasonable nature or for an anticipated limited duration…" The court ruled that since short-term vacation rentals are inherently transitory, no matter who was renting they could not meet the definition of "family" under the prior zoning ordinance; therefore, the homeowners lost their case—and all the future vacation rental income they could have made.

Lesson. While these cases are interesting in how the various courts parse through the language used in the association documents and the ordinances, the lesson we can draw for Wisconsin Condominium and Homeowners Associations is that if you want to limit or prohibit short-term rentals in your community, it is best to specifically say so within your Declaration or Bylaws. These cases show us that relying on "single family" or "residential use" to justify prohibition of short-term rentals will only lead to lengthy litigation.

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