

MERCERTRIGIANI

COMMON INTEREST COMMUNITY LEASING RESTRICTIONS

Leasing Rules & Regulations

Section 55.1-1973 of the Virginia Condominium Act and Section 55.1-1806 of the Virginia Property Owners' Association Act provide that associations may adopt leasing rules and regulations *only if* such rules and regulations are consistent with and based upon **express authority** contained in the condominium instruments or governing documents. Leasing rules and regulations not expressly authorized by condominium instruments or governing documents are subject to legal challenge.

The continuing trend in Virginia courts is to look for express authority in recorded documents. If recorded documents do not contain express authority to regulate leasing, boards generally cannot create substantive leasing restrictions through rules alone. Rules that attempt to impose leasing limitations such as prohibiting rentals, establishing leasing caps, or otherwise affect individual property rights of without clear authority may exceed board authority. Accordingly, associations considering a leasing resolution should carefully review recorded documents to confirm express authority. If sufficient authority is not established but the board wishes to adopt leasing regulations, recorded documents must be amended.

CONSIDERATIONS

Leasing Documents. Recorded documents may establish authority to require owners to use *standard form leases* or *lease addendum* to include select provisions, such as acknowledgement that tenants are subject to recorded documents and rules and regulations. If associations wish to require standard leasing documents, authority must be established in the recorded documents and be referenced in a leasing policy adopted by the board.

Lease addendums are preferred to mandating a lease form. Lease addendums are targeted to address specific concerns, avoiding overall terms that a landlord and tenant should address. Standard practice is to develop and include the lease addendum as an exhibit to the leasing policy. Common terms require documents:

- To be in writing.
- Signed by all tenants and occupants of the property.
- Provided to the Board within a specified time period of commencement of a new lease or lease renewal.

Tenant Information. Section 55.1-1973 of the Virginia Condominium Act and Section 55.1-1806 of the Virginia Property Owners' Association Act authorize associations to require owners to provide the association with the names and contact information, as well as vehicle information of tenants and authorized occupants under the lease. Associations may require owners to provide:

- Full names
- Contact information
- Copy of lease
- Authorized agent of the owner
- Vehicle information
- Tenant acknowledgement of rules and regulations

Resolutions may be drafted to include a *tenant registration form* which requires owners and tenants to provide the information authorized by Section 55.1-1973 of the Virginia Condominium Act and Section 55.1-1806 of the Virginia Property Owners' Association Act.

Tenant Compliance. Tenants are required to comply with the governing documents and condominiums instruments, rules and regulations in the same way as an owner is required to comply. Leasing policies should cite and be based upon authority established in the recorded documents.

- Owners to provide tenants with a copy of association documents; and,
- Tenant acknowledgement of and consent to association rules and regulations.

Owners are responsible for the conduct of tenants. Leasing policies may also be drafted to provide that owners authorize the association to take action against a tenant as well as owner to ensure tenant compliance. An association will direct compliance requests and enforcement action to an owner who may be held responsible for:

- Charges assessed for tenant violations.
- Charges for damages caused by tenants.
- Compliance measures that may include removing the tenant.

Occupancy Restrictions. Associations may adopt rules regarding maximum occupancy, based on local ordinance, square footage or room count and health and safety standards. However, care must be given to the federal Fair Housing Act and Virginia Fair Housing Law (which mirrors the Fair Housing Act) prohibit discrimination in housing on the basis of race, color, religion, sex, national origin, *familial status*, and disability. These laws prohibit “housing providers” from engaging in prohibited, discriminatory conduct. Courts have applied the fair housing laws to community associations, determining that a community association fits within the definition of “housing provider.”

Occupancy restrictions cannot discriminate based on familial status. Bedroom occupancy limitations could be viewed as restrictive and discriminatory toward families with children by prohibiting families of a certain size from residing together, particularly when the restriction is based on the number of persons in a bedroom, regardless of the size of the bedroom or home. In light of the fair housing law limitations, occupancy restrictions are subject to legal challenge.

DRAFTING & ADOPTION

Leasing policies should be embodied in a resolution drafted with reference to restrictions and requirements set forth in the recorded documents. Imposing leasing restrictions and requirements fundamentally affects individual property rights of owners. Rental restrictions require care and attention in order to be successful and supported in the community. These hurdles may be overcome with thoughtful drafting – designing restrictions to address the concerns that make leasing restrictions attractive. Essential to that is a community conversation around the topic.

Leasing resolutions must be considered at properly convened meeting of the board. Once finalized, the resolution must be adopted by a motion at a properly convened board meeting. Meeting minutes should reflect the board vote and include a copy of the adopted resolution. A copy of the executed leasing resolution should be maintained as part of association books and records and should then be published or distributed to all owners. A copy of the leasing resolution should also be included as an attachment to resale disclosure packets issued on behalf of the association.