

Two-family rental may violate codes

Michael Hunter
Association Answers

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Q: Last year our HOA's rental policy was challenged by a developer. We had previously not allowed rentals. After a new vote, property owners are now allowed to rent their properties. However, our restrictive covenants clearly state that homes are for single-family use only. There is a home in our community which has multiple levels and was marketed by a Realtor last year as having multi-family capability. Citing our restrictions, our board asked him not to market the house as multi-family. The house was recently sold and the new owner intends to rent the home. During a conversation with me he stated that he intended to rent the downstairs and occupy the upstairs himself. Our board feels this is a violation of the restrictive covenants. What recourse does our board have?

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[Michael Hunter](#)



Charlotte attorney Michael Hunter specializes in community and condominium association law for the firm of Horack Talley.

You indicate that your CCRs (covenants, conditions and restrictions) restrict homes to "single-family" use. Is the term "single-family" defined in your CCRs?

Unless your CCRs specifically define the term, you must look elsewhere for precisely what meaning will be applied to this term. This will be the first inquiry in determining whether your neighbor's dual use of his home violates your restrictive covenants.

The general rule in North Carolina in regard to the interpretation of terms in restrictive covenants is that the intention of the parties at the time the covenants were executed controls.

In the absence of any evidence of intent, courts in North Carolina will interpret terms in restrictive covenants consistent with the "natural meaning" of the terms in question. N.C. courts have held that a "family" does not ordinarily include "independent persons who share only the place where they sleep and take their meals." This suggests that the use of one residence to house two distinct families would be inconsistent with the term "single-family."

Additionally, I checked your local zoning ordinances and found the following definitions:

"Residence, Single-Family. A residential use consisting of a building containing one dwelling unit on a single lot."

"Residence, Two-Family. A residential use consisting of two dwelling units within a single building on a single lot ..."

This homeowner's proposed use might well constitute a "two-family" use, using those definitions.

If your CCRs do not define "single-family," and your board adopts the definition in the local zoning code, then the homeowner would be violating the CCRs by altering the home to contain two distinct living units.

Your options for addressing the violation include levying fines against the owner in accordance with the N.C. Planned Community Act (assuming your community is covered by

the Act), or suing the homeowner to seek an injunction barring him from converting or using the home for any use other than single-family.

If you have read my columns, you know I believe that litigation should be the last resort because it's time-consuming, expensive and can be stressful for the parties involved. Your CCRs may also provide other remedies for dealing with violations.

In addition to the CCRs, your community is also subject to zoning restrictions, and the proposed use of the home might well violate local zoning ordinances. Check with your zoning department.

Charlotte attorney Michael Hunter focuses on community and condominium association law for the firm of Horack Talley. E-mail questions to home@charlotteobserver.com.