

Get legal help limiting rentals amid condo units

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Q. We live in a small patio home development (37 total units) that has a homeowners association. Other than a statement that the homeowner is responsible for all requirements in our covenants, there is no statement that specifies the number of units that can be rented.

Is it correct that the presence of rental units depreciates home values in a development? Can the bylaws be changed to limit the number of rental units? If so, what would be a reasonable number and what procedure must be followed to change the bylaws?

Restricting the number of homes that can be leased in a community is a hot topic, mostly in multi-family developments (condos and townhomes).

The prevailing notion is that renters do not have a vested interest in the condition and value of the homes, and are more likely than owners to violate the community's covenants, rules and regulations.

In addition, as tenants move in and out of the rental units, it may increase wear and tear on common areas and facilities, thus increasing costs to the HOA. Further, new federal regulations that took effect Feb. 1 dictate that condos and townhomes will not qualify for federally backed mortgage loans (FHA, Freddie Mac, Fannie Mae) if more than 50 percent of the homes are occupied by someone other than the owner.

These restrictions on such federal loans and loan guarantees would reduce the number of potential purchasers, which could have a negative effect on home values.

Whether or not these beliefs are true, we have seen a significant increase in the number of multi-family communities that come to us asking for an amendment to their governing documents to limit the number of rental properties.

Limiting rentals can't be accomplished through a simple resolution, rule or regulation adopted by the HOA's board of directors.

It must be done through an amendment to the Declaration of Condominium (or Covenants, Conditions and Restrictions for townhomes and single-family communities), which must be approved by at least 67 percent of the owners and be recorded at the Register of Deeds.

You'll need an attorney to draft and record the amendment. Although there is very little N.C. case law dealing with the enforceability of such amendments, the courts here and elsewhere generally have upheld amendments when they are reasonable, and drafted as narrowly as possible to achieve a legitimate objective.

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