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Restrictions on Use: Can an HOA prohibit short-term rentals?

An HOA can prohibit short-term rentals if the original Covenants, Conditions, and Restrictions (CC&Rs) allow it to do so. A developer is free to include a prohibition on short-term rentals in its CC&Rs (along with any other lawful restrictions on use). HOAs may amend their existing CC&Rs to prohibit short-term rentals in some cases.

Washington courts have held an HOA may amend its CC&Rs to prohibit short-term renting with a majority vote only if homeowners had notice at the time they purchased their homes that the HOA could limit or prohibit renting of the homes.[1] Otherwise, an HOA may only amend its CC&Rs to prohibit short-term renting if all HOA members approve the amendment.[2] This is an evolving legal issue and very fact specific.

The Washington Supreme Court case, *Wilkinson v. Chiwawa Cmtys. Ass'n*, ruled that the restriction of short term rentals required every owner's approval in that community. An Idaho Supreme Court case, *Adams v. Kimberley One Townhouse Owner's Ass'n,*[3] [4] provided a different answer to what appears to be an identical question. The different results may be because of differences between Washington and Idaho law, or the facts presented in these cases may provide guidance to HOAs in answering this question for their communities.
The courts identified two situations where an HOA may validly amend its CC&Rs to prohibit short-term rentals without approval of all homeowners:

1) If the HOA's CC&Rs already contain a provision that limits the renting of homes, the HOA can amend its CC&Rs to prohibit short-term rentals with a majority vote (as provided by the

CC&Rs) so long as its CC&Rs specifically grant the HOA authority to amend existing covenants.[5]

2) If the HOA's CC&Rs grant the HOA authority to create new covenants,[6] the HOA can amend its CC&Rs to prohibit short-term rentals with a majority vote (as provided by the CC&Rs) whether or not the CC&Rs already contain a provision that limits renting of homes.

A recent Idaho Supreme Court decision (*Adams*) is at odds with *Wilkinson* in its conclusion about short-term rentals. In *Adams,* the court determined that an amendment to prohibit short-term rentals was valid against all homes even though the HOA's CC&Rs did not contain an existing covenant that limited or prohibited rentals.[7]

An analysis of the facts of each case may shed light on why the courts came to opposite conclusions on a seemingly identical question (keeping in mind that Idaho law does not control in Washington):

In the *Wilkinson* case, the CC&Rs only allowed the HOA to amend existing covenants. The court in *Wilkinson* determined that homeowners did not have notice that the HOA could restrict or limit the renting of homes because there was no mention of a limitation on rentals in the covenants and the reference to "for rent" signs in the CC&Rs indicated the HOA's intent to allow rentals in the community. In *Adams*, the CC&Rs allowed the HOA to make general amendments, which the court interpreted to include creation of new covenants. The court in *Adams* determined that homeowners **did** have notice that the HOA could restrict or the limit renting of homes.

In *Wilkinson,* the CC&Rs limited use of the homes to "single family residential purposes," and limited rentals to "single family residential purposes" (the rentals could not be for "commercial purposes.") The court in *Wilkinson* determined a short-term rental

is still a "single family residential purpose."[8] In *Adams*, the CC&Rs also limited use of the homes to "single family residential purposes," but the court determined the amendment was valid because it clarified what "single family residential purposes" meant for that community.

In *Wilkinson,* homeowners in the HOA had rented their homes as vacation homes (short-term and long-term) for decades. In *Adams*, homeowners in the HOA had never rented their homes as vacation homes (short-term or long-term). Virgil Adams, the appellant, had only rented his home as a vacation home for a few months before the amendment was adopted.

Both cases seem to stand for the proposition that an HOA cannot amend its CC&Rs to prohibit short-term rentals unless the homeowners have notice that the HOA could do so. An HOA cannot amend its CC&Rs to prohibit short-term rentals if short-term rentals are consistent with the HOA's definition of "single family residential purposes" (assuming the HOA limits use of the homes to "single family residential purposes"). Finally, it appears that courts likely will not allow an HOA to amend its CC&Rs to prohibit short-term rentals if the HOA has historically allowed short-term rentals.

See also the chapter entitled: "Restrictions on Use: What is required to create new covenants in an HOA?"

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[1] *Wilkinson v. Chiwawa Cmtys. Ass'n*, 180 Wn.2d 241 (2014) (court held the HOA could not prohibit short-term rentals because the Governing Documents did not give homeowners notice that the HOA could prohibit short-term rentals).

[2] *Wilkinson*, 180 Wn.2d 241 (a new restriction on short-term rentals was invalid because "homeowners cannot force a new restriction on a minority of unsuspecting homeowners unrelated to any existing covenant").

[3] *Adams v. Kimberley One Townhouse Owner's Ass'n*, 352 P.3d 492 (Idaho 2015) (a new restriction on short-term rentals was valid, even though the HOA had not obtained unanimous approval from homeowners, because the CC&Rs contained a provision allowing general amendments to the CC&Rs which included creation of new covenants unrelated to existing covenants).

[4] Idaho case law does not control in Washington, but it may be persuasive to Washington courts.

[5] *Wilkinson*,180 Wn.2d 241.

[6] *Adams*, 352 P.3d 492.

[7] *Adams*, 352 P.3d 492.

[8] Prior Washington cases have defined "residential use." *See, Ross v. Bennett*, 148 Wn. App. 40 (Wash. Ct. App. 2008) (a tenant's use of a property is a "residential use" because it is identical to a homeowner's use of the property- the use is for sleeping, eating, and other residential purposes).