



How to Effectively Work With Rental Properties in a Community Association

MULCAHY Community Association Cheat Sheet®

BRINGING ANSWERS TO COMMUNITY ASSOCIATIONS

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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WORKING WITH RENTAL PROPERTIES

Over the past few years, there has been a dramatic increase in the number of rental properties in Arizona, including short-term/vacation rentals. Sometimes an association's board or manager frequently contact legal counsel for assistance in dealing with tenants who do not comply with the governing documents. The short-term/vacation rentals present a unique enforcement challenge due to their temporary nature.

2014 LEGISLATION REGARDING RENTAL PROPERTIES

The 2014 Arizona legislation made changes in the condominium and planned community acts which affect how an association handles rental properties. This new legislation involves both the rights of owners and the owners' tenants. The following is a summary of those statutes:

RENTAL PROPERTY— A.R.S. SECTIONS 33-1260.01 AND 33-1806.01

1. Unless rentals are prohibited in the declaration, owners may rent their property, subject to any rental time restrictions in the declaration.

2. An owner may designate a third party to act as the owner's agent regarding any association matters pertaining to the rental unit, except for voting in association elections and serving on the board of directors. The owner must sign the written designation and provide a copy of that designation to the association. Once received, the association is authorized to work with the agent on all association matters involving that rental unit. Any notice given by the association to an owner's designated agent on any matter relating to the owner's rental unit is considered as notice to the owner.

3. Associations are prohibited from requiring any owner to disclose to the association, any information regarding a tenant other than the following: a. the name and contact information for any adults occupying the unit; b. the time period of the lease, including the beginning and ending dates of the tenancy; and c. a description and the license plate numbers of the tenants' vehicles. If the association is an age-restricted community, the owner, the owner's agent or the tenant must provide the association or its manager with government issued identification with a photograph of the tenant and confirmation that the tenant meets the association's minimum age restriction.

4. In providing the information about the tenant, the association may charge a fee of not more than \$25.00 to be paid within 15 days after the postmarked request from the association. The fee may be charged for each new tenant but cannot be charged if the same tenants renew an existing lease. Except for the fees allowed to obtain the tenant's information, and any fees that relate to the use of recreational facilities, the association or its manager cannot assess, levy or charge a fee or fine or otherwise impose any requirements on an owner's rental unit that are any different from on an owner-occupied unit in the association. For example, under this section, it would not be appropriate to charge a tenant a parking fee if such a fee is not charged to owners who occupy their unit/lot.

5. Notwithstanding any provision in the association documents, the association is prohibited from doing any of the following:

(a) Requiring an owner to provide the association with a copy of the tenant's rental application, credit report, lease agreement or rental contract or other personal information except as permitted. This paragraph does not prohibit the association from obtaining a credit report on any person in an attempt to collect a debt owed to the association.

(b) Requiring the tenant to sign a waiver or other document limiting the tenant's due process rights as a condition of the tenant's occupancy of the rental unit.

(c) Prohibiting or otherwise restricting an owner from serving on the board of directors because the owner is not an occupant of the unit/lot.

(d) Imposing on an owner or owner's manager, any fee, assessment, penalty or other charge in an amount greater than \$15.00 if the permissible information concerning the tenant is incomplete or untimely.

(e) Any attempt by an association to exceed the fees that are permitted, voids the fee.

These statutes specifically allow an association to enforce any provision in the governing documents that restricts the residency of persons who are required to be registered as a level two or three sex offender.

An owner of rental property in a condominium or planned community is required to abate criminal activity in the unit/lot under A.R.S. §12-991 because any residential property that is regularly used in the commission of a crime is a nuisance.

RESTRICTING SHORT TERM RENTALS

SB 1350, which passed in 2016 legislative session, severely limits a city, town or county from prohibiting or restricting the use of/regulating (based on their classification, use or occupancy) vacation rentals or short-term rentals. There are certain limited exceptions; however, in most cases, the exception will not apply to community associations. As a result, associations can no longer rely on local code enforcement divisions to assist in prohibiting short term rentals. Rather, associations now need to rely on their own governing documents.

HB2672, which passed in 2019 legislative session, expands upon the areas where a city, town or county can restrict short term rentals, including a prohibition against short-term rentals being used for non-residential purposes including for special events or for a retail, restaurant, banquet space, event center or other similar use.

ARS 33-1260.01(A)/33-1806.01(A) allow an association to restrict a member from using the property as a short-term vacation rental so long as the rental time restrictions are in the declaration.

QUESTIONS AND ANSWERS

How should a landlord communicate with his/her tenant?

An owner should provide the tenant with copies of all governing documents for the association and stress to the tenant that the owner expects the tenant to comply with those restrictions. The owner should insert provisions in the lease that state (1) a violation of any provision of the governing document is a violation of the lease giving the owner the right to evict the tenant for a non-monetary default; (2) if a violation occurs and the association imposes fines against the owner, the tenant is responsible for payment of the fines.

Can tenants attend board meetings and/or be designated by the owner as the owner's representative?

Tenants may only attend board meetings if the owner designates that tenant, in writing, as his/her representative. Or alternatively, if the board allows tenants to attend board meetings Tenants may speak on behalf of the owner at the board meeting if the tenant is a designated representative of the owner in writing.

Can a tenant sit as a board member on the board of directors?

In most instances the bylaws restrict the board to members (owners) of the association. However, if the bylaws do not require that board members be members of the association, then nonmembers (which include tenants) can serve on the board of directors.

Can tenants vote?

No, only property owners in the association are allowed to vote (and then only if in good standing if the voting rights are restricted in the governing documents).

How can the association get tenant compliance?

The association should contact an owner first in writing concerning violations. The association does not have a contractual relationship with the tenant and, as such, the best way to get compliance is to contact the owner. Sometimes the owner is not aware of the tenants violations. The legal remedies an association has against an owner for tenant violations are as follows: fine the owner (after notice and an opportunity to be heard), file a lawsuit against the owner seeking an injunction compelling compliance and/or consider whether self-help is an option. It is important to note that under Arizona law [A.R.S. Section 33-1803(b), planned communities and 33-1242(A)(11) condos], fines may only be imposed only after notice of the violation is provided to the owner (it is a good idea to send a courtesy copy to the tenant) and an opportunity to be heard is provided to the owner by the association. The opportunity to be heard can be a hearing or allowing the owner to send a response in writing to the association. Fines must also be reasonable. An association should periodically remind the owners that it is their responsibility to notify tenants of association restrictions and rules and to ensure the tenants are in compliance.

Are there any requirements to register a rental property?

On August 6, 1999, the Arizona legislature enacted the Residential Rental Property Registration law. Pursuant to A.R.S. Section 33-1902, an owner of residential rental property must file a notification form with the county where the rental property is located. The notification form provides the following information: the property owner's name, his/her address and telephone number; the street address of the rental property; and the year the property was built. Owners who fail to comply with this requirement after notification and a 10-day grace period are subject to a civil penalty of \$1,000.00 plus \$100.00 per month for every month the owner fails to comply with this requirement. The purpose of this registration requirement is to ensure that the county assessor is aware of which properties are rented so that the property taxes can properly be calculated as rental property is taxed at a higher rate than owner-occupied property.

HB2672 adds a requirement that the owner of a short-term rental property provide the city or town and the county, with contact information for the owner or owner's designee who is responsible for responding to complaints in a timely manner before offering to rent the property.