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Restrictions on Use: Can Associations limit "Airbnb" rentals of an owner's home, or part of the home, if the owner lives there?

An Association can prohibit or limit "Airbnb rentals (and other shared or short-term rentals) in some circumstances. It depends on the associations' Declaration or Covenants, Conditions, and Restrictions (CC&Rs). "Airbnb" is a website for people to list, find, and rent lodging (essentially a bed and breakfast facilitation site).

A developer is free to include an express prohibition or limitation on Airbnb, bed and breakfast, or other short term rentals in its Declaration or CC&Rs (along with any other lawful restrictions on use). Many Declarations and CC&Rs prohibit transient use of the units or operating units "like a hotel." If such a provision exists, an Association should be able to prohibit Airbnb rentals or any other shared or short-term tenancies, even if the owner lives in the unit during the rental.

Some Declarations and CC&Rs have no express prohibition against short term rentals or transient use, but restrict use of properties to "single family residential purposes." Although Washington courts have defined "residential use" to include a tenant's use of a property,[1] they are unlikely to find that the use by unrelated Airbnb, bed and breakfast, or other short term tenants is a "single family" use. Thus, where the Governing Documents restrict use to single family, Associations can likely prevent short term rentals.

Alternatively, an association may amend its existing Declaration or CC&Rs to prohibit "Airbnb" rentals in some cases.

Most condo associations' Declarations state that if the owner lives in the unit, others who live there are not considered renters. This would seem to indicate the association could not prohibit paying guests in the owner's home. There is no Washington case law

that specifically addresses whether an association can prohibit or limit bed and breakfast rentals if the owner lives in the property and operates a bed and breakfast. Other states have addressed this issue.

The Hawaii Court of Appeals held an owner who lived in a property and operated a bed and breakfast was in violation of a use restriction which limited use of the property to “residential purposes only.” It made no difference to the court that the owner also lived on the premises. [2] [3]

The Illinois Court of Appeals held use of a property as a bed and breakfast does not fall within the plain meaning of "a private dwelling for one family only." It made no difference to the court that the owner also lived on the premises. [4] [5]

Washington courts might consider “Airbnb” rentals (and other shared and short-term rentals) to fall within the definition of “single family residential purposes.” However, if an association’s Governing Documents specifically exclude bed and breakfast rentals (or other shared and short-term rentals) from the definition of “single family residential purposes” or if an association specifies in its Governing Documents that owners may not operate businesses in the property, then “Airbnb” rentals should fall outside the definition of “single family residential purposes” and the association will be able to limit or prohibit “Airbnb” rentals.

Additionally, if an association’s Governing Documents do not expressly exclude owners who both occupy and rent-out the premises from the association’s definition of “rental,” then the association will likely be able to regulate them the same as other rentals. Washington courts may consider an “Airbnb” rental or other shared or short-term rentals to be in violation of the Declaration even if the owner lives in the unit. It will depend on the specific facts of each case.

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[1] *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).

[2] *Cummings v. Roth*, 2009 Haw. App. LEXIS 780, *17 (Haw. Ct. App. Dec. 22, 2009). The court found the Declaration clearly and unambiguously required the property to be occupied and used for residential purposes only, and prohibited the property from being used as a rooming house or in connection with the carrying on of any trade or business. The court also found the Declaration only authorized the owner to lease the entire property, not a room within the property.

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

[4] *Fick v. Weedon*, 244 Ill. App. 3d 413 (1993) (the court found the bed and breakfast was a commercial use prohibited by the express language of the deed).

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