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# Urgent Warning About Rental Restrictions: Senate Bill 150 Enacted

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This year the California legislature enacted SB 150, a bill championed by the California Association of Realtors, intended to deprive association owners of the ability to restrict rentals within their communities. Until the passage of this bill, which adds Section 1360.2 to the Civil Code, owners within a common interest development were free to amend their CC&Rs to restrict rentals when it was reasonable to do so.

After January 1, 2012, this right is severely abridged. However, the new law does not affect rental provisions that became effective before January 1, 2012. If your association is contemplating a restriction on rentals, it would be wise to submit such a CC&R amendment to the owners immediately, to allow for recordation of the amendment prior to the effective date of the statute.

The bill provides:

- Any amendments to CC&Rs which would prohibit rentals of dwellings within the development are effective only as to (a) owners who purchased after the amendment was recorded, and (b) prior owners who consent to be bound by the amendment.

- The amendment does not apply to commercial common interest developments. They may continue to enact rental restrictions without regard for the provisions of the new law.

- While it is not absolutely clear, it appears that only “prohibitions” are outlawed; lesser restrictions, such as 30-day minimums or requirements that only the entire dwelling may be rented, appear to be permitted under the new law.

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• The new law adds a requirement that, prior to renting or leasing a dwelling, an owner "shall provide the association verification of the date the owner acquired title to the [dwelling] and the name and contact information of the prospective tenant or the tenant's representative."

• Because the new law creates classes of owners with different rights, it may be subject to legal challenge on the basis of previous California Supreme Court rulings (see, *e.g.*, *Villa de las Palmas v. Terifaj*: "To allow a declaration to be amended but limit its applicability to subsequent purchasers would make little sense. A requirement for upholding covenants and restrictions in common interest developments is that they be uniformly applied and burden or benefit all interests evenly. (See, e.g., *Nahrstedt, supra*, 8 Cal.4th at p. 368 [restrictions must be "uniformly enforced"]; Rest.3d Property, Servitudes, § 6.10, com. f, p. 200.) This requirement would be severely undermined if only one segment of the condominium development were bound by the restriction. It would also, in effect, delay the benefit of the restriction or the amelioration of the harm addressed by the restriction until every current homeowner opposed to the restriction sold his or her interest. This would undermine the stability of the community, rather than promote stability as covenants and restrictions are intended to do.").

Certain types of rental restrictions are common, and some have found support in case law:

• In *Colony Hill v. Ghamaty*, a court of appeals upheld the application of a "single family residential use" restriction to prohibit room rentals (a "mini dorm").

• In *Mission Shores Association v. Pheil*, the court approved the propriety of a CC&R provision which required a minimum 30-day rental period. (In the same case, the court also approved a portion of the amendment which allowed the association to evict a violating tenant.)

• In *Fourth La Costa v. Seith*, the court approved an amendment which required all leases to be in writing, and contain language binding tenants to the governing documents.

• While there are few reported cases, it would also appear that "occupancy restrictions" (that is, restrictions on the number of occupants who may reside in a dwelling), are also appropriate, provided such restrictions do not violate anti-discrimination guidelines. The usual acceptable number is 2 residents per bedroom plus 1.

• Restrictions based on "familial status" are hard to enforce, if the basis for enforcement is that the residents aren't related "by blood or marriage." Case law in the last 25 years makes it clear that a "family" consists of persons living together in the normal familial sense—sharing all rooms, sharing the responsibility for maintaining, paying the rent, etc. If (as the court in *Colony Hill* made clear) the use is not familial, but commercial (as when roommates are sought by advertisement, and certain portions of

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the homes are "off limits" to the residents), it is appropriate to conclude these are not "single family" uses.

Conclusion. If your community is serious about restricting rentals, it would be wise to evaluate whether and how to proceed before the effective date of SB 150, January 1, 2012.[1] Rental restrictions should be contained in the CC&Rs, not in the rules; CC&Rs are entitled to a presumption of reasonableness under *Nahrstedt*, making them far easier to enforce in court actions. Further, since CC&Rs (not rules) are recorded, they provide actual and constructive notice to owners (that is, an owner is bound by the CC&Rs whether he knew about them at the time of purchase or not).

[1] Condominium project associations wishing to obtain or retain FHA certification should consult with an attorney before deciding whether to pursue rental restrictions as certain rental restrictions will affect FHA certification eligibility.

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