

## Boarding & Rooming Houses: Potential Violations

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In a down economy, rentals flourish. What does this mean for community associations? It means that the likelihood a residence within the community is rented out instead of owner-occupied increases. As a result, we are seeing what appears to be an increase in boarding, rooming or “mini-dorm” houses in which tenants individually rent a bed or bedroom in a house with several other individual renters. The intent for the renter is to save money on renting only a room rather than an entire apartment or condominium, and the owner usually receives much greater total rental income since there are multiple tenants. [1]

If you discover a room-rental advertisement in the local classifieds for a property in your community, or you simply notice that a particular residence has several seemingly independent residents and/or an unusual number of vehicles, the owner of the residence may be violating the association’s governing documents. Some of the more common violations related to a mini-dorm or boarding house are as follows:

### Potential Single-Family Use Violation

If an association’s CC&Rs require that residences be used for single-family purposes, a boarding house *may* be a violation of that rule. We say “may” because when addressing possible violations of the single-family use provision, an association must use caution. This is because sometimes unrelated people living together in a house as a “single-family” can be classified as a “family” under the law. The law does not allow an association to require that a “family” consist only of persons related by blood or marriage. This definition of family is considered discriminatory. In a San Diego case entitled, *College Area Renters an Landlord Association v. City of San Diego* (1996) 43 Cal.App.4th 677, the court considered a definition from the San Diego municipal code that defined a “family” as persons who jointly occupy and have equal access to all areas of a residence and who function together as an integrated economic unit – whether related or not. The court upheld this definition and did not consider it discriminatory. It is possible an association’s CC&Rs include a specific definition of “family” which should also be reviewed. If the residents rely on each other financially and live cohesively as an integrated unit, an association may not be able to claim that they violate the single-family provision of the CC&Rs.

Notably, case law has upheld a prohibition on renting out single rooms in a home. *Colony Hill v. Ghamaty* (2006) 143 Cal.App.4th 1156, upheld a judgment in favor of the association, finding that

[1] Note, this article does not apply to addiction treatment facilities, sober housing, cooperative housing or other group-home housing protected under the Fair Housing Act.

homeowner's serial rental of rooms in his condominium violated the association's CC&Rs, which limited the home's use to single-family dwelling purposes.

Whether related or not, certain facts will indicate a violation of the single-family restriction. Such facts may include an advertisement that each room is rented individually, an indication that each tenant is assigned a bedroom or bathroom or that the tenants are on separate leases, pay separate rents, and appear to live their own lives apart from one another. Another fundamental indication the tenants do not function as an integrated economic unit is if one tenant fails to pay his or her rent, only that tenant could get evicted, without regard to the other tenants.

#### Potential Residential Use Violation

Many CC&Rs require that residences be used only for residential purposes and prohibit commercial uses of the residences. While a boarding house is technically used as a "residence," a violation of the restriction on commercial use may nevertheless exist if the owner advertises the rooms (and not the house) for rent or runs the residence more like a boarding house rather than a long-term, single-family rental.

#### Other Potential Violations

Some CC&Rs contain limitations on an owner's ability to rent their residence. For example, an association's CC&Rs may require that an owner rent or lease the entire lot or condominium. In this case, an owner is only permitted to lease an undivided interest in the entire lot or condominium, and not divided portions of the lot or condominium. If a tenant is prohibited from accessing any portion of the residence (i.e., the other tenants' bedrooms and bathrooms), a violation of this type of restriction may exist. In addition, some cities require permits or licenses to run boarding or rooming houses. If a city requires a permit to run a boarding house, and the city has not issued a permit to run the boarding house, not only may the owner be in violation of the city ordinance, but he or she may also be in violation of any CC&R provisions requiring compliance with the law. This gives the association the added bonus of potential help from the city in addressing the violation.

In conclusion, determining: (1) whether a boarding or rooming house exists in a community; and, (2) whether the boarding or rooming house violates an association's CC&Rs, is very fact-specific and should be analyzed on a case-by-case basis with regard to the specific restrictions in an association's governing documents. In any potential boarding house situation, we recommend you have the association's legal counsel determine whether satisfactory evidence exists to conclude that there is violation of the governing documents before the association proceeds with its enforcement procedures.