2015 CAI PA/Del-Val Legal Symposium:
Who's In; Who's Out?
Rental & Occupancy Restrictions in the Community Association

By: Marshal Granor, Esq., CCAL
Edward Hoffman, Jr., Esq.

Introduction

Cultures clash; economics reign; prejudices flare; laws collide.

The history of restrictions on rentals is sordid. The current (Fall 2014) issue of the Real Property, Probate and Trust Law Journal of the American Bar Association features a 100-page scholarly essay which asks the question, does the American Dream of Homeownership really need rental restrictions in community associations?

In her article, Andrea J. Boyack, Esq., Associate Professor of Law at Washburn University of Law shows convincingly that municipal restrictions against rentals grew from a desire for racial segregation well into the 20th century. And courts upheld those laws for decades. In fact, FHA rules from the 1920's and 1930's contain specifically fostered racial restrictions.

Today, we continue to wrestle with restrictions or limits on leasing in our common interest communities, from numerical limitations to waiting periods to outright prohibitions. Our associations try to control who may occupy the home next door, and we attorneys argue in favor of these controls by saying they are "contract rights" every owner knows about or agrees to when living in a private community. We claim our communities are not mini-governments, and thus should not be held to the same standard as a municipality, so racial or other discriminatory results should be ignored for the contract theory.

Since 2005, the percentage of occupants who own their own home has dropped dramatically, from 69% to 64%. The 5% difference is huge, and was caused by the Great Recession, foreclosures and tax sales, loss of income and job insecurity. With young people marrying later and having more jobs and job mobility, rental has become more of a way of life among the middle class.

More importantly for our discussion, only 85% of homes are now occupied. A 15% vacancy rate is huge! And in every age group until you get to 75 and older, the percentage of home ownership has dropped in the last 10 years.

Our governments speak with mixed messages. Be open; don't discriminate; Equal Housing Opportunity. But then we are told – at least for condominiums – that FHA and FNMA will no longer lend in a community if the tenant ratio is too high, or if a single investor owns too many units. These mixed messages help promote the general belief that tenants are not the solid citizens property owners are.

Are tenants always scum and owner-occupants the greatest folks alive? The 2014 Journal article, using 2014 statistics, reports that tenants tend, on average, to have lower incomes, be non-white, be comprised of single-parent households, and tend to be younger than homeowners.

However, the demographics of single-family detached house renters are more like those of the owners in the same community than of apartment dwellers. Not all renters are created equal.

Ms. Boyack concludes that the legitimate concerns of associations can be addressed with rules, regulations and compliance inspections, rather than outright controls on occupancy. She does not address, however, the trend in some communities to require credit and criminal background checks on incoming tenants (but typically not required the same for incoming owners).

As attorneys, we are pushed in many directions at once. Are rental and occupancy restrictions legal, constitutional, or violative of fair housing laws? Are they necessary for our condominium clients?

Let's delve further into the current state of rent and occupancy restrictions:

How do you feel about **an outright ban on all rentals**? Consider the 2009 Wisconsin Supreme Court case of *Apple Valley Gardens Ass'n, Inc. v. MacHutta*[1].

In *Apple Valley*, the original developer and his wife each owned a condo unit. The developer specifically chose to allow rentals in the association's bylaws. The association passed an amendment banning all new rentals, and requiring that any existing tenant-occupied unit be owner-occupied if and when the current tenant vacated. The developer and wife sued, because they created this community, in part, so they could enjoy the income and other benefits of owning rental properties.

The lower courts upheld the association's right to impose the ban.

At the Wisconsin Supreme Court, there were three (3) questions raised:

(1) whether a condominium complex may prohibit the rental of units through an amendment to the by-laws or whether the prohibition must be placed in the declaration,
(2) whether the original condominium declaration created an absolute right to rent, and
(3) whether the prohibition on renting a condominium unit renders title to the unit unmarketable.

On the first question, apparently in Wisconsin, placing a rental ban in the bylaws is acceptable under their statute.

In perhaps its best analysis of the case, the Court went further to address how the adoption and enforcement of such restrictions are likely to be unpopular with certain residents:

[1] 316 Wis. 2d 85, 763 N.W.2d 126 (Wis. 2009).

"We recognize that this empowers condominium associations to take actions that limit the rights of individual owners. There is an inherent tension between the competing interests of supermajority owners and individual owners. A unit owner might be frustrated, financially or otherwise, by the loss of her ability to rent out her unit. But the statutes are clear that associations have this power. Condominium ownership is a statutory creation that obligates individual owners to relinquish rights they might otherwise enjoy in other types of real property ownership. When purchasing a condominium unit, individual owners agree to be bound by the declaration and bylaws as they may be amended from time to time."

Thus, the court dealt with items two and three in one fell swoop. You cannot rely on existing declaration and bylaws provisions forever, and the mere ban on renting a unit does not make it unsalable.

When is an outright ban not really a ban? What do we do with words of equivocation. In Apple Valley, the ban was not total. "Owners shall not permit the use of said unit by any party other than owner or owner's immediate family member."

What is an "immediate family member?" Does it include a second or third generation skip? Is a companion or caretaker a part of the family?

What about unmarried individuals who are cohabiting? Or a same-sex couple in a state that does not permit marriage?

Is it OK to lease out a room or have an unrelated long-term guest occupant as long as the deed owner also resides in the home?

How many days in a year does the owner have to reside in the house? Is one day or one month sufficient?

Rental caps: FNMA and FHA guidelines for condominiums currently have extended their special rental caps of 50% until mid-2016. This was a temporary increase from 30% which had applied for decades. As many of us know and experience, rental caps are an administrative nightmare. While it may be easy to enforce rent restrictions in a high-rise building with security entry and a doorman, how does an association board or manager even know that a particular unit is leased? Often, it takes until summer for the pool or exercise room pass to be lacking before tenant occupancy is discovered.

How does the association handle hitting the cap? One local association decided to have a revolving approval process, requiring all leases to be one year in length, to renew annually, and not allowing a renewal if the cap was reached. Is this a reasonable solution? Should all current rental units be grandfathered?

How do you handle the case of an "under-water" home which is leased to allow the owner to stay out of foreclosure or bankruptcy? The owner can only maintain the mortgage payments by leasing the home and moving into less costly quarters.

What about an owner who is temporarily assigned overseas and needs to lease the home for six months? Or a military commitment?

Waiting Periods: One way to help prevent a community from being a renter's haven is to put a one-year waiting period on rentals. Thus, the purchaser either leaves the home vacant for a year (paying mortgage, taxes and association fees) or ownership begins as a resident and only after some time does the property become a rental. This method may slow initial builder sales and resales, but maintains a slow pace of conversions to leases.

FHA prohibits waiting periods for approved condominiums, thus this choice is not available if the association wishes to maintain FHA project approval.

The Law Hates Restrictions: See the recent Pennsylvania case of *Dawson v. Holiday Pocono Civic Ass'n*,[2] wherein Judge Nanovic goes to some length to overrule a community association's ban on vacation rentals, unless the tenant is approved as a "member" of the association. The analysis of requiring strict adherence to the language in the restriction is significant.

This community of about 1500 lots (fewer than 1/3 have houses on them) had a deed restriction dating back to the 1960's, which provides:

"The buyer agrees not to sell, rent, lease or permit the premises hereby conveyed, ***excepting to persons first approved for membership in the aforementioned association***, nor shall signs for advertising purposes be erected or maintained on the premises…" (emphasis added).

The judge discusses the contract theory that covenants are agreed-upon by the owners. But he dismisses this restriction because it was not enforced against any other owners from inception until 2011. In fact, the 1990 amendments to the restrictive covenants imposed a fee for rentals, thereby indicating they were contemplated and addressed by the association years before.

The Association in Holiday Pocono instituted an interesting variation on rent restrictions – issuing a "Lessee Privilege Card." The landlord would purchase a time-specific card which the tenant had to carry with them. Violations of rules and regulations could lead to a revocation of the Card.

The conclusion to take away from this case is that even when recorded governing documents permit leasing restrictions, unless they are imposed early and equitably, they may not be upheld. This area of the law is unsettled, and no advice will be correct 100% of the time. Thus, the community manager is cautioned to proceed carefully, and always with good legal advice. Even then, there will be no guarantees the restrictions on rentals or occupancy will be upheld by a court. Are tenants and owners truly different? Statistics reported by the Pennsylvania Association of Realtors, 2/17/15, from Freddie Mac's recently released "Perceptions of Renting and Homeownership," a survey of more than 2,000 U.S. adults indicates:

[2] PICS Case No. 14-0402 (C.P. Carbon Jan. 21, 2014).

There were a few big differences between the renters and buyers surveyed. For example, of those polled who rent their houses, 45% responded they have just enough money to get by, and 17% do not have enough money for basics, such as food and housing, until the next payday. In comparison, of those polled who own their home, 31% say they have just enough to get by, and seven percent do not have enough for basics until their next payday.

Among renters surveyed, 78% agreed that they preferred renting because it provides freedom from home maintenance responsibilities, while 68% agreed it allows more flexibility over where you live. Two-thirds agreed that renting protects against home price declines.

Of the renters, 39% expect to purchase a home in the next three years, with the remaining 61% planning to continue to rent. Of those planning to purchase, younger renters outnumber older numbers, with 47% of responders aged 25-34, and 58% of renters aged 35-44 planning to buy, with only 27% for people 45-64 years old and 21% of those 65 or older.

However, of those renting who plan to continue renting, most cite financial issues for not buying a home. Fifty percent believe they cannot afford a down payment, 38% believe they cannot afford a mortgage and 31% cite poor credit history for not purchasing a home.

On the other hand, some people just prefer renting, whether they don't want the responsibilities of home ownership (39%) or they feel that buying a home in this market is not a wise investment.

Attached are some sample rental restriction provisions of community association documents. These are provided ONLY as talking points, and should not be adopted in any community association. Because of the volatile and unsettled legal issues involved, such restrictions should not be considered nor adopted without legal guidance from an attorney very familiar with all of the attendant issues.

Rental restrictions in VA-approved condominiums: Although not many sellers of community association units concern themselves with Veterans Administration requirements, with the continuing return home of our military, VA guaranteed loans are being made. The VA does have slight mention of restrictions in the condominium regulations:

> (6) *Leasing restrictions.* Except as provided in this paragraph, there shall be no prohibition or restriction on a condominium unit owner's right to lease his or her unit. The following restrictions are acceptable:
>
> (i) A requirement that leases have a minimum initial term of up to 1 year, or
>
> (ii) Age restrictions or restrictions imposed by State or local housing authorities which are allowable under § 36.4308(e) or § 36.4350(b)(5)(iv).
>
> (d) *Rights of action.* The owners' association and any aggrieved unit owner should be granted a right of action against unit owners for failure to comply with the provisions of the declaration, bylaws, or equivalent documents, or with decisions of the owners'

> association which are made pursuant to authority granted the owners' association in such documents. Unit owners should have similar rights of action against the owners' association[3].

Further, the VA Guidelines for legal opinions (circa 2001) require the opinion of legal counsel that the governing documents do NOT contain the following provisions:

a. Right of first refusal;
b. Right of prior approval of a prospective tenant or purchaser;
c. "Leasing restrictions which amount to unreasonable restrictions on use and occupancy of a unit;" or
d. Any minimum lease term in excess of one year.

There is no guidance as to what constitutes an "unreasonable restriction on use and occupancy." However, from this short requirement, it is clear that many rental and occupancy restrictions would not pass muster in a VA-approved condominium community.

Fair Housing Law & Rental Restrictions

The Fair Housing Act applies to community associations because the Fair Housing Act prohibits discrimination, by the association, related to any services and/or facilities the association provides related to the residential housing in the association[4].

By way of background, Title VIII of the Civil Rights Act of 1968 ("Fair Housing Act"), and its subsequent amendment in 1974, made it illegal to threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right, or advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion or sex (gender). The Fair Housing Amendments Act of 1988 (FHAA) added two more protected classes to the Fair Housing Act: (1) familial status; and (2) individuals with disabilities. Familial status includes the presence or expected presence of children under 18, pregnant women and individuals securing the custody of children under 18. Exemptions to familial status include when the housing is planned and managed for people 55 years of age or older and the policies and procedures that demonstrate its intent to qualify for the exemption are followed and distributed. A disability includes physical, mental, sensory, AIDS/HIV and persons recovering from addiction.

Two types of discrimination can be alleged under the Fair Housing Act: Disparate Treatment and Disparate Impact. Disparate Treatment involves discrimination due to different treatment, i.e., treating someone differently because of race, color, sex, religion, national origin, familial status or disability. Disparate Impact involves discrimination by different impact, i.e., when a neutral policy or procedure has a disproportionately negative impact on a protected class.

[3] See: § 36.4358 38 CFR Ch. I (7–1–09 Edition).

[4] 42 U.S.C. §3604(b).

Thus, prior to enacting a rental/occupancy restriction, associations must understand the potential impact that a proposed rental restrictions or occupancy limit may have, as it relates to the Fair Housing Act, so as to avoid claims that may be brought against the association.

Associations should also be aware that Pennsylvania state law, specifically the Pennsylvania Human Relations Act (PHRA) (43 P.S. 951 *et seq*.), also prohibits discrimination related to leasing and/or in practices related to leasing, including but not limited to the imposition of rental restrictions or occupancy limits. Moreover, violations of fair housing laws have been held to violate the Unfair Trade Practices and Consumer Protection Law (UTPCPL), 73 P.S. 2011 *et seq*., which can lead to treble damages should a violation be found[5].

Occupancy Restrictions

Occupancy restrictions appear to be allowed but associations should be aware that there are limitations. To wit, in 1998 the U.S. Department of Housing and Urban Development (HUD) issued a Fair Housing Enforcement-Occupancy Standards Notice of Statement of Policy memo (frequently cited as the "Keating Memorandum") which provides that nothing in the Fair Housing Act "limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." HUD has recommended guidelines of two persons per bedroom as a "safe" policy for housing providers and same is reasonable under the Fair Housing Act. But the reasonableness of any occupancy policy is rebuttable, and the Keating Memorandum does not imply that HUD will determine compliance with the Fair Housing Act solely on the number of people permitted to occupy each bedroom. The official position is that "in appropriate circumstances, owners and managers may develop and implement reasonable occupancy requirements based on facts such as the number of sleeping areas or bedrooms and the overall size of the dwelling unit. In this regard, it must be noted that, in connection with a complaint alleging discrimination on the basis of familial status, the Department will carefully examine any such circumstances."

Accordingly, while a [rental] occupancy limit of two per bedroom appears to be an acceptable policy for an association to adopt, same could be challenged at some stage based on a violation of the Fair Housing Act under a disparate treatment theory (likely a familial status allegation). To wit, in *Housing Opportunities Project for Excellence, Inc. v. Key Colony No. 4 Condominium Assoc., Inc. a/k/a Botanica*,[6] the [federal] court denied a motion to dismiss a complaint alleging that a four-person-per unit occupancy restriction violates the Fair Housing Act because of disparate treatment and impact.

Keeping "those people" out

As touched upon previously, under the Fair Housing Act, Disparate Treatment involves discrimination due to different treatment, i.e., treating someone differently because of race, color, sex, religion, national origin, familial status or disability (frequently called "overt"

[5] See, *Creamer v. Monumental Properties, Inc.*, 459 Pa. 450 (1974).

[6] 510 F.Supp.2d 1003 (S.D. Fla. 2007).

discrimination). Though this type of discrimination still occurs from time to time, more frequently, the discriminatory intent is veiled in some manner (if intentional to begin with), or it involves disparate impact, which is discrimination by different impact, i.e., when a neutral policy or procedure has a disproportionately negative impact on a protected class.[7] Disparate impact claims shift the focus away from "intent" as is required under a disparate treatment claim.

Because claims brought under a theory of disparate impact are a growing phenomenon, in 2013, HUD issued a final rule entitled "Implementation of the Fair Housing Act's Discriminatory Effects Standard."[8] This final rule provides that if a practice has a "discriminatory effect", HUD (or a private plaintiff) can establish liability under the Fair Housing Act *even if a facially neutral practice has no discriminatory intent*. To wit, the final rule provides that a facially neutral practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin. Thus, although an association may not intend to discriminate against a class or group of people through a policy or practice, a violation of the Fair Housing Act may still be found if the policy or practice has a disproportionally negative impact on a protected class.

For an excellent discussion and historical analysis of disparate impact in an association setting as it relates to rental restrictions specifically, see the Indiana Supreme Court's majority opinion in *Villas West II of Willowridge Homeowners Association, Inc. v McGlothin*[9]. This case originated when the association sued a homeowner who was renting her home in violation of the governing documents for the community which provide as follows: "[f]or the purpose of maintaining the congenial and residential character of Villas West II and for the protection of owners with regard to financially responsible residents, lease of a Dwelling by an Owner, shall not be allowed." The owner countersued the association by claiming that the rental ban had a disproportionate impact on minorities and therefore constituted a violation of the Fair Housing Act. In support of her claim at trial, the owner retained an expert who opined that a total ban on rentals had a disparate impact on minorities as compared to Caucasians. In rebuttal, the association introduced evidence that it had legitimate non-discriminatory reasons for the rental restrictions. The trial court agreed with the owner, holding that the rental ban was "subterfuge for excluding minorities from renting homes," and the association appealed. The intermediate appellate court affirmed the trial court's decision and the association appealed to the Indiana Supreme Court.

The Indiana Supreme Court disagreed and overturned the decisions of the trial court and the intermediate appellate court, holding that the association had legitimate, non-discriminatory reasons for the rental restriction. The Court found that both the evidence in the case and common sense dictate that owner-occupants have a better incentive than tenants to not only

[7] Frequently discussed examples include criminal background checks, credit checks and the adoption of policies related to placing restrictions on children for swimming, riding bicycles on the property, parental supervision and rental restrictions.

[8] Federal Register**,** Vol. 78, No. 32, Friday, February 15, 2013.

[9] No. 34S02-0805-CV-266 (Ind. 2008).

preserve, but to actually enhance, property values. In doing so, the Court concluded that the association did not violate the Fair Housing Act with respect to the "disparate impact" theory brought by the Plaintiff.

Finally, the Supreme Court of the United States recently heard oral argument in *Texas Department of Housing and Community Affairs (TDHCA) v. Inclusive Communities Project*.[10] The Supreme Court has limited review to the sole issue of: "[a]re disparate-impact claims cognizable under the Fair Housing Act?" The outcome of this case will determine whether or not disparate impact claims brought under the Fair Housing Act may continue or if the only available cause of action for Plaintiffs will be disparate treatment based upon intent.

Criminal background checks on potential tenants

This is a slippery slope for associations for a number of reasons and could lead to a Fair Housing Act claim under a disparate impact theory, as discussed above. This being said, associations can mandate that ALL potential tenants (not some) undergo a criminal background check, to be performed by a third party (not the association!), at the landlord's expense.[11] The association would need to revise its governing documents to facilitate such a requirement. It is important to note that the prospective tenant would need to consent to the criminal background check, in writing, prior to same being performed. The association would need to determine exactly "what" information it is seeking to be provided by the landlord (sometimes too much information "TMI" can lead to unintended consequences) and would also need to issue a written policy for any restrictions that may be placed upon a potential tenant based on the results.

It is noted that the authors of this material take no position on criminal background checks for tenants; in fact, we advise that associations proceed at their own risk as it relates to same and seek the advice of counsel prior to beginning the process.

A Pennsylvania criminal background check may be performed using the Pennsylvania Access to Criminal History Fact Sheet. The Pennsylvania State Police established a web-based application called "Pennsylvania Access to Criminal History," PATCH for short. Using this system, a requestor can apply for a criminal background check on an individual. Eighty-five percent of the time, "No Record" certificates are returned immediately through the Internet to requestor.

The information provided by the requestor will be checked against the State Police criminal history database. If the subject's information does not hit on any information in the database, the requester receives an instant "No Record" certificate. If the subject's information hits on something in the database, the requester receives an immediate "Request Under Review"

[10] 13-1371, on appeal from the Fifth Circuit Court of Appeals (2014 WL 1257127). This is the third time the Court has taken up the issue of disparate impact under the Fair Housing Act in three years. The two previous matters were *Magner v. Gallagher*, 132 S. Ct. 548 (2011) (mem.) and *Twp. of Mount Holly v. Mt. Holly Gardens Citizens in Action, Inc.*, 133 S. Ct. 2824 (2013) (mem.). In these two prior matters, the parties settled before oral arguments and the writs of certiorari were dismissed.

[11] An example of a contractor used by landlords is: www.realid.net.

response, which requires a manual review. The status is then updated to "No Record" or "Record." All "Record" responses are mailed to the requester and may take up to two weeks for the status update, and a few more to receive the written report. The report costs $10.00.

Does the requirement to obtain the State Police report, which may take 14 days or longer, impose an unreasonable delay on the landlord?

Sexual predators and other unwanted neighbors

Frequently, when performing a criminal background check (as discussed above), a sexual offender, Sexually Violent Predator/Sexual Violent Delinquent Child search is performed as part of the process. Regardless of whether or not a criminal background check is performed, an association can mandate that a landlord have a search professionally performed, using the National Sex Offender Registry (in 2011, Pennsylvania joined the National Sex Offender Registry), in order to learn if the potential tenant is a registered sex offender.

This being said, Pennsylvania's Megan's Law does not restrict where a sexual offender or Sexually Violent Predator/Sexual Violent Delinquent Child may reside, so an association arguably may not restrict a landlord from renting to a registered offender even if its governing documents permit such restriction. However, an offender may be restricted from residing near a school, park, daycare center, etc. under one of the following circumstances:

- The sexual offender or Sexually Violent Predator/Sexual Violent Delinquent Child is under the supervision of a federal, state, or county department of probation or parole and there are specific restrictions designating where the sexual offender or sexually violent predator may reside.

- The sexual offender or Sexually Violent Predator/Sexual Violent Delinquent Child is under specific court ordered restrictions designating where the offender may reside or who the offender may have contact with.

Also, it is important to note that should the association learn that a Sexually Violent Predator or a Sexually Violent Delinquent Child resides in or near the community, it should take care to not take on "notification" requirements on its own, for a myriad of reasons, including improper notification (for example, a South Carolina jury awarded $890,000 in damages to a man after members of the governing board at his condominium wrongly identified him as a registered sex offender and circulated a flyer in the community from the S.C. Sex Offender Registry website, containing an offender with a similar name, while at the same time telling residents it was the condominium owner).[12] In Pennsylvania, notification is to be handled by law enforcement who will provide notice of the Sexually Violent Predator's or Sexually Violent Delinquent Child's presence in the community to those persons who live or work within 250 feet of Sexually Violent Predator's or a Sexually Violent Delinquent Child's residence or the 25 most immediate residences and places of employment in proximity to the predator's or offender's residence, whichever is greater. Notice is also provided by law enforcement to:

[12] http://www.insurancejournal.com/news/southeast/2013/12/16/314543.htm.

- The director of the county children and youth service agency of the county where the predator or offender resides or is homeless/transient;
- The superintendent of each school district and the equivalent official for private and parochial schools enrolling students up through grade 12 in the municipality where the predator or offender resides or is homeless/transient;
- The superintendent of each school district and the equivalent official for private and parochial schools located within a one-mile radius of where the predator or offender resides or is homeless/transient;
- The licensee of each certified day care center and licensed preschool program and owner/operator of each registered family day care home in the municipality where the predator or offender resides or is homeless/transient; and
- The president of each college, university and community college located within 1,000 feet of where the predator or offender resides or is homeless/transient.

Accordingly, associations need to take care in how they handle issues surrounding sexual offenders and rental restrictions in order to comply with the law and to best protect the interests of the association and its residents.[13]

Does imposing occupancy restrictions require a 100% vote of owners? Do owners even get a say?

In general, 100% unit owner approval is not required under the Uniform Planned Community Act and/or the Uniform Condominium Act, but at least 67% unit owner approval may be required to facilitate a change of the Declaration with respect to these issues (unless the Declaration provides otherwise). Further, any rental restrictions or occupancy limitations must comply with the existing terms of the Declaration, if said terms exist, and to the extent that the Declaration is silent on these issues, the restrictions or limitations that are proposed to be enacted must still comply with other requirements, such as the Fair Housing Act and FHA or VA standards relating to loan approvals. Thus, care must be taken to ensure that any new rules or other standards are properly and thoughtfully drafted.

Unit owners should get a "say" in this process as the Board should be communicating its intent to the owners via newsletter and/or at open/Annual Meetings. Owner/occupiers are interested in ensuring that their community is financially stable and otherwise protected to the extent permissible and investor owners certainly have a vested interest in ensuring that their investments are protected and that they are allowed to continue renting their units.

Finally, amending governing documents to establish rental restrictions or occupancy limitations must be done correctly and thoughtfully and the advice of counsel should be sought early on in the process.

[13] Source for PA Megan's Law discussion: http://www.pameganslaw.state.pa.us.

Example 1: The following is a hypothetical taken from an actual rental restriction that combines prior lease notification with a criminal background check requirement:

RESOLUTION OF THE BOARD OF DIRECTORS
RENTAL REGULATION

The undersigned, being all of the members of the Board of Directors of Homeowner Haven Owners Association, a Pennsylvania domestic non-profit corporation (the "Corporation"), do herby consent in writing to the adoption of the following resolution in accordance with the Association's Documents and the Nonprofit Corporation Law:

WHEREAS, the Board of Directors has determined that no owner shall be permitted to lease his or her dwelling unit unless the lease be in writing. All leases must be written for a minimum of one (1) year and shall provide that the lessee be subject in all respects to the governing documents of the Homeowner Haven Owners Association and that failure by the lessee to comply with all terms of these documents shall be a default under the lease. It is the lessor's responsibility to furnish to the lessee a copy of the Homeowner Haven Owners Association's Rules and Regulations, Declarations, Bylaws and all other pertinent documents. A copy of said lease must be provided, in advance of occupancy, to the management company upon rental of the dwelling unit with the following additional information:

1. Names of all occupants.
2. Phone numbers of occupants (work, home, cell phones and email addresses).
3. Proof that the tenant(s) has received the Rules and Regulations.
4. Home address and phone number of all owners.
5. There is a Lease Review Fee for investor owners in the Homeowner Haven Owners Association. A unit may be leased, but is subject to review by the Association to insure compliance with the lease requirements. A two hundred dollar ($200) review fee must be submitted to the Association's Management Company within ten (10) days of lease execution.
6. Must provide a copy of all tenant(s) criminal background history from the Pennsylvania State Police. This must be submitted to the Association within ten (10) days of the lease execution.

THIS RESOLUTION EFFECTIVE AS OF _____, 2015
IN WITNESS WHEREOF, we have executed this written consent.

President	Vice President
Treasurer	Member at Large

Example 2: Below is a sample Declaration Amendment enacting a rental restriction.

PREPARED BY:

RETURN TO:

BEST ASSOCIATION LAWYERS, P.C.

County Parcel No.: _____

FIRST AMENDMENT TO
DECLARATION OF SERENITY CONDOMINIUM

THIS FIRST AMENDMENT is made this _____ day of _____, 2015, to the Declaration Creating and Establishing Serenity Condominium, ("Declaration") dated April 15, 2000 and recorded in the Office of the Recorder of Deeds, Serenity County, Pennsylvania, as Document ID No. 0000000 (as amended), which covers the "Property" as that term is defined and described therein.

WHEREAS, the Unit Owners, as that term is defined in the Declaration, desire to amend the Declaration to create and enforce reasonable restrictions and limitations upon the rental and leasing of Units in the best interest of the Association;

WHEREAS, pursuant to Article X, Section 4 of the Declaration, as stated in the attached Certificate of Amendment, this First Amendment has been approved by at least sixty-seven percent (67%) of the Members in good standing present in person or by proxy at a meeting of the Members of the Association held in accordance with the Bylaws and of sixty-seven percent (67%) of those Unit Owners whose Units are subject to Permitted Mortgages; and

WHEREAS, pursuant to Article XV, Section 5 of the Declaration, and in the manner provided by Section 3221 of the Uniform Condominium Act, fifty-one percent (51%) of Eligible Mortgage Holders have provided approval to this Amendment.

Pursuant to the Uniform Condominium and the Declaration, the Members and Unit Owners hereby amend the Declaration as follows:

1. The following shall be added to Article V, Section 4(a) of the Declaration:

(3) Units leased at the time of the recording of this Amendment shall be defined as "Grandfathered Units." Such Grandfathered Units shall be exempt from the rental restrictions as set forth in this section subject to the following conditions, and such reasonable conditions as the Executive Board may impose:

(i) Unit Owners may extend the tenancy of a Grandfathered Unit only to the present tenants of that Grandfathered Unit;

(ii) New, additional or replacement tenants shall not be allowed; and

(iii) Upon the termination of the tenancy or vacating of the Grandfathered Unit by the tenant, the Unit shall no longer be determined to be a Grandfathered Unit and thereafter shall be subject to the terms of this section.

(4) At no time may more than 20% of the Units, or such lower number as may be required under FHA lending guidelines be leased at any one time. A Unit Owner who intends to lease a Unit shall first request the consent of the Executive Board to rent, whereupon the Executive Board will notify the Unit Owner if this limitation has been met. In such event, the Unit Owner shall not rent the Unit. If this limit has not been met, permission shall be granted for a one-year period. Should the Unit Owner who has received permission desire to relet the Unit, such Unit Owner shall again seek the consent of the Executive Board. All such requests shall be granted upon a first come/first served basis.

(5) An additional Unit shall be reserved for a rental by a Unit Owner suffering from a financial or personal hardship which renders the Unit Owner unable to reside in the Unit. In such cases the Executive Board, in its sole discretion, shall be authorized to permit the Unit Owner to rent the Unit in the same manner as set forth above.

(6) In the event that during the tenancy a tenant demonstrates a disregard for the provisions of this Declaration

and/or the Rules and Regulations, the Executive Board shall so notify the Unit Owner who shall thereupon be precluded from extending the tenancy of such tenant beyond the original.

IN WITNESS WHEREOF, The Association has caused this Amendment to be executed this _____ day of _____, 2015.

SERENITY CONDOMINIUM ASSOCIATION:

BY:_____

TITLE:_____

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF :

On this, the _____ day of _____, 2015, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____, a non-profit entity, and that he/she as such_____ _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Serenity Condominium Association by himself/herself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

_____
Notary Public
My Commission Expires:

Example 3: The following is taking from a real rental restriction in a Pennsylvania condominium association.

RESTRICTIVE PLACE CONDOMINIUM ASSOCIATION

1. Effective January 1st, 2013: No more than one (1) unit can be leased/rented at a time by a Unit Owner (including LLC's, Inc.'s, and investment groups) of record on deed and or title. Unit Owners who possess two (2) units as of the effective date are grandfathered/exempt but may not lease a third. Exemptions/Grandfathered status is not transferable upon sale of unit.

2. Only the Unit Owner of record on the Title and or Deed can engage into a binding Lease Agreement within the Association. The Unit Owner of record must sign all lease documents including but not limited to the Lease Agreement and RPCA Lease Addendum. Provision of documentation supporting Deed and or Title ownership is required at the discretionary request by the Board.

3. Effective January 1'S, 2013 All Association members wishing to lease their unit must have lived in their units for at least two (2) years. Exceptions to this include documented out of state employment and military responsibilities. Landlords with current and active lease agreements within the Association as of the effective date of January 1, 2013 are grandfathered/exempt. All other exceptions are at the sole discretion of the Board.

4. The *"Lease Request Form"* is required by all Association members requesting permission and approval from Board to lease unit.
    a. Establishes a standard process for requesting permission to lease unit.
    b. Provides unit owner contact information.
    c. Provides tenant contact information for renewals.
    d. Unit owner elects whether or not to be put on waiting list if limit is met.
    e. Unit owner acknowledges and agrees to lease terms and conditions.
    f. Unit owner signs and dates form.

5. The Board has ten (10) business days to reply to all *"Lease Request Forms"* submitted.

6. All submitted "*Lease Request Forms"* are to be entered into corporate minutes with reference to:
    a. Unit number, Owner name, Date request made.
    b. Number of leased units as of the date of the request.
    c. Permission status: Approved or Denied.

7. The Board is to adopt a consistent standard of record keeping for *"Lease Request Forms"*

8. The Board is to adopt standardized approval reply to *"Lease Request Form."* through:
    a. *"Permission to Lease Unit Approved"* letter.
        i. Approval letter will identify:
            1. Date.
            2. Unit number.
            3. Unit owner name.
            4. Current number of leases in the community.
            5. Clearly identify approval of lease request.
            6. What is required from landlord moving forward
            7. Expiration date of approval.

8. Waiting list number in the event of a denial.
9. Hardship option in the event of a denial.
10. Reference to Association's "Lease Process"

9. The Board is to adopt standardized denial reply to *"Lease Request Form"* through:
    a. *"Permission to Lease Unit Denied"* letter.
        i. Denial letter will identify:
            1. Date.
            2. Unit number.
            3. Unit owner name.
            4. Current number of leases in the community.
            5. Clearly identity Denial of lease request.
            6. Waiting list number in the event of a denial.
            7. Hardship option in the event of a denial.
            8. Reasons for denial including but not limited to:
                a. Lease limit reached
                b. Past due or delinquent account status
                c. Excessive violations
                d. Misrepresentation of unit lease/occupancy status
                e. Not Unit owner of public record.

10. The Board is to establish and maintain an official RPCA Lease Waiting List system, which organizes and records all unit owners on a waiting list to lease units. This utilizes a fair and reasonable first come first serve system.
    a. First page list
        i. Unit owner name
        ii. Unit number
        iii. Date entered on list
        iv. Number in line.
    b. Supporting documentation
        i. Copy of *"Lease Request Form"* from unit owner

11. Approval of lease requests are good for only ninety (90) days starting on the approval date shown on *"Permission to Lease Unit Approved"* letter. The ninety (90) day expiry applies to all new, renewed and extended lease requests. Upon expiration, the Unit Owner must resubmit a "Lease Request Form"
    a. Unit owner must provide f unexecuted lease agreement prior to approval expiration date.
    b. Unit owner must provide unexecuted RPCA Lease Addendum prior to expiration date.

12. A processing fee of fifty dollars ($50.00) will be due at the time the unexecuted Lease Agreement and unexecuted RPCA Lease Addendum are submitted to the Board for review and approval.

13. RPCA Lease Addendum is mandatory. All existing and active leases within the community as of the date of this resolution must comply.

14. The RPCA Lease Addendum to be initialed by both Tenant and Landlord on each of the five pages.

15. The Board is to adopt standardized letter replies upon receipt of unexecuted lease agreements and RPCA Lease Addendums in need of review and approval.

16. The Board is to establish a consistent standard of record keeping for all approved, unexecuted leases

17. All Association Unit Owner Landlords are to submit along with executed Lease Agreements and RPCA Lease Addendums tenant contact and auto information
    a. *"Tenant Auto Information"* form.
    b. *"Tenant Contact Information"* form.
18. The Board is to establish a consistent standard of record keeping for all approved executed lease agreements and RPCA lease Addendums.
    a. Copies of executed Lease agreement and RPCA Lease Addendum to be entered into appropriate unit file
    b. Receipt of executed Lease agreement and RPCA Lease Addendum, *"Tenant Contact Information Form"* and *"Tenant Auto Information Form"* to be referenced in minutes.

19. Effective January 1st, 2013, a monthly fine in the amount of five hundred dollars ($500.00) will be assessed against landlords with active tenants and lease agreements who have not first obtained documented Board approval for their lease agreements including renewals and extensions. Fine starts at the time of violation discovery and continues monthly through the term of the lease.
    a. Applies to all Leases with initial, renewal and extension term dates on or after January 2013.

20. Effective January , 2013, a monthly fine in the amount of five hundred dollars ($500.00) to be assessed retroactively against landlords with active tenants and lease agreements who have not first obtained documented Board approval for their lease agreements including renewals and extensions and have submitted documentation misrepresenting the lease status or tenant occupancy of their owned unit. Fine starts at the initial start term of the lease agreement and time continues through the identified initial term of the lease agreement.
    a. Applies to all leases within the community.
    b. No exemptions or Grandfathered clauses.
    c. All future lease requests for the unit will be restricted for a period of 1 year (12 months).

21. Effective immediately, a one hundred dollar ($100.00) fine to be assessed against unit owners who fail to provide required lease documentation after receiving three (3) notices. Upon ten (10) days after the date of the third notice, a fine of one hundred dollars ($100.00) will be assessed. The fine amount grows by one hundred dollars ($100.00) every ten (10) days thereafter.

22. All Tenant violations will be submitted to the Landlord for immediate resolution. Landlord will be held financially responsible for unresolved tenant violations. A copy of the violation letter will be sent to the tenant. Payment of violation fine (if any) is due from landlord.

23. Landlords with accounts that are delinquent for forty-five days or greater will have tenant privileges to common elements including gym, pool and tennis courts revoked until account is current.

24. The burden of providing documented proof of Board approvals for new, renewed and or extended lease agreements is the responsibility of the leasing Unit Owner. Unit owner is responsible for retaining documented copies of all Association correspondences and documents.

25. The payment of all monthly assessments, fines and other related financial transactions are to be issued by the Unit owner/landlord. Payments from Tenants will not be accepted.