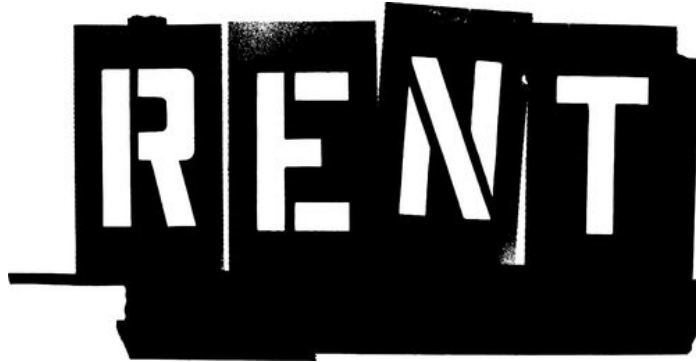




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## ***A Property Manager's (Non-Musical) Survival Guide to Rentals.***

### Rental Restrictions: The Basics.

- “Rental Restrictions” are provisions of an association’s governing documents that limit or prohibit an owner’s ability to rent his or her unit to someone else.
  - Example 1: Some or all of the units may not be rented (rental prohibition or rental caps)
  - Example 2: Units may not be rented except subject to certain conditions
- Rental Restrictions must appear in the Declaration.



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## Rental Restrictions: The Case For.

- Perception that renters reduce property values.
- Perception that renters may not take care of units as well as owners do.
- Perception that renters are less invested in the community, and are less inclined to follow its rules and regulations.
- Perception that landlord owners are less inclined to keep their units in good repair, keep the property clean, and enforce the rules.
- Enforcing rules and regulations against renters can be difficult because of the unavailability of landlord owners.



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## Rental Restrictions: The Case Against.

- Rental restrictions may cause financial hardship on homeowners.
  - Housing market is improving, but some owners may not have enough equity in their units to sell.
  - Some homeowners may not be able to stay in their unit due to military deployment or reassignment, job change or transfer, or layoffs.
  - Rental restrictions may force homeowners to abandon their homes, sell below market value, or sell for less than what they owe.
- “Ripple effect” on associations.
  - Homeowners who abandon their units do not pay assessments, resulting in budget shortfalls.
  - The sale of properties below market value depresses property values throughout the association.



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## Rental Restrictions and FHA Financing.

- FHA approval is extremely important to common interest communities.
  - FHA-insured mortgages represent 30 – 40% percent of all condominium mortgages.
  - FHA insurance is typically required on mortgages where there is less than a 20 percent down payment.
- FHA will not finance properties if the rental restrictions are too strict.



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## Rental Restrictions and FHA Financing

- Rental restrictions must meet the following criteria to qualify for FHA financing:
  - All leases must be in writing and subject to the association's Declaration and Bylaws.
  - The association may request and receive a copy of the lease.
  - The association may request the name(s) of all tenants who will occupy the unit.
  - Unit owners are prohibited from leasing their units for an initial term of less than 30 days.
  - The association may establish a maximum lease term (for example, six months or twelve months).
  - The association may establish a maximum number of rental units, but the percentage of rental units may not exceed the FHA's owner-occupancy requirement (owner-occupancy ratio must be at least 50 percent).



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## Rentals and the Fair Housing Act.

- Rentals must comply with the Fair Housing Act (“FHA”).
- The FHA is a federal law that makes it unlawful to refuse to sell or rent a dwelling to any person because of race, color, religion, sex, familial status, or national origin.
- The FHA also makes it unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.



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## Rentals and the Fair Housing Act.

- An individual who has been injured by a violation of the FHA may bring a civil claim for damages.
  - Actual damages
  - Punitive damages
  - Costs and attorneys fees
  - Fine of up to \$50,000 for first violation.
- Agents, including property management companies, can be held liable for violations of the FHA.



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## Rentals and the Minnesota Human Rights Act.

- Minnesota has its own anti-discrimination law, the Minnesota Human Rights Act (“MHRA”).
- The MHRA is broader than the FHA, and prohibits housing discrimination by owners their managing agents on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status.
- Parties who violate the MHRA are also subject to civil liability, costs, and attorney fee awards.



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## Anti-Discriminatory Laws: The Takeaway.

- Associations that adopt rental restrictions that violate the FHA or the MHRA, and management companies that enforce them, put themselves at risk of a civil lawsuit.
- Associations should not adopt rental restrictions that violate the FHA or the MHRA.
- Management companies should not enforce rental restrictions that violate the FHA or the MHRA.



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## Adopting or Amending Rental Restrictions

- Rental restrictions must be in the association's Declaration.
- Adopting or amending rental restrictions will require an amendment to the association's Declaration.
  - Requires homeowner approval.
  - Likely also requires approval of first mortgage holders.



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## Adopting or Amending Rental Restrictions

- The Process:
  1. Gauge homeowner interest.
    - Consider calling a special meeting to discuss the proposed restrictions.
    - Surveys may also be effective.
  2. Work with attorney to prepare necessary documents
    - Amendment to declaration
    - Cover letter to homeowners explaining proposed amendment
    - Homeowner consent forms
    - First mortgage holder information form
    - First mortgage holder consent form



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## Adopting or Amending Rental Restrictions

- The Process:

3. Mail proposed amendment, cover letter, homeowner consent form, and mortgage holder information form to all homeowners.
4. Mail mortgage holder consent form to all first mortgage holders.
5. Track homeowner consents and first mortgage holder consents as they come in, and follow up with homeowners as necessary.
6. When threshold for amendment reached (usually 2/3 of all homeowners and majority of all first mortgage holders, but it varies), record amendment to declaration with county recorder and distribute to all homeowners.



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## Questions?

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