

HUSCH BLACKWELL



Condominium Rentals: The Issues are Numerous

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I. Relevant Laws

- A. Sec. 703.09(1)(g) Wis. Stat. Use restrictions in the declaration
- B. Sec. 703.10(3) Wis. Stat. Use restrictions in the bylaws
- C. Fair Housing Act

II. Condominium Documents

- A. Declarations that allow/prohibit leases
- B. Bylaws that allow/prohibit leases
- C. Rules and regulations that prohibit leases
 - 1. Validity of such provisions
 - 2. What the bylaws or declarations say

III. Other Lease/Rental Issues

- A. Prohibiting sex offenders from renting
- B. Having different rules or specific rules for renters
- C. Capping the number of rentals at
 - 1. Some percentage
 - 2. Some amount tied into loans (Fannie Mae)
- D. Leasing of units after foreclosure by
 - 1. Association
 - 2. Bank
- E. Renters on the board
- F. Fines against renters – Sec. 703.24 Wis. Stat. (see Exhibit 703.24; Page 4)
- G. Affect on value of the units

IV. Rental Restriction Language

- A. **Transfer of a Unit.** A Unit Owner may, without restriction under this Declaration, sell, give, devise or otherwise transfer his Unit, or any interest therein. Notice of any such transfer shall be given to the Board within five (5) days following consummation of such transfer. After June 1, 2009, no Unit, or interest therein, shall be leased by a Unit Owner or sold by land contract. Any Unit that is leased as of June 1, 2009 may continue to be leased until the later of December 31, 2011 or the termination of the lease under which the property is being leased as of June 1, 2009. Any Unit that is under contract for sale by land contract as of June 1, 2009, may be completed. Nothing in this section shall prevent or prohibit the Association from leasing any Unit that it should own.

- B. **Sex Offenders.** There are really two options:
1. Protect yourself– safe, not sorry
 - a. Look at the sex registry in your state. For Wisconsin here is the site:
<http://www.wi-doc.com/offender.htm>.
 - b. Verify the Information with your local sheriff or police department.
 - c. Decide if you will inform your residents of the offender’s presence (Some Risks with this approach).
 - d. Research your state’s sex offender notification law and talk to an attorney.
 - e. Point residents to appropriate sources for information.
 - f. Advise restraint – Advise residents that it is against the law to intimidate or harass a registered sex offender.
 2. Investigate residency restrictions
 - a. Won’t require current offenders to move out.
 - b. May stop future sex offenders from moving in.
 - c. Fair Housing Amendments Act of 1988 (FHAA). Specifically protects people whose physical or mental impairment “substantially limits” their major life activities.
 - d. California and Massachusetts have laws that allow residency restrictions. Any person who has been adjudicated dangerous to others, including those required to register on any sexual offender list, may not reside in the association as an owner, renter or guest.

V. Fair Housing Act Issues – Protected Classes

- A. The FHA prohibits all forms of discrimination based on protected classes. Under the act, discrimination on the basis of protected classes–race, color, national origin, religion, sex, disability, familial status, and age–is barred.
- B. Ideally, an association or landlord should base as much of your rental decision as possible on factors that can be documented on paper, such as financial scores.
- C. The less physical interaction with the potential occupants, the better. As times the FHA will send out testers of properties being rented to see if there is discriminatory steering going on.
- D. The issue of discrimination on the basis of protected classes also arises in associations that screen residents. If a tenant or new purchaser has to complete an application that can be approved or denied by the board, you need to be very careful.
- E. As a general rule there is no real reason to physically interview someone.

VI. Questions

EXHIBIT 703.24

703.24. Remedies for Violation by Unit Owner or Tenant of a Unit Owner

- (1) Definition. In this section, “violation” means failure to comply with this chapter or the declaration, bylaws, or association rules.
- (2) Liability for unit owner violation. A unit owner who commits a violation is liable for any charges, fines, or assessment imposed by the association pursuant to the bylaws or association rules as a result of the violation and may be subject to a temporary or permanent injunction.
- (3) Liability for violation by tenant.
 - (a) If a tenant of a unit commits a violation that results in a charge, fine, or assessment imposed by the association pursuant to the bylaws or association rules, the tenant is liable for the charge, fine, or assessment.
 - (b) If the association complies with the notice requirement of sub. (4), the owner of the unit occupied by the tenant when the violation occurred is liable for any charges, fines, or assessments imposed by the association for which the tenant is liable under par. (a) that are not paid by the tenant within 30 days after receiving the notice under sub. (4). This paragraph does not affect the liability of the tenant to the unit owner..
- (4) Notice requirement for violation by tenant. If an association imposes a charge, fine, or assessment as a result of a violation by a tenant of a unit in the condominium, the association shall give notice to the tenant by any method under s. 704.21(1)(a) to (e) and to the owner of the unit occupied by the tenant by any method under s. 704.21(2)(a) to (d). The notice shall include all of the following:
 - (a) The amount of charges, fines, or assessments for which the tenant is liable.
 - (b) Notice that if the tenant fails to pay the association the amount for which the tenant is liable within 30 days after the tenant receives the notice, the owner is liable to the association for the amount unpaid by the tenant although the tenant may be liable to the unit owner for any amounts the unit owner pays.
- (5) Other liability not affected. This section does not otherwise affect the liability of a unit owner or tenant who commits a violation.