

Red Cedar Canyon Townhouse Association
Executive Board Meeting: RE: Rental Policy – Attorney Q & A
Thursday, June 25, 2020, 2 pm
Teleconference

The executive meeting minutes are subject to review and approval by the board of directors (BOD) at the next meeting.

A question-and-answer teleconference meeting was held between the Red Cedar Canyon Townhome Association (RCCTA) BOD, the Rental Committee Chairperson and Brent Johnson, RCCTA Attorney. President Dave Preller (DP) opened the conference call at 2:09 pm. The following participants attended: Nadine Sands (NS,) Vice President; Ronald Urhammer (RU,) Treasurer (joined at 2:23 pm;); Gretchen Trebnick (GT,) Member-at-Large; Karen Mackesey (KM,) Secretary; Bob Stabell (BS,) Rental Committee Chairperson; Brent Johnson (BJ,) Hudson Attorney.

The Rental Committee was established to research and recommend options for the future direction of the RCCTA as it pertains to allowing or banning rental units within the community. Prior to the above meeting, the Rental Committee recommended zero rentals; HOA documents would need to be legally changed and voted on by the homeowners.

The attorney meeting was established to verify specific ramifications and avenues whereas the Association would limit liabilities and maintain a strong legal standing for the future.

The following bullet points relate to the questions, answers and general statements amongst the RCCTA members and attorney. Note, the information is grouped into the different topics and not listed as they transpired during the meeting timeline:

1. Deterring Investors:
 - a. Rental restrictions deter real-estate investors from purchasing 'investment' properties.
 - b. More restrictions on a property are not attractive to investors.
 - c. BS had concern if had a 'number cap' an investor could buy up a group and 'use up' the entire allotment of availability to rent.

2. BJ stated a 'hardship' clause must be objective and not subjective:
 - a. For example, a homeowner would meet 5 of 7 criteria (criteria established by HOA) for consideration for a rental hardship.
 - i. However, it does not prevent BOD from using subjective opinions to determine approval. (Per BJ, it is a gray area and can be scrutinize.)
 - b. A hardship clause is enforceable but scrutinized by the courts if it ends up there for a decision.
 - c. A hardship clause should not be subjective.
 - d. Putting a 'cap' (specific number or percentage) on rentals is better than a hardship clause as it is objective.
 - i. Courts have upheld 'caps.'
 - ii. The HOA can have a 'cap' as well as a minimum term for rental.

3. Absence of hardship clause concerns:
 - a. GT stated with no rentals, short-term (two-year) job transfers could prevent an owner from renting out their unit during the relocation and cause financial burden.
 - i. BJ replied that zero rental would prohibit renting out; a simple 'cap' (which is objective criteria) would allow it if there was available 'openings.'

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- b. BS spoke with the Department of Defense earlier; if owner was in the military and got ‘called to duty,’ the governmental agency, DOD, (government agency) overrules restrictions.
 - c. BS stated a personal property trust might include multiple ‘owners’ or trustees and it, too, would override the rental policy; it would allow units to be ‘rented out’ to noted trustees.
 - d. KM asked BJ about an owner facing financial hardship but did not want to sell if the market was slumping. BJ said there would be no ‘loop hole’ for that person to rent out the unit; rather, it would potentially be sold at a loss.
 - e. GT remarked if unit was unavailable for rental income during a personal hardship, there is a potential for foreclosure which in turn negatively affects property values.
4. Suggestions from BJ:
- a. It is a good idea to obtain owner opinions (which can be obtained with a survey.)
 - b. The survey does not have to be anonymous.
 - c. A survey could be presented as a zero rental or a ‘cap’ on rentals.
5. Other Factors:
- a. BS asked BJ about notifying eligible mortgage holders concerning legal changes.
 - i. BJ stated we could obtain any written documentation from Cities Management as it relates to a mortgage holder requesting to be notified of changes.
 - ii. BJ also stated the BOD should document the same type of information from the HOA President or Secretary.
 - iii. BJ stated all mortgage holders have the legal documents and requirements of notification. It is the responsibility of the mortgage holder to follow through with the process, if so desired.
 - iv. BJ stated it is important to have good records as it translates into good effort.
 - v. BJ suggested we produce a letter documenting no written documentations were known about now, and then the same type of letter closer to voting time.

BJ left the meeting at 2:40 pm. The HOA members discussed next steps. DP asked if we still needed to send a survey to the homeowners. The group discussed the purpose and reason of a survey:

- 1. It is a chance for the owners to voice their opinion.
- 2. They can research and contemplate the pros and cons prior to voting.
- 3. If a limit was set it would be using objective data.
- 4. A survey should be done before winter travelers leave the area.

The group was in favor of BS relaying the attorney meeting information back to the Rental Committee for input. BS will notify DP by June 30, 2020, of their suggestions.

The meeting concluded at 2:59 pm.

Respectively submitted,

Karen M. Mackesey
Red Cedar Canyon Townhomes, Secretary