

Summary of Attorney Malaska's Opinion Letter Regarding Rental Restrictions.

Kevin G. McGrath, President, BCLCA

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Due to Attorney Client Privilege, the board has been advised not to share the actual Opinion Letter.

I have crafted this summary for your information.

Attorney Malaska conducted a thorough review of all Pennsylvania case law and court rulings. He also reviewed nationwide case law as well as all of the BCLCA governing documents. For the most part he agrees with the comments that Attorney Nanovick has made at many of our board meetings.

1. BCLCA **cannot** legally restrict or ban short term rentals (STRs) without an amendment to our declaration. If we were to vote to change the declaration to limit or ban rentals or short term rentals, the association would be subject to the potential of legal action by current members who engage in short term rental activity. If such litigation would occur, the probability is that the association would lose this case and have to pay significant damages. These damages would have to be funded by assessing all members of the community.
2. Short term rentals **do not constitute a business use of the property**, as decided by PA courts.
3. Penn Forest Township has approved STRs under residential zoning by crafting the STR ordinance. So, **zoning cannot be used as a method to prohibit STRs**
4. Under our current Bylaws and Rules, we **can** adopt reasonable rules and regulations regarding rentals and short term rentals. These rules may include registration, annual or per rental fees, local emergency contact, require copies of PFT permits, listing of occupants, etc.
5. He also recommends that we set up more active stringent enforcement of all of our rules.
6. Malaska also recommends that we develop a close working relationship with the township to enforce the PFT code.

(KGM Note – Currently PFT does not have active enforcement of the STR ordinance.

Enforcement is handled by their part time code enforcement officer. As you all know, PFT does not have a police department so there is no one at PFT to call during the loud midnight party.

We will have to increase BCL security to respond.)

I hope that this summary is helpful.

Kevin G McGrath