

Poole Points to Draft an HOA Ban on Airbnbs

Lane Marie Brown

Sage Lane Law, PLLC
Meadowlakes, Texas
laniebrowntx@gmail.com

In March 2023, the Austin Court of Appeals decided a property rights case involving amendments to subdivision deed restrictions to prohibit short-term rentals. [*Angelwylde HOA, Inc. v. Fournier*](#), No. 03-21-00269-CV, 2023 WL 2542339, at *1 (Tex. App.—Austin March 17, 2023, pet. filed) (mem. op.). Co-plaintiffs owning in two different residential subdivisions rented their homes for terms of thirty days or fewer. The two homeowner’s associations (HOAs) contained materially identical provisions permitting such written rental agreements. Subsequently, the members of each of the two HOAs voted to amend the rental provisions to restrict rentals to a minimum twelve-month duration and prohibit transient or vacation rentals.

The trial court found in favor of the owners that the amendments infringed on their property rights with “new and different restriction[s] [on leasing] which def[y] the reasonable expectations” of the owners/landlords. *Id.* at *4. However, the appellate court applied the three-prong approach it had employed in [*Poole Point*](#) to find the amendments to HOA deed restrictions valid and enforceable and reversed in favor of the HOAs. [*Poole Point Subdivision Homeowners’ Ass’n v. DeGron*](#), No. 03-20-00618-CV, 2022 WL 869809, at *2 (Tex. App.—Austin Mar. 24, 2022, pet. denied) (mem. op.).

First, the court reviewed the conditions that must be met to amend deed restrictions. [*Roddy v. Holly Lake Ranch Ass’n*](#), 589S.W.3d 336, 342 (Tex. App.—Tyler 2019, no pet.). These are: 1) Both the right to amend and the method to amend must be established through the original instrument that created the deed restrictions or by statute; 2) The amendment contemplates a correction, improvement, or reformation of a covenant, not its complete destruction; and 3) The new restriction must not be illegal nor contrary to public policy.

Next, the court considered whether the restrictive covenants, including the processes for amendments, are contracts that run with the land. Relying on a Texas Supreme Court decision, the court held that generally, yes, they are. [*JBrice Holdings, L.L.C. v. Wilcrest Walk Townhomes Ass’n*](#), 644 S.W.3d 179, 183 (Tex. 2022). Thus, the court continued its analysis.

Ultimately, the key issue discussed was whether the amendments effectively destroyed the original right to lease. Here, the court relied on its own [*Poole Point*](#) opinion, along with a sister court’s similar conclusion. See [*Adlong v. Twin Shores Prop. Owners Ass’n*](#), No. 09-21-00166-CV, 2022 WL 869801, at *12 (Tex. App.—Beaumont Mar. 24, 2022, pet. denied) (mem. op.). [*Poole Point*](#) presented a similar fact pattern that the challenged amendment set a 180-day minimum duration on leases and required the lessee to reside at the property. The [*Poole Point*](#) court held that these requirements imposed by the amendment did not destroy the original right to lease the property because the original permission to lease was not written to be an *unlimited* right. [*Poole Point*](#), 2022 WL 869809, at *3. Thus, “[t]he placing of certain conditions on the duration of a lease . . . does not constitute ‘complete destruction’ of the [d]eed [r]estrictions.” *Id.* Rather, “[t]he Amendment *reformed* the right to lease . . . by setting a minimum duration.” *Id.*

Additionally, the [*Poole Point*](#) court addressed the elements of legality and agreement with public policy. The court explained that an amendment that tightens restrictions is not illegal when it is consistent with the overall development plan, such as an intent to reinforce the residential character of a community. *Id.* at *4. Significantly, the court asserted, “the Texas Supreme Court has indicated that amending deed restrictions is an appropriate method for specifying a minimum duration for leases in a residential subdivision.” See [*Tarr v. Timberwood Park Owners Ass’n*](#), 556 S.W.3d 274, 277 (Tex. 2018).

Therefore, this [Angelwylde](#) court concluded that the HOAs' amendments were valid and enforceable because, just like in [Poole Point](#), both HOAs' dedicatory instruments expressly stated intent to be a residential community; the amendments corrected, reformed, or improved the right to lease, not destroyed it; and the amendments that reinforced the residential character of the subdivisions and prohibitions against commercial activity were not illegal nor contrary to public policy. [Angelwylde](#), 2023 WL 2542339 at *10.

In summary, for an HOA to write an amendment to protect the residential character of its subdivision (that when properly enacted, will be valid and enforceable) the amendment may correct, reform, or improve the existing covenants (*i.e.*, tighten restrictions), but not completely destroy said covenants (*i.e.*, property rights).