

LOCAL

Airbnb dispute in Tennessee mountain town turns nasty as neighbors head to court

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It sounds like a reality TV show destined for good ratings: Neighbors turned against neighbors, allegations of conspiracy and a homeowners' association in a legal battle with its own residents, all set against a backdrop of serene mountains and lake views in rural Tennessee.

For the residents of Lone Mountain Shores in New Tazewell, it's just reality.

A feverish fight over short-term rentals in the neighborhood, which was established on Norris Lake in 1998 and now includes around 165 homes, has landed in court and split the community in two.

Conflicts over allowing short-term rentals like those offered through Airbnb and Vrbo are commonplace in residential communities, especially in tourist hot spots like Hawaii and New York City, where locals weigh economic advantages and property rights against housing access and disturbance from vacationers.

For more than two decades, Lone Mountain Shores has offered visitors access to Norris Lake and the Cumberland Gap through vacation rentals. The Lone Mountain Shores Owners Association board of directors is trying to end the practice in its neighborhood.

The homeowners' association filed a lawsuit requesting a permanent injunction against two dozen residents in November 2022, alleging they had rented their homes in violation of the neighborhood's covenants.

"The covenants say what they say," said Mark Jonckheere, president of the HOA board since 2021. "If we don't get this clarified in our lives, nobody knows where they belong. This

argument's been going on for 20 years in this place. It's time to settle it.”

In March, the defendants filed their own lawsuit, alleging the covenants were not clear and the board could not suddenly prohibit vacation rentals after allowing them for years.

A smaller group of residents filed an additional lawsuit suing the board members personally on allegations of civil conspiracy, including claims that board members defrauded homeowners by knowingly lying about their intentions to forbid short-term rentals.

They say the board's stance reflects a curmudgeonly, not-in-my-backyard mentality and that vacation rentals are integral to the identity of the neighborhood, where the motto is "A Friendly Community You Can Call Home."

Some residents even called for a recall vote to remove board members, which failed by a slim margin and exacerbated questions over the board's transparency.

A fight that began in heated community meetings is now expected to end with a court ruling, several years lost to fighting, broken relationships and tens of thousands of dollars paid in legal fees.

Welcome to Lone Mountain Shores

In neighborhoods across the U.S., homeowners disagree sharply over politics, using yard signs to demonstrate their loyalty to Republican or Democratic candidates. In Lone Mountain Shores, yard signs do not separate conservatives from liberals, but pro-renters from anti-renters.

Anti-renters say the neighborhood's rules clearly forbid vacation rentals and they support a law-and-order HOA board attempting to enforce those rules for the first time. Their signs read "People Over Profit: Save Our Community," and, more to the point, "Vacation Rentals Not Welcome Here."

Pro-renters say the vacation homes pose no threat to Lone Mountain's residential peace and provide homeowners with financial means to maintain a second mortgage. Their signs read "Vacation renters welcome. We hope you enjoy your stay!!"

The stakes of the debate are high in a retirement destination where 85% of property owners are part-time residents. Some seasonal residents have rented or rent their properties out to vacationers, but many have not. Very few are from Tennessee originally.

Most of the neighborhood's more than 600 lots contain only woodland brush, since their precipitous angles make construction nearly impossible. But for residents who have built or bought homes on the mountain, it's the kind of paradise they talked for years about finding.

"There is a clear divide here, but we have plenty of friends, and plenty of things to do with those friends," said Paul Schmutzler, a pro-renter and the previous president of the HOA board.

Schmutzler and his wife, Ruthann Geib, retired to Lone Mountain Shores full-time from D.C., where he was an analyst in the Pentagon and she was a lobbyist for the sugarbeet industry.

Sitting on the back porch of their home, which boasts stunning views of Norris Lake curving between the Cumberland Mountains, the couple reflected on how the neighborhood has changed since the current HOA board took office two years ago.

Schmutzler said anti-renter residents still wave at him like they used to, but "occasionally, it's with one finger."

Geib used to chat with her anti-renter neighbor while they gardened, but now she said they haven't spoken in two years. For her, it reflects the same political divisions in the country over the past five years, where people of different beliefs seem to live in different realities.

"This is a little microcosm of what's going on nationally," Geib said. "We didn't sign up for this. We didn't leave D.C. to move to a little mini-D.C. ... both sides are convinced of the rightness of their cause, so what do you do?"

Earlier that morning and across town, a group of anti-renter men sounded off on their neighbors over breakfast at Rhonda's Restaurant in New Tazewell. They meet monthly at this spot in one of many community events for residents of Lone Mountain Shores, but like all of these events, it doesn't bring pro-renters and anti-renters together.

The date was July 26, one day before a recall ballot for the board was due. The men did not want their names published, in case pro-renters came to power and sought retribution against them, they said.

One man said a large group of vacation renters treated his boat on the neighborhood's private dock as their "overflow," drinking beer and eating chips on his seats.

Another said renters routinely knocked on his door late at night mistaking his home for one they had rented. Others mention garbage left on the side of the road, loud music and smoke.

Their resentment is echoed in the HOA's lawsuit against renters, which argues that renters "disrupt the owners' quiet enjoyment of their real property."

While anti-renters conjure an image of vacationers as large parties of loud youngsters who smoke marijuana and break the rules, pro-renters call to mind images of peaceful families and the laughter of children.

"I think it's awesome to hear kids laughing," said Kathy Nixon, who owned several properties on the mountain through Norris Lake Cabin Rentals before selling to Vacasa in 2022. "It just makes your heart smile."

Before she sold her properties in Lone Mountain Shores, Nixon got a legal opinion that she claims was ambivalent on the question of whether short-term rentals were allowed. She said she rarely received complaints about renter behavior, which was "self-policed."

When Schmutzler was president of the HOA board, Nixon was part of a committee formed to find a solution to the rental debate. The committee, comprised of anti-renters and pro-renters, as well as a few neutral members, was disbanded after it could not reach consensus.

A bylaw change based on the committee's input would have placed regulations on short-term rentals. Though it received a majority approval on a ballot, it was not enacted by the current board, which cited incorrect methodology for a bylaw change.

Both sides believe their opponents are making the alpine haven less desirable. That debate, like all the others, depends on whether potential homeowners want a community that brings vacationers in or one that keeps them out.

Lone Mountain Shores Owners Association vs. Defendants

In July 2022, the Knoxville office of law firm Lewis Thomason reviewed the neighborhood's covenants at the request of the HOA board and gave its opinion on whether short-term rentals were prohibited. In the firm's response, it said the board would be on "solid legal footing" if it took action against homeowners.

At issue is a section of the covenants that does not mention short-term rentals specifically, but does state that "any rental accommodations or services" are excluded from the single-family residential definition for property use. The current board has taken no issue with long-term rentals, which it says the covenants allow.

In a batch of cease-and-desist letters dated Aug. 8, 2022, a lawyer from Lewis Thomason warned a group of homeowners that if they did not stop short-term renting, the board would initiate legal action against them.

Three months later, the lawsuit arrived. In November, the HOA board filed a request for a permanent injunction against short-term rentals in the Claiborne County Circuit Civil Court, using funds drawn from membership dues to pay its legal fees.

Jonckheere, the HOA board president, said some anti-renters threatened to sue the board if it didn't take legal action against short-term rentals and that "the law is clear and on our side in this matter."

The 28 original defendants are mostly homeowners with permanent addresses outside the state, some of whom say they stopped renting after receiving a cease-and-desist letter and before the lawsuit.

After a failed attempt to dismiss the board's lawsuit, the defendants countersued the HOA in March, arguing vacation rentals posed no threat to the community's peace and the board was illegally going back on the precedent of allowing short-term rentals.

The pro-renters' countersuit rests on a judicial device known as estoppel, which can prevent a person or entity from going back on previous judgments. The HOA affirmed the right of homeowners to rent out to vacationers in a letter from 2003 and again in a 2014 lawsuit that prohibited bed and breakfasts, but allowed short-term rentals.

As the lawsuits sit in court, pro-renters initiated a failed attempt to oust the five HOA board members in a recall vote. A third party firm that counted ballots for the HOA announced July 31 that Jonckheere kept his position by a vote of 176-174. The other four members retained their seats by slim margins.

The accounting firm said eight ballots were deemed ineligible by the board, enough to have removed Jonckheere, though it's unclear if those ballots belonged to anti-renters or pro-renters.

Jonckheere said ballots are only ineligible if members have not paid dues, but Schmutzler and other pro-renters said the list of ineligible voters and the reason for their ballot removals had not been shared with residents.

Beyond the lawsuit, pro-renters have a slate of grievances against the current board, including a lack of newsletters or detailed meeting minutes they believe would fill members

in on proposed changes to covenants and bylaws.

“If all owners had all the information, I don’t think this board could get re-elected,” Schmutzler said. “They haven't created a history for themselves that would lead people to give them the benefit of the doubt.”

Branden Frantz, president and general manager at WLWT TV station in Cincinnati, was one of the defendants originally sued by the HOA. He has owned a home in Lone Mountain Shores since 2007 and rented it to vacationers seasonally until 2021. He and his wife hired legal counsel to free them from the lawsuit, since they had already stopped renting their home.

“The unfortunate reality is it still costs a tremendous amount of money to get out of something that we weren't even doing,” Frantz said. “It’s been an emotional strain in a lot of ways.”

Where the law stands on short-term rentals

Vacation rentals are still available in Lone Mountain Shores, for prices between around \$125 and up to \$950 a night, if you want 7 bedrooms, a golf cart and a private cove.

Those who still vacation in the area find themselves in the middle of a conflict that's both familiar and strange.

Asher Wright booked a home in Lone Mountain Shores in December after searching Airbnb for somewhere his family could meet halfway between Asheville and the Middle Tennessee town of Carthage.

It wasn't until his family arrived in the neighborhood in July and saw the anti-renter and pro-renter signs that they realized there was a neighborhood dispute.

"I thought there was a grumpy neighbor who was like, 'We don't want our community to be full of renters,' which, I get that," Wright said, standing on the front porch of the rental home holding his toddler.

Wright had seen that kind of debate in Asheville, where short-term vacation rentals are limited to "resort" zoning districts and whole-house rentals are banned. Still, some illegal rentals persist and the vacation rental sector rakes in \$229 million in Buncombe County, where Asheville is the county seat.

Claiborne County does not have its own regulations on short-term rentals and brings in between \$6,000 and \$12,000 a month from the lodging tax that includes hotels, motels and vacation rentals, said a representative of the Claiborne Economic Partnership.

A Tennessee law passed in 2018 gives HOAs broad authority to restrict or prohibit short-term rentals. For years before and after the law went into effect, short-term rentals existed in Lone Mountain Shores with little or no pushback from previous boards.

The Tennessee Supreme Court could shake up the legal fight. In the pending case *Pandharipande v. FSD Corporation*, a resident in a similar lakeside neighborhood is appealing a court decision that would prevent him from renting his home for shorter than 30 consecutive days, based on the neighborhood's covenants.

Depending on how the court rules, the case could render the 2006 ruling which upheld an HOA's prohibition on vacation rentals inapplicable to single-family residences which are occupied by their owner.

Wright said the home he and his family were staying in was clearly lived in by its owners. It was filled with their personal belongings, including a chest freezer full of food that the renters could not eat. Some homes he'd stayed in seemed fully dedicated to renting as a business venture. This was not one of them.

In covenant-restricted communities, where homeowners sign onto a list of limitations to their property rights, legal disputes often come down to a few sentences in those documents.

Gregory Stein, a professor emeritus at the University of Tennessee College of Law who researches real estate and land use, said HOAs are able to enforce stricter rules than local governments and enforce them in private.

There are two kinds of property rights to consider in this kind of legal battle, Stein said. First, property owners may feel their rights are infringed by the HOA's interpretation of its rules. Secondly, neighbors may feel their rights are infringed when vacation renters are allowed into their community.

"Each community has to adopt rules that fit what the owners want and are expecting," Stein said in an email. "If you are thinking of buying property, you had better learn what the rules are first, since you will be bound by them! If you don't like those rules, you should buy somewhere else."

In Lone Mountain Shores, a history of practice is running up against the neighborhood's written rules, and the interpretation will be left to the court after several failed attempts to reach consensus.

Residents sue board members for 'civil conspiracy'

A smaller group of property owners are suing the five board members personally on allegations of fraud, harassment, interference with property rights, violation of due process rights and conspiracy to commit fraud.

Jason Jordan, an attorney from Colorado, is one of the plaintiffs in the suit, which paints a picture of a board that works in tandem and in secret to achieve its goals. Jordan plans to move full-time to Tennessee, which he believes is a beacon for personal liberty. In his mind, the actions of the board threaten that freedom.

“The actions that we sued them for were not actions that fall within their fiduciary duty as a board member,” Jordan said, explaining why he felt it was necessary to sue the board personally.

The lawsuit alleges that board members harassed pro-renters and "intentionally and abruptly" ended community meetings when the question of short-term rentals was raised. It claims the board tossed out a bylaw that would have regulated rentals because of the "personal preference" of members for a community without rentals.

Crucially, it alleges the board misled prospective homeowners into thinking short-term rentals were allowed in the neighborhood, leading one of the plaintiffs to make costly renovations.

As the board enforces its interpretation of a prohibition on commercial activity, the lawsuit claims monetary damages of \$600,000 to plaintiffs for loss of rental income, diminished property value and attorney fees.

Jonckheere said the lawsuit was little other than an intimidation tactic to keep anti-renters from running for board positions. Who, he reasoned, would want a tiring volunteer position that could get them sued for hundreds of thousands of dollars?

How the fight in Lone Mountain Shores could end

An election this October will put the HOA board on the ballot again, and pro-renters are expected to raise a challenge. Jonckheere said members running against the current board have submitted their candidacies, but the information is private to the association.

If the failed recall vote is any indication, it will be a tight race. But even if board members are removed and pro-renters take their place, the battle over vacation rentals will likely still end in court.

Mike Sislow and his wife live in what some anti-renters call the "Bermuda Triangle," a cluster of homes populated by pro-renters who are suing the HOA board, both in the counter lawsuit and in the civil conspiracy lawsuit.

The couple live in Texas, where Sislow works as a petroleum engineer, and looked for a home where they could split their time and escape the worsening heat.

When they first moved in, they were invited to a bonfire at the home of a neighbor.

Around the fire, anti-renters asked their intentions for their home. When they said they were thinking of renting it out seasonally, the Sislows no longer felt welcome at the gathering, and would come to realize there were only two camps on Lone Mountain.

If the court decides in the board's favor in either case, Sislow said he and other pro-renters with the means to prolong the legal battle will appeal the decision, seeking a higher court's judgement.

The fight over short-term rentals could be extended far beyond the board's expectations.

"They didn't realize what they were getting themselves into," Sislow said. "It's not gonna end until it ends the right way."

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