
THE LUEDER LAW FIRM, LLC

ATTORNEYS AT LAW

January 3, 2008

Board of Directors of
Sweetwater Valley Condominium Association, Inc.

Re: Leasing of Units

Dear Board:

As you are aware, this firm represents Sweetwater Valley Condominium Association, Inc. (the "Association"). I have been requested to draft a letter regarding the importance of upholding leasing restrictions within the condominium.

Various purchasers on the secondary mortgage market have limits on the number of units that may be leased. This can have a significant impact on an owner's ability to obtain a mortgage. Many mortgage companies will issue an individual a mortgage and then sell that mortgage on the secondary mortgage market. If the mortgage company cannot sell the mortgage on the secondary mortgage market because the ratio of renter occupied units is too high, they are less likely to issue an individual a mortgage. Fannie Mae and Freddie Mac are two of the largest purchasers of mortgages on the secondary mortgage market. Both companies have a limitation on the ratio of renter occupied units. This limit was between twenty-five to thirty percent when the amendment restricting leasing was recorded. However, this limit was recently changed to fifty percent. As such, a community can have up to fifty percent of the units renter occupied without directly affecting the marketability of the mortgage on the secondary mortgage market. However, this change in the limit is unfortunately not widely known, even by those in the industry.

In addition, although this limit was changed regarding the secondary mortgage market, any federally backed loan (FHA, HUD, VA, etc.) still has the twenty-five to thirty percent limit.

Other issues that a community can encounter when there is a higher ratio of renter occupied units are an increase in crime and vandalism and a decrease in maintenance of units, which will likely lead to a decrease in property values. Tenants simply do not have the same investment in the community that owners do. In addition, off-site owners are less likely to see a direct benefit from increases in assessments for various services, and are thus more likely to oppose any such increases, or actively seek to decrease assessments. This can lead to a decrease in quality of life for those

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owners that occupy their units and a decrease in property values because the Association does not have sufficient funds to fulfill its maintenance obligations.

Another issue that often comes up with leasing restrictions is the granting of hardship leasing permits. Although the Board is vested with the sole discretion to grant a hardship leasing permit, its decision must be reasonable and not arbitrary or capricious. An owner can raise the issue that the Board has acted arbitrary or capricious by presenting evidence that the Board granted another owner a hardship leasing permit due to "Situation A," but denied him or her a hardship leasing permit when his or her hardship was based upon "Situation A." When an owner presents such evidence, the burden then shifts to the Association to establish a valid reason for the different decision. This is a very fact specific determination. As such, if the other owner was granted a hardship leasing permit for "Situation A," and the Board can demonstrate that this owner's situation was actually "Situation B," and presents a valid reason why it denied such leasing permit, then the court would likely rule that the Association was not acting arbitrary or capricious. The decision of the Board to grant or deny hardship leasing permits can establish a precedent that can lead to unfavorable outcomes for the Association in the future.

By way of illustration, and not by limitation, examples of circumstances which could constitute an undue hardship are those in which (1) an owner must relocate his or her residence for employment purposes and cannot, within ninety (90) days from the date the unit was placed on the market, sell the unit for a price no greater than the current appraised market value, after having made reasonable efforts to do so; (2) where the owner dies and the unit is being administered by his or her estate; and (3) where the owner takes a leave of absence or temporarily relocates and intends to return to reside in the unit. These are a few of the common situations where the Board could determine to grant an exception to the leasing restriction based upon an undue hardship.

In making such a determination, the Board may take several factor into account, including, but not limited to: (1) the nature, degree, and likely duration of the hardship, (2) the number of hardship leasing permits which have been issued to other owners, (3) the owner's ability to cure the hardship, and (4) whether previous hardship leasing permits have been issued to the owner.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Brendan R. Hunter

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BRH/sb