

CDCA Advisory Committee Recommendation

Agenda item: Rentals

Underlying need to address:

The Reservation and Restrictions of Circle “D” Country Acres were initially written in 1969 and did not reference single home rentals. The committee will make recommendations and clarifications about rental properties within the CDCA, including defining what constitutes short and long-term rentals and restrictions for both.

Current statement: (Item #1 building and construction restrictions)

NOTE: there are some exclusions in sections; refer to each section for more detail

“Each parcel in the Subdivision shall be used only for noncommercial residential and recreational purposes. Only single family residential dwellings and appurtenances ordinary to rural residential living shall be permitted. To this end, without limitation, the following structures may not be built on any parcel in the Subdivision: hospitals, clinics, rest homes, duplex houses, apartment houses, garage apartments, hotels, or any retail, wholesale, or other business or commercial establishment of any kind.”

General discussion and understandings:

In reviewing the intent of the phrasing in the statement, this committee believes the following tenants were the objective of their definition.

- Address definitions of terms, including short-term and long-term rentals.
- Review and determine laws around rental restrictions allowed by HOAs.
- Recommend restrictions that would apply to both short-term and long-term rentals.

Short-term rentals, Air B&B, VRBO, etc., were widely voted against in the most recent pole sent out to the homeowners. Recent polls on Nextdoor also saw solid indications that homeowners do not favor this type of rental. The committee agrees that this should be prohibited.

Address definitions of terms, including short-term and long-term rentals

- Short-Term rental - less than 30 days
- Long-Term rental – longer than 30 days
- Leaseback/Rentback scenarios – There are two different scenarios to consider.
 - A home seller may negotiate with the home buyer to stay for a short time after the sale. Usually, while the seller is looking for or finishing another residence, it could be free or for an agreed-upon rental amount.
 - Selling your house to a real estate investor and then renting the property from them. They are often used to remove the hassle of finding a short-term rental if they plan to move or can be used for homeowners who want to cash out equity and remain in their current home.

Review and determine laws around rental restrictions allowed by HOAs (see attached document)

Texas Laws are specific in areas that an HOA cannot enforce rental restrictions. Primarily, they pertain to the screening of the tenants by the HOA. Per **Title 11 Sec. 209.016. REGULATION OF RESIDENTIAL LEASES OR RENTAL AGREEMENTS**. The HOA cannot require a potential tenant to be submitted to and approved by the association, nor can the renter's credit reports or a rental application be requested.

Otherwise, the HOA can establish restrictions relating to occupancy or leasing.

There are two important caveats to be aware of.

1. The HOA cannot restrict rental when the home is designated "a Family Home" per **Title 8 – Sec 123 COMMUNITY HOMES FOR DISABLED PERSONS LOCATION ACT**
2. For the restrictions to be enforceable, they must be voted in as part of the actual restrictions and not just documented or stated as a rule. Reference **Tx supreme court *Tarr v. Timberwood Park Owners Ass'n*, 61 Tex. Sup. Ct. J. 1174 (2018)**. *The court held that, because the restriction did not plainly prohibit short-term rentals, the restriction was not violated as long as the short-term renters were using the home for residential purposes*

Most federal laws and TX landlord – Tenancy laws apply to the landlords' responsibility and, as such, would not pertain to the HOA, including the Fair housing act, Fair credit reporting act, and HUD restrictions.

Bastrop County Hotel occupancy tax – Both the city of Bastrop and Bastrop County expect properties listed as Airbnb /HomeAway type properties to pay hotel tax. There is also a State Tax that should be paid. As we are outside of the city, only the county and state taxes apply. If someone is violating a future restriction on a short-term rental, this could be a way to gain enforcement by reporting the offender to these agencies to see if they are paying their taxes.

<https://www.statesman.com/news/20190425/bastrop-proposes-crack-down-of-tax-evading-short-term-rentals>

Recommend restrictions that would apply to both short-term and long-term rentals

These proposed restrictions are intended to prevent the neighborhood from becoming flooded with short-term rentals that are not used as permanent residences. They are not intended to prevent property owners from having extended guests or doing as they please at home and on their property within the confine of existing restrictions.

Short-Term Rentals (Air B&B; VRBO)

The committee recommends the following rules and restrictions around short-term rentals.

- Short-term rentals would not be allowed within the CDCA.
- Short-term rentals are defined as anything less than 30 days.
 - Pertains to rental for profit only
 - It does not include family/friends as visitors
 - Does not include personal use of an RV/Tiny Home/Trailer for visitors short-term. Long-term usage will be addressed in the RV/Tiny home recommendations
 - Does not include leaseback/rentback situations during the sale of a property as defined in the first part of the leaseback definition above; the 2nd definition will be addressed in the long-term rental discussion

Long-Term Rentals

The committee recommends the following rules and restrictions around long-term rentals.

- Long-term rentals are defined as anything longer than 30 Days
- Long-term rentals are permitted for permanent structures designated in the restrictions code. This would preclude:
 - Garage apartments
 - Barns or other outbuildings
 - Trailers, campers, RV's, etc., will be addressed in the RV/Tiny home recommendations.
- If family/friends stay in a non-permanent structure for longer than 30 days, but less than a year, it is recommended but not required that the homeowner notify the office to avoid any issues. This type of stay would be permitted.
- For rentals longer than six months, it is recommended (not required) that the owner provides information to the office to include the renter in the community activities (E.g., Neighborhood clean-up days).