



# COMMONWEALTH of VIRGINIA

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The Honorable Kathy J. Byron  
Member, House of Delegates  
523 Leesville Road  
Lynchburg, Virginia 24502

Dear Delegate Byron:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You ask whether a homeowners' association, by duly recorded covenant, may limit the number of housing units within the association that may be offered for rent by the owner to tenants.

## Response

It is my opinion that if properly written, adopted and enforced, and authorized as to purpose and not in conflict with an association's declarations, bylaws or rules and regulations, a homeowners' association may covenant to limit the number of housing units within the association that may be offered for rent by the owner to tenants.

## Applicable Law and Discussion

The relationship between a homeowners' association and a homeowner covered by its restrictions is contractual in nature.<sup>1</sup> In addition to principles of contract, the Virginia Property Owners' Association Act ("the Act") provides further restrictions on homeowners' associations in Virginia.<sup>2</sup> The Act does not contain any provisions relating to rental property. In general, the Act allows broad latitude for contracting parties and homeowners' associations to devise rules and restrictions governing the use of property.

Although the precise issue you raise has not been the subject of any published decisions in Virginia, in analyzing an analogous statute, the Condominium Act,<sup>3</sup> the Virginia Supreme Court has held

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<sup>1</sup> *Sully Station II Cmty. Ass'n v. Dye*, 259 Va. 282, 284, 525 S.E.2d 555, 556 (2000). "Property owners associations and their members must abide by the corporation's governing documents. The governing documents constitute a contract collectively entered into by all the owners in the association." *Farran v. Olde Belhaven Towne Owners Ass'n*, 2010 Va. Cir. LEXIS 92, \*7 (Fairfax Cir. Ct. 2010) (citations omitted).

<sup>2</sup> VA. CODE ANN. §§ 55-508 through 55-516.2 (2007 & Supp. 2010).

<sup>3</sup> VA. CODE ANN. §§ 55-79.39 through 55-79.103 (2007 & Supp. 2010).

that “[a] condominium restriction or limitation, reasonably related to a legitimate purpose, does not inherently violate a fundamental right and may be enforced if it serves a legitimate purpose and is reasonably applied.”<sup>4</sup> The Court further held

that amendments to condominium restrictions, rules, and regulations should be measured by a standard of reasonableness, and that courts should refuse to enforce regulations that are found to be unreasonable. In doing so, inquiry must be made whether an association has acted within the scope of its authority as defined under the Condominium Act and by its own master deed and bylaws, and whether it has abused its discretion by promulgating arbitrary and capricious rules and regulations bearing no relation to the purposes of the condominium.<sup>[5]</sup>

The Court likely would apply similar principles in adjudicating amendments, restrictions, rules and regulations in cases involving homeowners’ associations.

Restricting the rental of homes serves a number of legitimate interests, including preserving a sense of community and protecting property values. Virginia courts likely would uphold reasonable restrictions on the rental of homes by a homeowners’ association, provided that such restrictions serve a legitimate purpose, comply with the association’s own declarations, bylaws and rules and regulations, and comply with applicable laws in the way they are enforced. Whether a restriction is reasonable would be highly context specific, and may depend upon whether it was contained in the original restrictions or was the subject of an amendment to existing restrictions, and how draconian the rental restrictions are.<sup>6</sup>

#### Conclusion

Accordingly, it is my opinion that if properly written, adopted and enforced, and authorized as to purpose and not in conflict with an association’s declarations, bylaws or rules and regulations, a homeowners’ association may covenant to limit the number of housing units within the association that may be offered for rent by the owner to tenants.

With kindest regards, I am

Very truly yours,

  
Kenneth T. Cuccinelli, II  
Attorney General

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<sup>4</sup> United Owners Ass’n of Buildamerica-1, A Condo. v. Gillman, 223 Va. 752, 768, 292 S.E.2d 378, 386 (1982).

<sup>5</sup> *Id.* at 223 Va. at 768–69, 292 S.E.2d at 386–87.

<sup>6</sup> See *Harrison v. Sierra Dawn Estates Homeowners’ Ass’n*, 2010 Cal. App. Unpub. LEXIS 4736 (Cal. Ct. App. 2010) (upholding as reasonable an amendment to a homeowners’ association’s recorded covenant that imposed restriction on homeowners’ right to rent their units); *but see Kiekel v. Four Colonies Homes Ass’n*, 162 P.3d 57 (Kan. Ct. App. 2007) (rejecting a bylaws restriction on rental of homes in a subdivision as void because the association’s recorded declaration required an amendment to the declaration to impose property use restrictions).