

The Vistas at Nor'wood Townhome Association, Inc.
2019 Survey on Covenant Amendment to Regulate Leases
Background Information

Some HOAs amend their covenants to regulate leases because of concerns that increased rentals may lead to more covenant/rule violations (e.g. noise, parking, pet waste) and lower property values. The Board is not agreeing or disagreeing with this view, and realizes that regulation has pros & cons¹. The Board has no data specific to our HOA which definitively correlate rentals with violations or property values. While some HOAs seek FHA certification which may lead to a minimum owner-occupancy rate, this HOA is not required to do so² and has not done so. Also, the Board has no data specific to our HOA showing that the owner occupancy rate has affected insurance premiums or mortgage approvals. The latest data indicates that 20 of the 80 Units (25%) are under "Lease" as defined in our governing docs. An amendment requires the consent of Owners of 67% of the Lots³ (54).

As background, here is the current Covenant⁴ language regarding leases (article IX, para 16):

- Leases. The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease his Lot, but all leases shall be in writing and all leases shall provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the provisions of this Declaration, and the articles of incorporation, bylaws and rules and regulations of the Association.

Here is the HOA's definition of Leasing (2017 Resolution⁵, page 2, para 1):

- Definition of Lease and Rental: The terms "lease" and "rental" as used herein are the exclusive occupancy of a Lot by any person other than the Owner and specifically includes, but is not limited to, long term leases, month-to-month leases, short term leases, and leases or licenses for less than 30 days. However, leasing shall not include the occupancy of a Lot by the child or parent of an Owner. Occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence shall also not constitute leasing.

Short-Term Rentals (STRs) are not the focus of this survey. This survey asks whether the HOA should increase regulation of leases of any length. But if the STR topic interests you, here's some background info:

- Covenants (IX.3) prohibit most commercial use, but Colorado courts may⁶ still allow STRs (HOA would need to ask an attorney to be sure) since Covenants (IX.16) don't give a minimum lease length.
- Colorado Springs recently adopted an ordinance⁷ regarding STRs.
- Subject to Covenants, the City allows STRs in R5 zoning, like our HOA.
- City defines STRs as less than 30 days in length.
- Owners seeking a permit are required to state whether they have checked HOA covenants/regs⁸.
- In case of non-life-threatening emergency, neighbors of a permitted STR can call the emergency contact for that unit. This can be found in Springsview⁹.
- If you suspect an STR is operating without a permit, confirm this is true at Springsview, then call City¹⁰.
- According to public information¹¹, none of the units in our HOA have been operated as an STR in 2019.

1 <https://altitude.law/rental-caps-good-bad-ugly/>

2 The Covenants include language (e.g. II.1 (top p. 7), VI.1, XI.5, XI.8) allowing the Declarant to modify the covenants to get approval of a Government Mortgage Agency. But the Covenants do not obligate the HOA to get this approval, and the Declarant has transitioned out of control of the HOA (2012).

3 Ref art XI para 6 of Covenants: https://vistasatnwta.com/CCRs_Rules/Declaration_of_Covenants.pdf

4 https://vistasatnwta.com/CCRs_Rules/Declaration_of_Covenants.pdf

5 https://vistasatnwta.com/SB100_89/2017_Oct_Leasing_Resolution_-_Signed.pdf

6 Houston v. Wilson Mesa Ranch Homeowners Association, Inc., 360 P.3d 255 (Colo.App.Div.3. 2015).
See para 24 here: <https://caselaw.findlaw.com/co-court-of-appeals/1710512.html>

7 https://coloradosprings.gov/sites/default/files/inline-images/ord-short_term_rental_2018.pdf

8 See bottom of page 5 of the following document:

https://coloradosprings.gov/sites/default/files/short_term_rental_permit_application_checklist_2-6-19.pdf
which the applicant must include per City Code 7.5.1703.B.

9 Go to the <https://coloradosprings.gov/planning-and-development/page/short-term-rentals>

and click the FAQ labeled "I'm a neighbor of a short term rental and there is an issue with renters, what do I do?"

10 Go to the <https://coloradosprings.gov/planning-and-development/page/short-term-rentals>

and click the FAQ labeled "What can I do if I think my neighbor is operating a short term rental without a permit?"

11 Per check of vrbo.com, airbnb.com, craigslist.org, homeway.com, rentbyowner.com, coloradovacationrentals.com, and also the City's permit data (go to <https://coloradosprings.gov/planning-and-development/page/short-term-rentals> and click the FAQ labeled "What areas of town have active short term rental permits?")