

FAILED: HOUSE BILL 89

RENTAL RESTRICTIONS

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Rental restrictions in community associations are rife with thorny issues and different perspectives. On the one hand is an owner's freedom to use his or her property as he or she wishes, including earning rental income from the property. On the other hand is a community association's desire to enhance property values and maintain a desirable community, including the development of long-term personal relationships among more permanent neighbors. This issue presented itself during the 2014 legislative session in Representative Earl D. Tanner's (R-West Jordan) House Bill 89, entitled "Association Rental Amendments" ("H.B. 89").

H.B. 89 sought to amend both the Condominium Ownership Act and the Community Association Act with respect to rental restrictions in community associations whose initial declaration was recorded before May 12, 2009 ("pre-May 2009 HOAs"). The initial draft of H.B. 89 limited community associations from imposing rental restrictions more prohibitive than those contained in the operative declaration at the time an owner purchased his or her unit, unless the owner renting his or her unit provides written consent. Utah's Legislative Action Committee (the "LAC"), a committee of the Utah CAI chapter, opposed the initial version of H.B. 89 because it would have retroactively invalidated scores of properly adopted rental restrictions.

Due to the LAC's efforts, Representative Tanner redrafted H.B. 89 during the legislative session to temper its retroactive impact. The final version of H.B. 89 expanded to all community associations a number of conditions on rental restrictions including, for example, exempting certain family members from rental restrictions, requiring associations to adopt procedures to determine and track rental units, requiring associations to adopt procedures to ensure consistent administration and enforcement of rental restrictions, and allowing a unit owner renting a unit before a rental restriction is recorded to continue renting the unit until it is owner occupied. However, the final version of H.B. 89 provided that these conditions would not apply to pre-May 2009 HOAs, unless the association adopted or amended rental restrictions after the date H.B. 89 was to become law. In other words, HOAs created between May 12, 2009 and the present would have been subject to the conditions in H.B. 89, whereas HOAs created prior to May 12, 2009 would not have been until such time they adopted or amended a rental restriction provision.

In addition, H.B. 89 restricted an association's ability to require an owner to get the association's approval of a prospective tenant or require the owner to provide the association with a copy of the rental application, the renter's credit information, the renter's background check, or documentation to verify a renter's age.

In the final days of the legislative session and without further opposition from the LAC, the House of Representatives passed the amended version of H.B. 89 and sent it to the Senate for consideration. However, the 2014 legislative session ended before the Senate could vote on H.B. 89. As a result, H.B. 89 did not become law. However, given the hot-button nature of the rental restriction issue, H.B. 89 is expected to reappear during the 2015 legislative session. If the reintroduced H.B. 89 is substantively the same as that passed by the House of Representatives in 2014, the LAC is not expected to oppose it in 2015.



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