house bill 98

Restrictions on Rentals

BY BRUCE C. JENKINS
MANAGING PARTNER
VIAL FOTHERINGHAM SG, LLP

Once again in 2014 renters and restrictions on rentals were hot topics. Early in the year the Apartment Association (a group organized for the benefit and protection of landlords) contacted me concerning perceived abuses of renters and owners of rental lots and units by HOA Boards. One of the several examples cited by the Apartment Association was a move-in/move-out fee charged to rental unit owners, but not to owner occupants. The Apartment Association argued that a move-in/move-out fee charged only to rental unit owners, and not to all occupants, treated renters differently without justification.

The concerns of the Apartment Association were vetted through committees of the LAC. The LAC recognized the potential for abuse and decided to take part in drafting legislation to address the issues. Several months of negotiating ensued. Ultimately, to bring clarity to the draft legislation, I undertook the drafting effort for the LAC in late 2014 as preparation for the 2015 legislative session. (The LAC has found it helpful to be involved in drafting legislation that affects Community Associations rather than reacting to legislation during the hectic legislative session).

The joint effort with the Apartment Association was included in the broader Community Association amendments contained in H.B. 98, and included the following:

- A rule may not treat the lot/unit owner differently because the lot/unit owner owns a rental unit. (57-8a-218(2), 57-8-8.1(2)).
- However, a rule may:
  - (i) limit or prohibit a rental lot/unit owner from using the common areas for purposes other than attending an association meeting or managing the rental lot;
  - (ii) if the rental lot/unit owner retains the right to use the association's common areas, even occasionally, charge a rental lot/unit owner a fee to use the common areas. (Id.)
- An Association cannot require the owner of a rental lot/unit to pay an additional assessment, fine or fee because the lot/unit is used as a rental. (57-8a-209(8)(c); 57-8-10.1(8)(c)).

As a part of the negotiation with the Apartment Association, I explained that although there was concern with how HOAs may treat renters, there was also concern about how renters treated the HOA they live in. To address this concern, the Apartment Association consented to a provision allowing for joint and several liability of owners and renters for violations of the governing documents, if such statement was contained in one of the Association's governing documents, including its rules. (57-8a-218(2); 57-8-8.1(2)).

The final change to statutory regulation of rentals is that Associations with declarations recorded before May 12, 2009, were previously not required to adhere to the limits on rental restrictions found in the Community Association Act (57-8a-209) and the Condominium Ownership Act (57-8-10.1). As of May 12, 2015, however, any Association that seeks to add or amend a rental restriction or prohibition must comply with limitations identified in the Community Association Act and the Condominium Ownership Act.

The LAC is grateful for the joint effort with the Apartment Association and hopes to foster this type of cooperative effort with others. Remember, with few exceptions rental unit owners should be treated the same as similarly situated owner occupants. If renters seem to be causing an undue problem, adopt a rule holding renters and rental lot/unit owners jointly and severally liable for violations of the governing documents.