



LEGAL Leasing Moratoriums

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In 2002 the Supreme Court of Florida heard the case of Woodside Village Condominium v. Jahren. The Court held that condominium unit owners were bound by amendments that restricted leasing of units. A person purchases a unit and the declaration to which they are bound has an amendatory clause; meaning that upon vote of the owners the declaration provisions, including provisions regarding leasing, could change. If you purchased the unit being able to lease, an amendment could make the condominium into a no-rental building on the date the amendment is recorded in the public records. That decision did not sit well with the Florida legislature.

In 2005, Section 718.110(13), Florida Statutes was created, which has been amended over the years to currently read:

“An amendment prohibiting unit owners from renting their units or altering the duration of the rental term or specifying or limiting the number of times unit owners are entitled to rent their units during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of that amendment.”

The foregoing means that if I

am a unit owner and either don't vote on an amendment which changes the leasing provision, or if I vote “no” to such change, then the new provision does not apply to my unit until the unit is sold. That's why it is difficult to change a building from one which permits leasing to one that prohibits leasing, because you end up with two classes of unit owners; those who must comply with the new amendment provision and those who remain “grandfathered” under the prior leasing provisions of the Declaration. To avoid this outcome, you can do a few things to protect your building from being purchased by those whose only intention is to lease the unit immediately after purchasing it.

A leasing moratorium is the first line of defense. Basically this type of moratorium provides that upon the sale of the unit (so it applies only after a transfer as noted in the statute cited above), the new purchaser cannot lease his or her unit for a certain period of time. Such typical time periods are 12 months, 24 months, or 36 months. What that is intended to do is to dissuade only the investor-buyer from purchasing a unit at the condominium. It does not prohibit a unit owner, after the moratorium period has concluded, from renting out his or her unit, but keeps the unit from being purchased

for the sole purpose of making it a rental property. If the unit is rented at the time of sale, there is language that can be used to have the moratorium period begin at the end of that lease.

You might also wish to consider limiting ownership of units to only natural persons and/or trusts for estate planning purposes and limiting the number of units that anyone (directly or indirectly) may ever own.

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shareholder at the Law Firm of Becker and is certified by the Florida Bar as a specialist in Condominium and Planned Development Law. This article is intended for educational purposes only and not as legal advice. If you are considering whether a leasing moratorium or other amendment is appropriate for your condominium, you should always consult with your Association's legal counsel before proceeding. Mr. Friedman may be reached at MFriedman@beckerlawyers.com.



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