



## LEGAL ALERT

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### **New York Homeowners and Condominium Associations Should Articulate Clear Rules on Short-Term Rentals to Avoid Potential Pitfalls**

By: Jeffrey Fasoldt, Jr.

As schools and colleges break for summer and vacation season gets into full swing, short-term rentals – offered on popular platforms like Airbnb and VRBO – are often a prime topic of discussion.

Short-term rentals are not new. But they are consistently the subject of debate of local municipalities – some residents preferring the extra earning potential, privacy, and flexibility they offer, while others decry their increased transient effect on neighborhoods. In addition to municipal regulations, Common-Interest-Communities ("CICs") – like homeowners associations and condominiums – whose residents must abide by an additional set of rules, also must choose how to handle short-term rentals.

The CIC should check its governing documents – which typically includes its Declaration of covenants and its Bylaws. What do they say about short-term rentals? If they allow a home to be conveyed or leased "free of any restrictions" then it is unlikely short-term rentals can be regulated or prohibited within the CIC without an amendment to the CIC's governing documents.

Still, if the governing documents allow, CIC's may regulate short-term rentals in the manner they prefer – even if that means an outright ban.

Finally, there is disagreement by courts in other states on whether a ban on "commercial activity" within a residential neighborhood constitutes prohibition of short-term rentals. New York is seemingly undecided on this issue. Still, CICs are best served by prescribing specific rules and regulation regarding short-term rentals and not leaving it up to a court for interpretation. The law favors the free and unobstructed use of property – and ambiguous covenants are generally frowned upon.

To learn more about your options in a homeowners association, condominium, retirement community, or subdivision subject to restrictive covenants, please contact Joshua S. Werbeck, Esq. at [jwerbeck@bhlawpllc.com](mailto:jwerbeck@bhlawpllc.com), and Jeffrey C. Fasoldt, Jr., Esq. at [jfasoldt@bhlawpllc.com](mailto:jfasoldt@bhlawpllc.com) to learn more.



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