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**ATTORNEY CLIENT PRIVILEGE
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Board of Directors
The Harbours Condominium Association, Inc.
1 Riverpointe Plaza
Jeffersonville, IN 47130

Re: Adding a Requirement for All Leases to be One Year Minimum

Dear Directors:

This follows up your questions about how to add a requirement that all leases be for a minimum term of one year. You said that some of your residents have complained about the transient nature of some tenants due to short-term leases, with a resulting lack of respect for the other residents and the property itself. We have heard these concerns from other condominiums as well as typical subdivisions; short-term occupants simply don't have any "buy-in" to their homes or the rest of the community.

You indicated that about 82 of your 169 units have absentee owners, with about 60 of those 82 units believed to be actually rented. You also said that many of the original purchasers were investors, and that many of those are still owners.

As an initial comment, I am not surprised that your condominium community was, and still is, attractive to investors. Your Association, acting through your Board of Directors, performs many of the functions that would normally fall upon a landlord. In exchange for your Association performing services such as building repairs, grounds maintenance, insuring the building, etc., the landlord simply pays your Association a monthly fee. Thus, it's not surprising that condominiums tend to get the attention of investors.

Your Declaration already has leasing restrictions on pages 10-11 that are much more extensive than most original, developer prepared Declarations for condominiums. In fact, your provisions include many of the requirements that we recommend when a community association asks us to prepare leasing restriction amendments.

The original Declarations for the vast majority of community associations are completely silent on leasing. When such associations ask us to help put rental restrictions in place, we advise them that they will have to follow the official amendment procedure which is usually found at the end of the Declaration. (We don't believe that an Indiana court would ever uphold leasing restrictions if they were simply adopted by the Board of Directors under a general rule-making provision in either the Declaration or the By-Laws.) Indiana law doesn't dictate the exact number of homeowners in any given community that are required to approve amendments to the Declaration. However, most communities have language that requires a "super majority" of the owners to approve any amendments to their Declaration. That "super majority" is often stated such that the owners of something like 67% or 75% of the total number of homes must actually vote in favor of the amendments.

Your Declaration on page 20 states that any proposed amendment to the Declaration must be approved by a vote of not less than 67% of the Percentage Vote. Thus, rather than "one vote per unit", the voting is based upon the percentage interests assigned to each home. Although I don't have a copy of the schedule that lists all 169 units with their corresponding percentage interests, we do know from Section 14.A on page 13 of your Declaration that the percentage interests were calculated based upon the square footage of each unit. That means that the owners of the larger units have more "voting power" than the owners of smaller units.

Although 67% would be difficult to achieve, we have had many community associations successfully reach that number of approvals. In the end, as long as an amendment is not controversial, the biggest challenge for a Board of Directors is to overcome homeowner apathy. Usually, a door-to-door campaign is required to obtain the last few approvals.

With all of that said, we recommend your Declaration be amended to include the new requirement that leases be for a minimum term of one year. An alternative would be for your Board of Directors to adopt a rule or regulation without trying to get the 67% "super majority" vote from the unit owners. However, for at least a couple of reasons, we do not recommend that option. First, several courts throughout the country have struck down Board-adopted rules concerning leases, finding that such restrictions are so important that they rise to the level of something that requires homeowner approval by following the strict amendment procedures set forth in the Declaration.¹ Second, rules are never given as much weight by the courts as compared to provisions in the Declaration. For these reasons, we recommend an amendment to your Declaration rather than for your Board to adopt a rule.

Despite the above, if you decide as a Board to adopt this new leasing restriction in the form of a rule or regulation, there is one big difference that might bolster its enforceability as compared to amending your Declaration. That is, your Declaration **ALREADY HAS** numerous rental restrictions.² This would be just one more restriction that would be "added" to what you already have. You indicated that you would present it to the homeowners at a duly called

¹ It's one thing for a Board to adopt rules about the community's swimming pool. It's quite another to adopt a rule that restricts an owner's ability to rent their home.

² Most other covenants that contain rental restrictions include a requirement that leases be for a minimum term of one year.

meeting and, after discussion, you would ask the owners to vote on whether to authorize your Board to adopt it as a new rule. Even if you don't obtain anything close to a "super majority" vote, it would still be better than having the Board adopt the rule unilaterally. Finally, if you adopt such a rule, we would strongly recommend that it be filed with your County Recorder and have it cross-referenced to your original Declaration. That way, it would become public record and would put future purchasers "on notice" of the new rule.

Enclosed is a draft of the rule.

If you have any questions, please call me or email me. Thank you.

Sincerely,

EADS MURRAY & PUGH, P.C.

A handwritten signature in cursive script that reads "Tom Murray".

P. Thomas Murray, Jr.
Tom@IndianaHOAlaw.com