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SEE PAGE A9

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INSIDE

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VACATION RENTALS

Air BnB and other e-commerce companies may pose problems for condominium associations, warns civil litigator Jed L. Frankel.

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PRACTICE FOCUS / REAL ESTATE

E-Commerce Poses Challenge to Community Associations

Commentary by Jed L. Frankel



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It is not uncommon for community associations to have some sort of rental restriction in the governing documents ranging from outright bans to minimum leasing periods to screening requirements for people who reside there for more than a certain period of time.

Establishing minimum standards often enhances property values throughout the community. Knowing who is residing in the community—even on a temporary basis—also aids in maintaining security. In order to ensure that these restrictions remain valid, associations must enforce them uniformly and not “selectively” against particular unit owners.

The recent explosion in Internet commerce—with sites as Air BnB offering short-term residency options—presents associations with a tremendous challenge in enforcing their rental restrictions. The Internet has given enterprising unit owners an opportunity to market their unit for rent, even in violation of the governing rules. Often unit owners listing their unit (or even a bed in their unit) for rent on the Internet will tell management that

those staying with them are guests, friends, or even a relatives—anything but a paying customer. In doing so they hope to get around the association's minimum rental rules and screening process. Given the limited resources of most associations it is difficult, if not impossible, to determine whether the unit owner is being truthful.

A “guest” is generally someone who stays for a relatively short period of time while the owner remains present, often times a friend or relative. This type of arrangement poses less problems for the association—and neighboring unit owners—as the owner exercises control and ensures that there is compliance with the community's rules and regulations. Depending upon the community's governing documents, a “guest” frequently can stay up to a certain period of time (such as 30 days) without going through the background screening process required for longer residency.

Once money is injected into the equation, the situation changes to the association's detriment. Paying customer “guests” expecting to use the community's amenities without respecting the rights of long-term residents can disturb others and strain the association's resources. Leaving garbage in the hallway

rather than depositing it in the designated area is an obvious nuisance to all. The owner's absence can cause additional problems with the “guests” having access to the community without someone to keep them in check. Without a background check, the association has no idea who is staying within the community.

Community associations must work closely with management and experienced counsel to determine if someone is in fact a “guest” before taking action that might lead to claims of harassment or even violation of laws like the federal or Florida Fair Housing acts.

In one recent case, board members grew suspicious after several unit owners starting registering a number of “guests” over a short period of time, including a family of five who arrived with a van full of shopping bags from a local outlet mall demanding that the valet take all their goods upstairs to their room. The unit owners, as might have been expected, represented to the association that the “guests” were friends and relatives visiting from abroad.

A search on the Internet was undertaken, and the unit where the family was staying as well as several others located on the Air BnB website. The association notified

the offending unit owners that their improper rental operations were to cease immediately.

In addition, local municipal officials were notified of the situation. The city promptly issued notices of violation to the unit owners for operating a transient rental operation in violation of city ordinances and without the required business permits and directed the “guests” to vacate the premises.

The unit owners were notified that they had to appear before the city's special master to explain their activity at the risk of daily fines if their offending activity continued. If that was not enough, the owners learned that they might be held responsible for taxes they were required but failed to pay for their rental operations.

By using the Internet to confirm the unit owners were violating the association's governing documents (as well as local law), the association was able to enlist the assistance of local government to end the improper rental operations and maintain its minimum rental standards.

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