

## Short Term Rental Regulations Within Colorado Homeowners Associations

As the use of [short term rentals](#) by vacationers increases in popularity, with multiple [websites](#) offering advertising and payment services, many communities and property owners are struggling with how to regulate such rentals or how to get into the market. Short term rentals are typically defined as the rentals of less than 30 days. Most local governments in Colorado have adopted a regulatory scheme within their land use code to address short term rentals, including but not limited to zone district locations, licenses and fees, local contact requirements and safety/building code issues. These regulations distinguish short term rentals of homes, or even parts of homes, from the operations of bed and breakfasts or hotels/motels. However, in communities that have a [lodging tax](#), property owners with short term rentals are required to collect and remit this tax as part of their rental fee. Sales tax is also applicable. Property owners that want to short term rent their property not only need to check with the local government regarding licensing and regulations, but if the property is located in a covenanted community, the covenants must be reviewed to ascertain whether short term rentals are allowed.

Despite this tax collection requirement, the Colorado courts have determined that [short term rentals are not a “commercial use” of a property](#) and that a homeowners’ association (“HOA”) cannot prohibit short term rentals under a covenant restriction of “residential use only.” Garfield & Hecht, PC represented the Wilson Mesa Ranch Homeowners’ Association (“WMRHOA”) in a lawsuit whereby the HOA Board adopted rules and regulations prohibiting short term rentals under the covenant restriction that all lots could be used for residential purposes only and that no commercial use was allowed. The HOA and subdivision were created in 1970, long before the advent of short term rentals. A property owner that was short term renting his property challenged these rules and regulations. The trial court and the [Colorado Court of Appeals](#) agreed that short term rentals were still a “residential use” of the property and that if the HOA wanted to prohibit such rentals it would need to amend its covenants and not just adopt a rule, a holding that can be more broadly interpreted that any restrictions on property “use” must be contained in covenants, which are recorded, and not rules and regulations. Thereafter, Garfield & Hecht, PC assisted the HOA in successfully amending its covenants to prohibit short term rentals except in limited circumstances.

Please do not hesitate to contact Mary Elizabeth Geiger (970-925-1936 ext.813, [megeiger@garfieldhecht.com](mailto:megeiger@garfieldhecht.com)) or Tracy Kinsella (970-925-1936 ext.854, [tkinsella@garfieldhecht.com](mailto:tkinsella@garfieldhecht.com)) in our HOA practice group if you have questions or need assistance with regard to your HOA, covenants, or short term renting your property.