

ANALYSIS OF RA SECTION 28 (*written in blue italics*)

Existing RA Section 28 reads as follows:

"28. RESTRICTIONS ON USE & LEASING. The Association deems it to be in the best interests of the community as a whole to preserve the Subdivision as a community in which the Lots are occupied by the Owners. Accordingly, the purpose of this Section 28 is to foster Owner-occupancy and thereby improve stability among residents, inhibit transiency and protect property values, by prohibiting current and future owners from being able to lease and adopting reasonable regulations if a Lot is authorized to lease.

(a) Definitions. For purposes of this Section:

(1) **"Direct Family Member"** means children, parent, grandchildren, grandparent, caregiver, in-laws, stepchildren, or siblings of the Owner.

(2) **"Lease"** means any agreement for the exclusive possession of the Lot that creates a relationship of landlord-tenant or lessor-lessee in which the record Owner does not occupy the Lot.

(3) **"Owner-Occupied"** means that the resident of the Lot is the record Owner, his or her siblings, parents, children, grandchildren, grandparents (and their families). In the event the Lot is owned by a trust, the Lot shall be deemed to be owner-occupied if the Lot is occupied by a beneficiary of the trust, as long as the beneficiary is also the grantor of the trust, or the Lot is occupied by the spouse or direct family member of the grantor of the trust.

(4) **"Governing Documents"** means the Restrictions and any rules as may be adopted by the Board. -'

(b) **Restriction on Leasing.** An Owner shall be prohibited from leasing the Lot unless the Lot is being leased at the time of adoption of this Amendment; said Lot shall be prohibited from leasing upon the earlier of the lease term expiring or the current tenants vacate.

The Board may waive the limitation on leasing in this Section 28(b) for a reasonable period of time in the event of personal hardship or unanticipated circumstances such as military service, sabbatical, job transfer, or medical conditions.

Any such waiver shall be in writing and signed by the Owner and the Board. In the event a waiver is granted, the Owner may lease the Unit for the term granted in accordance with the regulations in Section 28(c) below.

(c) Lease Regulations. Any lease permitted under this Section 28 and executed or renewed on or after the Effective Date shall be evidenced by a written lease agreement ("Lease") and, whether or not expressly set forth in the Lease, shall be deemed to include the regulations contained in this Section.

(1) Copy of Lease. The Owner shall furnish to the Board, at least ten (10) days before the commencement date, a copy of the executed Lease and a lease addendum if required by the Association ("Addendum"), as well as the names and contact information of the tenant and all occupants. The Lease shall comply with the Governing Documents.

(2) Persons Subject to Governing Documents. The Lease, Owner and tenant(s)/occupant(s) are subject to the provisions of the Governing Documents.

(3) Term of Lease. The Lease shall have an initial term of twelve (12) months. Any renewal or extension of the Lease, and any sublease of the Lot or assignment of the Lease, shall be in writing and a copy submitted to the Board at least ten (10) days prior to its commencement date. Further, any lease renewal or extension may not exceed twelve (12) months at a time.

(4) Short Term Rentals. No Lot may be leased on a nightly or monthly basis, or for transient or hotel purposes including home exchange, swap or via Airbnb®, VRBO® "" or their functional equivalent. Not less than the entire Lot may be leased. If a lease is voluntarily terminated within 180 days of commencement, the Lot may not be "leased for 180 days after the date of termination. "

(5) Certification. The Owner certifies that he/she obtained a background check and provided a copy of the Governing Documents to tenant, and tenant certifies that he/she received said Documents, prior to signing the Lease.

(6) Assignment of Rights. The Owner assigns to tenant all rights and privileges related to occupancy of the Lot. The Owner retains the right to vote, the duty to pay assessments, fines and other charges by the Association, and the obligation to maintain the Lot and carry a personal insurance policy on the Lot.

(d) No Time-Share. No Lot may be conveyed under a time-sharing plan.

(e) Rulemaking. The Board may adopt such rules, regulations, and forms as it deems reasonable and necessary to implement the provisions of this Section.

(f) Reasonable Restraint on Alienation. The leasing limitations of this Section shall be deemed a reasonable restraint on alienation and not a change in the use of Lots, which shall continue to be used for single-family residential purposes.

(g) Enforcement. The Association is authorized to enforce any violation

by tenant or occupant (regardless of relationship to Owner) of the Governing Documents, except for nonpayment of rent, and may deem such violation a default of the Lease and shall have the right, after notice to the Owner and opportunity to cure, to terminate the Lease by judicial proceeding, and shall have all other remedies under the Governing Documents. In the event the Owner fails to pay any assessment and related charges and fees for 60 days or more, the Board, upon written notice, may direct the tenant to pay rent directly to the Board which shall be applied to the Owner's account until the delinquency is paid in full; otherwise, however, the foregoing shall not impose any direct liability on a tenant to pay any general or special assessment on behalf of the Owner."

Why Revise this Section 28?

This Section was added to the Restrictive Agreement (RA) in October, 2020. The purpose behind this amendment was laudable. Namely, to preserve Dougherty Lake Subdivision as an owner occupied residential community. Unfortunately, this amendment in its current form is of dubious validity.

At the time this amendment was approved in October, 2020, Section 18 of the RA required that any amendment of the RA be approved by a majority vote of the lot owners in attendance at an in-person lot owners meeting. This amendment passed because it was approved by a majority of votes cast by proxy. However, there is no provision in the RA which authorizes voting by proxy. If the vote was invalid, then the amendment is unenforceable.

Moreover, by its terms, the entity charged with the responsibility of enforcing the amendment was the Board of Directors designated as the Board of Trustees of the Dougherty Lake Homeowners' Association (DLHA). The DLHA was a not-for-profit corporation (NPC) created by the prior board without a vote of the lot owners. The NPC no longer exists in that the conversion of the trusteeship to the NPC has been reversed.

The substance of this provision remains basically the same. However, to make it enforceable we have changed wording as follows:

- *the word "Trustee" was substituted for the words "Board" or "Association";*
- *wherever they appeared; the words "Restrictive Agreement" were substituted everywhere the words "Governing Document" appeared; and*
- *a definition of "Trustee" and "Restrictive Agreement" were added.*

Proposed Amendment to RA Section 28 will read as follows (changes in red):

28. Restrictions on Use & Leasing.

The ~~Association~~Trustees deem it to be in the best interests of the community as a whole to preserve the Subdivision as a community in which the Lots are occupied by the Owner. Accordingly, the purpose of this Paragraph Section 28 is to foster owner-occupancy and thereby improve stability among residents, inhibit transiency and protect property values, by prohibiting current and future owners from being able to lease and adopting reasonable regulations if a Lot is authorized to lease.

(a) Definitions. For purposes of this ParagraphSection:

- (1) "Direct Family Member" means children, parent, grandchildren, grandparent, in-laws, stepchildren or siblings of the Owner.
- (2) "Lease" means any agreement for the exclusive possession of the Lot that creates a relationship of landlord-tenant or lessor-lessee in which the record Owner does not occupy the Lot.
- (3) "Owner-Occupied" means that the resident of the lot is the record Owner, his or her siblings, parents, children, grandchildren, grandparents (and their families). In the event the Lot is owned by a trust, the Lot shall be deemed to be owner-occupied if grantor of the trust, or the Lot is occupied by the spouse or direct family member of the grantor of the trust.
- (4) ~~"Governing Documents" means the Restrictions and any rules as may be adopted by the Board.~~ "Restrictive Agreement" means Restrictive Agreement of Dougherty Lake as recorded in Book 6567 Page 2375, as amended, in the records of St. Louis County, Missouri and any rules as may be adopted by the Trustees.
- (5) "Trustees" means the duly elected Trustees under the provisions in the Restrictive Agreement.

(b) **Restriction of Leasing.** An Owner shall be prohibited from leasing the Lot unless the Lot is being leased at the time of adoption of this Amendment; said Lot shall be prohibited from leasing upon the earlier of the lease term expiring or the current tenants vacate. The ~~Board~~ Trustees may waive the limitation on leasing in this Paragraph Section 28(b) for a reasonable period of time in the event of personal hardship or unanticipated circumstances such as military service, sabbatical, job transfer, or medical conditions. Any such waiver shall be in writing and signed by the Owner and the ~~Board~~ Trustees. In the event a waiver is granted, the Owner may

lease the Unit for the term granted in accordance with the regulations in ~~Paragraph Section~~ 28(c) below.

(c) **Lease Regulations.** Any lease permitted under this ~~Paragraph~~Section 28 and executed or renewed on or after the effective date hereof shall be evidenced by a written lease agreement (“Lease”) and, whether or not expressly set forth in the Lease, shall be deemed to include the regulations contained in the ~~Paragraph~~Section.

(1) Copy of Lease. The Owner shall furnish to the ~~Board Trustees~~, at least ten (10) days before the commencement date, a copy of the executed Lease and a lease addendum if required by the ~~Board Trustees~~ (“Addendum”), as well as the names and contact information of the tenant and all occupants. The Lease shall comply with the ~~Governing Documents Restrictive Agreement~~.

(2) Persons Subject to ~~Governing Documents Restrictive Agreement~~. The Lease, Owner and tenant(s)/occupant(s) are subject to the provisions of the ~~Governing Documents Restrictive Agreement~~.

(3) Term of Lease. The Lease shall have an initial term of twelve (12) months. Any renewal or extension of the Lease, and any sublease of the Lot or assignment of the Lease, shall be in writing and a copy submitted to the ~~Board Trustees~~ at least ten (10) days prior to its commencement date. Further, any lease renewal or extension may not exceed twelve (12) months at a time.

(4) Short Term Rentals. No Lot may be leased on a nightly or monthly bases, or for transient or hotel purposes including home exchange, swap or via Airbnb, VRBO or their functional equivalent. Not less than the entire Lot may be leased. If a lease is voluntarily terminated within 180 days of commencement, the Lot may not be leased for 180 days after the date of termination.

(5) Certification. The Owner certifies that he/she obtained a background check and provided a copy of the ~~Governing Documents Restrictive Agreement~~ to tenant, and tenant certifies that he/she received said ~~Documents Restrictive Agreement~~, prior to signing the Lease.

(6) Assignment of Rights. The Owner assigns to tenant all rights and privileges related to occupancy of the Lot. The Owner retains the right to vote, the duty to pay assessments, fines and other charges by the ~~Board~~

Trustees, and the obligation to maintain the Lot and carry a personal insurance policy of the Lot.

(d) **No Time-Share.** No Lot may be conveyed under a time-sharing plan.

~~(e) **Rulemaking.** The Board may adopt such rules, regulations, and forms as it deems reasonable and necessary to implement the provisions of this Section.~~

(e) **Reasonable Restraint on Alienation.** The leasing limitations of this Section shall be deemed a reasonable restraint on alienation and not change in the use of Lots, which shall continue to be used for single-family residential purposes.

(f) **Enforcement.** The ~~Board~~ Trustees are authorized to enforce any violation by tenant or occupant (regardless of relationship to Owner) of the ~~Governing Documents Restrictive Agreement~~, except for nonpayment of rent, and may deem such violation a default of the Lease and shall have the right, after notice to the Owner and opportunity to cure, to terminate the Lease by judicial proceeding, and shall have all other remedies under the ~~Governing Documents Restrictive Agreement~~. In the event the Owner fails to pay any assessment and related charges and fees for 60 days or more, the ~~Board~~ Trustees, upon written notice, may direct the tenant to pay rent directly to the ~~Board~~ Trustees which shall be applied to the Owner's account until the delinquency is paid in full; otherwise, however, the foregoing shall not impose any direct liability on a tenant to pay any general or special assessment on behalf of the Owner.”

What is accomplished with this new Section 28:

The approval of this revision will eliminate the uncertainty surrounding the adoption and enforcement of this Section 28 provision by the Trustees.