A. Introduction

This article is intended to help owners of condominium units in California understand the basics about the laws and documents that govern their relationship with other condominium owners within a condominium building. We also introduce the concept of amending a building’s condominium documents to allow for short-term rental (“STR”) use of their unit by third parties.

STR use has become easier than ever as the sharing economy continues to grow and owners of hard assets (condominiums, homes, cars, etc.) continually seek out new and more efficient ways to use their property. While many local jurisdictions have recently started to regulate the STR industry through local zoning laws and in many cases permit STR use, this alone does not clear the path for STR use within a condominium building. Even if a jurisdiction authorizes STR use, each individual condominium association must also decide to allow it. Local law cannot overrule the Association’s right to further regulate use within the building pursuant to California state law, and many project’s condominium documents restrict the rental of units.

This primer is not intended to substitute for sound legal advice tailored to a specific Association or owner’s situation. We encourage any individual condominium owner or Association leadership to consult with qualified legal counsel before making any changes to condominium documents.

B. HOAs and CC&R Primer

Homeowners Associations (“HOAs”) are creatures of state law, and must abide by all applicable statutes and regulations.

1. What are the laws governing HOAs?

HOAs are primarily governed by the Davis-Stirling Common Interest Development Act (“Davis-Stirling Act”). The Davis-Stirling Act covers requirements for laws regarding an HOA’s governing documents, the ownership and transfer of interests, property use and maintenance, HOA governance, assessments, insurance and liability, dispute resolution and enforcement, and construction defect litigation. Since most HOAs are nonprofit mutual benefit corporations, most HOAs are also governed by the Nonprofit Mutual Benefit Corporations Law. In general, the Davis-Stirling Act governs the operations and management of the development, while the Nonprofit Mutual Benefit Corporations Law governs the corporate procedures.

2. What are the key terms and definitions?

The key terms and definitions used here and within the applicable laws are listed below for your reference.

“Articles of incorporation” or “articles” means the document that is executed and filed with the state to create the corporate existence of an Association.

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1 California Civil Code §§4000-6150.
2 California Corporations Code §§ 7110-8910.
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“Association” or “HOA” means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development. ³ (also “Homeowners Association”)

“Bylaws” means one of the governing documents adopted by an Association, which generally relates to that Association’s corporate governance (i.e. when and how HOA meetings are held, election procedures, duties of the Board of Directors, etc.)

“Common interest development” means, for the purposes of this article, a condominium project.

“Condominium project” means a real property development consisting of condominiums.⁴

“Declaration” or “declaration of covenants, conditions, and restrictions” or “CC&Rs” means the document that contains the legal description of the common interest development and sets forth the restrictions on the use and enjoyment of any portion of the common interest development.⁵ This is different from the bylaws.

“Governing documents” means the declaration and any other documents, such as bylaws, operating rules, articles of incorporation, or articles of association, which govern the operation of a common interest development or Association.⁶

3. Amending CC&Rs: an Introduction to the Process

CC&Rs must include at least the following items: (i) a legal description of the common interest development, (ii) the type of common interest development involved (e.g. condominium project), (iii) the name of the Association, and (iv) the restrictions on the use or enjoyment of any portion of the common interest development that are intended to be enforceable equitable servitudes.⁷ CC&Rs may contain other matters as the declarant or members consider appropriate.

Upon recording, CC&Rs are enforceable covenants and shall run to the benefit of and restrict all owners of separate interests in the development. Unless the CC&Rs provides otherwise, the CC&Rs may be enforced by any condominium owner or by the HOA, or by both.⁸ Enforcement is ultimately through the courts; neither local nor state government has a role in enforcing these agreements.

CC&Rs may be amended at any time, unless an amendment is prohibited or limited by the express terms of the CC&Rs.⁹ An amendment is effective after the following requirements are met: (i) approval by the percentage of members required by the CC&Rs and any other person whose approval is required by the CC&Rs, or by a majority of all members, if the CC&Rs does not specify a required percentage; (ii) written certification acknowledged by the officer

³ Civil Code §4080.
⁴ Civil Code §4125.
⁵ Civil Code §4135.
⁶ Civil Code §4150.
⁷ Civil Code §4250.
⁸ Civil Code §5975.
⁹ Civil Code §4260.
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designated in the CC&Rs or by the HOA, or if not designated, by the HOA president; (iii) the amendment has been recorded in each county in which a portion of the common interest development is located.  

The HOA will also need to tailor any restrictions to be consistent with the limitations imposed on rental of units in general. Some projects limit the total number of units that may be rented, and therefore not “owner occupied.” Some projects prohibit the rental of units altogether. (California law was changed on this point in 2012. Only projects with CC&Rs or amended CC&Rs recorded prior to the owner’s acquiring the unit may restrict owners from renting their units.)

C. How Should HOAs Consider the Benefits and Burdens?

1. Benefits

There are two areas in which the use of short-term rentals may add value to both the project and to the individual unit.

First, and most obvious, is the fact that allowing STR within the condominium structure would allow each owner to make additional money. This could help the owner pay monthly HOA dues or provide savings for special assessments passed by the Association or other personal use. This is basically the same argument used by renters and owners that support STR. This income is meaningful and can sometimes make the difference between whether the owner can afford the mortgage. This is likely the primary reason that Associations may want to amend the CC&R documents to allow STR.

Less obvious, but also important, is the potential improvement of the image of the project as time goes on and people get more and more comfortable with STR. Prohibiting STR may be seen negatively. There is no question that the sharing economy is here to stay. The home-sharing websites and platforms are likely to expand their reach into the travel market. It is conceivable that as STR becomes more and more accepted within each community, buildings that are already allowing such use and working with owners may be ahead of the game. An organized and thoughtful approach to STRs is arguably better than prohibiting or limiting STRs for a number of reasons. The time and expense of addressing those that violate the STR rules could outweigh the benefits of restricting STRs. Since many homeowners will take advantage of STRs, it may be best to encourage owners to comply with the rules and collect some additional income for the HOA, rather than incur the expense of fighting STRs. The suggested downsides may not be as bad as perceived.

2. Burdens

The negatives here are fairly straightforward and arise mostly from potential bad behavior by guests of the STR owner. If the building is seen as a “party pad” or has repeated difficulties with guests in general, that can certainly lead to friction within the Association itself, and possibly even going so far as to impact the project’s value, or in a severe case, incentivize owners to leave the building. Use of common area facilities, parking and utilities in a manner that significantly exceeds the typical use by the regular owner and increases costs is something that may also be of a concern to the HOA. Another potential concern for HOAs may be damage or bodily injury to, or caused by, STR guests or people that an STR guest brings onto the

10 Civil Code 4270.
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premises. CC&Rs typically have provisions for guest liability, but more specific language may be desired. While these are legitimate concerns, careful planning and regulation of STR within the Association’s governing documents should be able to minimize most of the issues.

D. Regulation of STR Activity within the CC&R Structure

Probably the most difficult issue for any group of homeowners to come to agreement on is how to appropriately regulate the short-term rental activities from within the CCR structure. Assuming the owners that make up the voting majority in the HOA are in agreement that some form of STR should be allowed, the next step is to delve into the details.

In our discussion below, we will separate the two general groups of areas for consideration into practical issues and legal issues.

1. Practical Issues

Under this broad category we try to include everything that an HOA might consider to be a positive or negative issue with respect to the operation of STR. The following questions are relevant to this discussion:

- How many days a year should an owner be allowed to rent out the condominium as a STR?
- Should an owner pay a fee to its HOA to cover potential additional common area expenses or costs of administrative oversight?
- What kind of objective standards should be put in place to regulate bad behavior (noise, damage to common areas, parties, trash, security, etc.)?
- What kind of penalties is the HOA willing to consider for an offending owner member?

a. Rental Periods

One of the easier objective standards to establish is how many days a year an owner’s unit may be rented out as a STR. Of course, the HOA needs to first consult local law to confirm that STR is in fact legal and other local rules and regulations applicable to STRs, including limits on number of stays per year, number of STR units allowed in a given area, and registration and contact requirements. Another potential requirement could be that people within the HOA are notified that a unit owner is proposing to use the unit for STR in the future—or at least neighbors that share common walls or hallways be notified. Similarly, a 24-hour or 48-hour advance notification of an impending STR use could be appropriate for smaller HOAs, or alternatively for this 24 or 48-hour advance notice to go to the unit’s neighbors.

The HOA should not allow STR use for a number of days per year that would exceed what would otherwise be allowed by local law. The HOA could consider a provision that simply allows the same number of days as would be allowed under local law. The HOA could also reduce that number as it sees fit based on the owners’ goals and needs. A small allowance of less than 30 to 60 days annually is likely not enough of a benefit to any individual owner. An
additional factor is that it may not be worth the trouble and expense of amending the CC&Rs and establishing HOA policies and regulations if an owner would only be able to rent out his or her unit as a STR for just a few days each year.

b. **Registration Requirements**

The Association should also consider registration requirements. These may or may not match with local ordinance requirements. For example, the Association could require that any owner interested in renting a unit as a STR provide the Association with proof of obtaining any required licensing and insurance, and if no specific licensing is required, a statement of intent to rent as STR in any given calendar year. Also, periodic reports to the Association on number of stays, alerts to the HOA of pending STR rentals, and year-end summary reports, could all be reasonable requirements.

c. **Bad Behavior**

Some issues will be more difficult to figure out than setting time limits on STRs. It is often difficult to attach objective standards to human behavior, especially where a significant amount of subjectivity is involved in describing the behavior. In other words, one person’s fun get-together may be viewed by another as a disruptive party. Disputes are most likely between “super-sensitive people” and those with a more “laissez-faire” attitude.

For example, an owner rents her unit out to a couple traveling from Europe. That couple is in San Francisco and visiting local friends. Those friends come over to the unit for a dinner. No wild music, no big group of people, just one couple entertaining another couple at dinner. However, in the coming and going of the parties before and after dinner, there is some loud boisterous laughter and talking in the hallway. This disturbs the next-door neighbor. Is this the kind of complaint that would cause a problem within the HOA? Most reasonable people would say no. That said, such a sensitive person may be in the building and object to even minor disturbances like this. Every case is unique, and each group of owners would need to carefully think this issue through before making any final decisions.

d. **Injuries and Property Damage**

The HOA will need protection from the physical consequences of a problematic STR, including damage to common areas and bodily injury to anyone as a result of the STR, including owners, guests, and the STR users. This can be accomplished by requiring that the owner of the STR unit maintain a broad insurance policy that names the HOA as an additional insured and covers events that take place while the unit is being used for STR. Additionally, terms could be added to the HOA’s governing documents, or a separate agreement could be entered into between the HOA and the applicable owner, ensuring that the HOA’s liability is limited and that the owner will protect, indemnify, and hold the HOA harmless for any and all damage or injury that results from use of the owner’s unit as STR. An example of such language is provided below.

e. **Security**

Depending on a variety of issues, including the size of the building, the neighborhood, and other practical issues with respect to the safety of the residents and visitors, the issue of security should be discussed.
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A large condominium building may already have a security guard posted in the lobby. The security guard, and any HOA management company, should be fully apprised of any new protocols or rules related to STRs within the building. This is the easiest of the scenarios to deal with, as that there is already a built-in security system with a live, objective human being that can observe and report back to the Association. While it would not be appropriate to put the security person in place as “STR police” (i.e., they will not be enforcing any CC&R provisions), they will certainly have the capacity to observe and take careful notes as to what is going on in the building, as well as to assist the STR owner and the STR guests, as appropriate.

For smaller buildings with no full-time lobby assistance and no security guard, the question becomes one of expense and practicality. A small four or five unit building with virtually no lobby has no practical way to bring in 24-hour security, and such a small HOA would probably not want to pay for this service. So what does security mean in this context? At a minimum, it means the Association’s direction to the STR owner should be that she is fully responsible for all activities and actions by her STR guests. This could take the form of requiring more insurance of this particular owner, having the owner or designated representative on-call in case of a problem, or other similar rules that emphasize the owner’s responsibility for everything that happens when STR guests are on the premises.

Other potential security issues include access to common area keys or entrance codes, and notifying neighbors of STR uses so the neighbors can be on the lookout for suspicious or potentially illegal behavior. There may be some expense to provide short-term passwords or key cards that expire after a short period of time.

f. Use of Common Areas

Like the security issue, this one will be very building-specific. Small buildings with little or no common area and no amenities will not have much of an impact. In larger buildings, with many amenities, owners could feel very differently about the subject.

Amenities that are paid for by each condominium owner are likely also to be promoted by the owner when she is enticing potential guests through the STR websites. A pool, large deck with a beautiful view, open space areas with barbecues, fitness centers, and similar benefits are things that many STR users would enjoy. The Association must assume that any given individual trying to maximize his value with STR will want to promote these amenities.

Again, for most people, this is likely not a problem. A project large enough to have the fitness center can easily absorb the use by a few guests who are taking the place of the unit’s regular occupant for a week or two. Their use may be even less than a full-time owner’s use. The same goes for other amenity spaces: nobody in a large building is likely to even notice an extra person or two in the pool area, using a barbeque, or on their viewing deck in the evening having a glass of wine.

The challenge is often caused by the potential for bad behavior. While STR guests certainly should be allowed to make reasonable use of the facilities, no HOA will allow parties in common areas that are not appropriate for such gatherings. This and similar acts would be easy to prohibit through the CC&Rs and STR rules. Below are some sample provisions related to common use and insurance. You will also see that we have provided for a grievance procedure in the event that an owner’s STR guest damages the amenity space or does not provide proper
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clean up. For example, the HOA could install a “one-strike” system of punishing an STR owner for a first significant violation by simply prohibiting that owner from allowing guests to use the amenity space any further. This could theoretically still allow the owner to offer his or her unit for STR, but without the benefit of the amenities. Further violations could include monetary fines, suspension or even revocation of the right for that owner to offer his or her unit for STR.

g. Overload on Common Areas and Services

For most STR users, typically there should not be any “overuse” of the common areas and utilities, such as wear and tear on the building structure, trash service, and common utilities at the project, compared to full-time use of the residence by the owner. Utilities serving the unit itself are typically separately metered, and if they are not, provisions could be included in the CC&Rs to address any additional costs. Any concern with common area utilities and building use could be addressed by making sure that the number of individuals using the unit for STR purposes is limited to that similar to regular residential use. Most CC&Rs limit the number of people living in the unit, either based on local zoning requirements or other standards appropriate for that project. These same limits should be adhered to for STR use, and perhaps a lower number of individual users could be considered as a means to reduce any potential concerns. Typical STR use should not cause wear and tear to building structures and systems (such as roofs, decks, building walls) beyond what normally occurs.

2. Legal Issues

a. Lender Approval

Typically, most CC&Rs require that a certain number of the lenders providing loans secured by individual units approve material changes to the CC&Rs. Material changes most often include changes to allocation of assessments, voting rights, termination of the project as a condominium, and other matters that would have a major impact on the value of the property. The Association should review the CC&Rs to confirm if lender approval is required. In most cases, lender approval should not be necessary. Many lenders do impose limits on the number of units at a particular project that are not “owner-occupied” and that are rented to third parties. At the present time, this restriction has not made its way to the STR area. However, Fannie Mae requires that no more than 25% of a condo project be commercial space, including “rental apartments.”

b. Insurance

In order to avoid any risk that the HOA is sued for personal injury claims by the STR users, each owner should be required to carry liability insurance that specifically allows for STR use, and, if feasible, names the HOA as an additional insured. This insurance coverage should extend to the common areas of the project and include a waiver of subrogation in favor of the HOA, so that the HOA is not sued by the owner’s insurance company for contribution to the claim.

c. Sample Language

The following are some sample provisions that could be used as a starting point for drafting “STR Provisions” in an Association’s CC&Rs. While some of this language will vary from project to project, this language may provide a template that can be used to develop the necessary language.
1. **Compliance with Laws**

“Each Owner shall comply with all applicable laws, regulations and ordinances (the “Applicable Laws”) with respect to the Short-Term Rental of their Unit, including, without limitation any limitations imposed by the local jurisdiction on the amount of time that the Unit may be used for Short-Term Rentals. The Owners shall also comply with any registration requirements imposed by Applicable Laws and provide a copy of such registration to the Board. Each Owner shall be responsible for the payment of any taxes or fees that may be assessed due to the Short-Term Rental of their Unit, including, without limitation, any registration fees, franchise taxes, license fees or income taxes. The Owners shall also be solely responsible and liable for compliance with any accessibility laws, including, without limitation, the Americans with Disabilities Act and any applicable State laws. Any failure to comply with Applicable Laws shall be a Default under this Declaration and shall result in the Owner’s loss of any right to the Short-Term Rental of their Unit until such Default is cured.”

2. **Time Limits on Short-Term Use and Number of Guests**

“As a condition precedent to each Owner’s right to the Short-Term Rental of the Owner’s Unit, each Owner shall comply with the limitations imposed by this paragraph. Any Short-Term Rental of a Unit shall not exceed ____ days during any ___ month period. For purposes of this Section, a “day” shall be any day that the Unit is used for a Short-Term Rental (as defined in Section __ above) past 11 a.m. [The number of guests occupying a Unit for Short-Term Rental shall not exceed the number of persons that may occupy a Unit under Section __ of this Declaration] OR [the number of guests occupying a Unit for Short-Term Rental shall not exceed the following limits:

- Two Bedroom Unit: ______ Adults and ___ Children
- One Bedroom Unit: _____ Adults and ___ Children
- Studio Unit: ___ Adults and ___ Children

For purposes of this Section, “Children” shall be defined as persons under the age of 14.

Any breach of this provision shall result in:

- Fines:
- Loss of STR Privileges:”

3. **Registration Requirements**

“Before any Short-Term Rental of a Unit, the Owner shall submit the registration form required by the Board. Such registration form shall include, at a minimum: (i) copies of any registrations required by local ordinances or other applicable laws, (ii) emergency contact information for the Owner, (iii) certificate of insurance, along with the contact information for the Owner’s insurance provider, (iv) Owner’s estimate of the amount of Short-Term Rentals expected during any 12-month period, (v) list of websites that the Unit will be listed on, and (vi) such other information reasonably requested by the Board. The registration form shall be updated on an annual basis.” [Other information could be included, such as application fees, review process, and a specific indemnity that must be signed, in addition to what is in the CC&Rs.]
4. Liability and Insurance

(a) “Liability Insurance. Each Unit Owner shall maintain its own policy or policies of liability insurance against any liability resulting from any injury or damage occurring within the Owner’s Unit and, the Common Area, specifically including any Short-Term Rental use. Each Residential Unit Owner shall, at such Owner’s sole cost and expense, maintain a general liability insurance policy insuring the Unit Owner against liability for injury to any person or damage to any improvements or personal property within the Development arising from the ownership, operation, maintenance and use of the Residential Unit by such Residential Unit Owner or such Owner’s tenant, or their family members, employees, agents, guests or Invitees, specifically including users of a Short-Term Rental of a Unit. Such policy shall have limits of liability of not less than $_____ per occurrence and $______ general aggregate.

(b) “Property Insurance. Each Unit Owner shall maintain its own policy or policies of property insurance providing coverage against losses to personal property located within the Owner’s Unit and all upgrades or additions to the fixtures and improvements installed in the Units by Declarant at the time of original construction of the Unit, but only to the extent that the replacement cost of any such upgrades or additions exceeds the amount of coverage provided by the Association’s insurance described in this Declaration, if any.

(c) Any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the other Owners (and occupants), the Association, and any first mortgagee of the Owner’s Unit.

(d) Each Owner should seek the advice of a qualified insurance consultant regarding personal liability insurance coverage and property insurance coverage appropriate for the Owner, the Owner’s personal property and the Owner’s Unit, and to ensure compliance with the provisions of this Section. Each Owner should consult with a qualified insurance consultant regarding the availability of other insurance coverages, endorsements or riders that may be appropriate for the Owner and the Owner’s Unit in order to provide desired coverage, including, without limitation (i) all risk endorsement, (ii) loss assessment coverage, (iii) living expense endorsement, (iv) rental coverage endorsement (if applicable), and (v) coverage for the Association master policy deductible.

(e) The Association shall have the authority to enforce the Unit Owners’ insurance obligations described in this Section and require that each Owner maintain all of the required insurance coverages. Notwithstanding the foregoing, the Association and its directors, officers and agents have no duty or obligation to monitor, verify or enforce any Owner’s compliance with this Section.

(f) Copies of all insurance policies that an Owner is required to maintain pursuant to this Declaration, or a certificate of such insurance, shall be delivered to the Association upon request. The acceptance of a certificate of insurance by the Association shall not constitute a waiver of any insurance requirements set forth herein.”

It is recommended that the Association’s insurance consultant review this provision for any particular coverage issues.

5. Indemnity Provision
“Each Owner shall be liable to the Association and the remaining Owners for any damage to the Common Area that may be sustained by reason of the negligence of that Owner, members of his family, his contract purchasers, Tenants, Occupant, guests, co-inhabitants, or Invitees, including, without limitation, users of the Short-Term Rental of a Unit, to the extent that any such damage is not covered by insurance. Each Owner, by acceptance of the deed for his or her Unit, agrees for himself or herself and for the members of his or her family, tenants, co-habitants, occupants, guests or Invitees to indemnify the Association and each and every other Owner, and to hold the Association and such Owner harmless from, and to defend such against, any claim by any Person for personal injury or property damage, to the extent (a) occurring within the Unit of that particular Owner, (b) occurring within any exclusive easements over the Common Area appurtenant to that Owner’s Unit, and (c) to the extent arising from or relating to a Short-Term Rental. This indemnification and hold harmless provision shall not apply to the extent the damage or injury is caused by the negligence or willful misconduct of the Association, another Owner, or the family members, tenants, co-habitants, occupants, guests or Invitees of another Owner.”

6. Repair of Damage

“Each Owner shall be liable to the remaining Owners and the Association for any damage to the Common Area and/or any personal property located within the Common Area that may be sustained by reason of the negligence of that Owner, members of his family, his contract purchasers, Tenants, Occupant, guests, co-inhabitants, or Invitees, including users of the Short-Term Rental of the Unit, to the extent that any such damage is not covered by insurance. Each Owner, by acceptance of the deed for his or her Unit, agrees for himself or herself and for the members of his or her family, contract purchasers, co-inhabitants, tenants, Occupants, guests or Invitees to indemnify each and every other Owner and to hold such Owner harmless from, and to defend such Owner against, any claim by any Person for personal injury or property damage occurring (a) within the Unit of that particular Owner, and (b) within any exclusive easements over the Common Area appurtenant to that Owner’s Unit, unless the injury or damage occurred by reason of the negligence of another Owner temporarily visiting in said Condominium or portion of the Common Area subject to an exclusive easement appurtenant to the Unit or is fully covered by insurance.

E. Conclusion. While short-term rentals impose some challenges to a Condominium Project, the benefits are likely to outweigh the burdens. We trust that this article has provided some guidance to you about these issues. As a reminder, you should discuss any changes to a project’s CC&Rs with qualified legal counsel. Best of luck to your Homeowner’s Association as it considers these important issues.