

HMC Attorney Statement Regarding Members Right to Rent or Lease Property

At the August Board meeting, and in correspondence to the Board, some Members have raised concerns about an apparent increase in rentals and the guests that they bring with them. Concerns have been expressed that guests are not knowledgeable about Island Rules and may improperly use some of the common areas, such as the small boat dock. The Board was asked why rentals are allowed at all, when Section 11.2 of the Bylaws (2004) appears to forbid it. Note that the deciding case referenced by the attorney was a 2008 case.

In response to these questions, we received the following statement from the HMC attorney:

“As a general principal, a land owner is entitled to the free use of their land unless that use is prohibited by either applicable law or a restrictive covenant (which you refer to as Bylaws). I am not going to address the applicable zoning regulations other than to say (1) there are significant gray areas when it comes to the operation of cottage industries, and (2) zoning regulations are enforced by the County, not by private parties (who may only lodge a complaint).

“Your Bylaws, however, contain two applicable restrictive covenants in Articles 11.1 and 11.2. Those Articles provide:

“11.1 Single Family Residential Use and Occupancy. The Lots shall be used exclusively for single family residential purposes, including the customary social, recreational and other reasonable uses normally incident to single family residential purposes and for purposes of operating the Association and managing the Community. Residential purposes include sleeping, eating, food preparation for on-site consumption by Residents and Guests, entertaining by Residents of personal Guests and similar activities commonly conducted within a residential dwelling, without regard to whether the Owner or Resident resides in the residence on the Lot as a primary or secondary personal residence, on an ownership, rental, lease or invitee basis.

11.2 Limitation on Business Use. No Trade or Business of any kind may be conducted in or from any Residential Site except that a Resident or Owner residing in a Home on a Residential Site may conduct Business activity within the Residential Site only if:

11.2.1 the Business activity conforms to all zoning and other governmental requirements for the Lot and/or the activity;

11.2.2 the Business activity does not involve persons who are not Owners or Residents coming onto the Properties in any number or manner which shall be determined by the Board to create or constitute a burden on the Properties or the other Owners;

11.2.3 the Business activity does not increase the liability or casualty insurance obligation or premium of the Association; and

11.2.4 In the sole discretion of the Board, the Business activity is consistent with the residential character of the Association and does not constitute a nuisance, annoyance, or hazardous or offensive use.

“ In my opinion, ... short term rental of ... cabins to couples or small groups who use the cabin to sleep, eat, prepare food, and otherwise reside for brief periods of time does not violate either the “residential use and occupancy requirement” of Article 11.1 or the “no trade or business” requirement of 11.2. Generally, a short term vacation rental of a dwelling unit is not a violation of a restrictive covenant that requires all lots to be used for residential (not commercial) purposes. That issue was addressed by the Washington State Court of Appeals in the case of Ross v. Bennett, decided in 2008. In that case, the covenants expressly restricted the use of all lots to a “residential purpose”. A home owner subject to the covenants rented his home as a short term vacation rental for periods of less than 30 days. He made money on the rentals. Neighbors sought a court order enjoining the vacation rental of the property saying it was a commercial use, and not a “residential purpose”. The trial court agreed. The Court of Appeals, however, reversed the decision, and found that the short term rental of the property was a permitted residential use, saying in the second to last paragraph: On its face, the Covenant does not prohibit the short term rental of [the home] to a single family who resides in the home. The covenant merely restricts use of the property to residential purposes. Renting the home to people who use it for the purposes of eating, sleeping and other residential purposes is consistent with the plain language of the Covenant. The transitory or temporary nature of such use by vacation renters does not defeat the residential status. This is consistent with the evidence of context and with preserving the free use of land. Based on the facts I have been given, I believe the decision would be the same in the case at hand. The Bylaws expressly allow dwelling units to be rented. Regardless of the fact that the cabins are rented for profit on a short term basis, that use is not prohibited by the covenants.”

It is the responsibility of every Member to inform their guests, paying or not, of the Island Rules. The Rules are posted on the website and available in booklet form from the office. The Board hopes that every Member who rents out their unit(s) through online or other reservation systems, informs those guests of the Rules. Each Member is responsible for the consequences of their guests' actions. If a neighborly chat doesn't solve a problem, the Rules are there and a formal complaint can be filed.

Thank you.
Board of Directors