

# RIVER OAKS HOMEOWNERS ASSOCIATION

**Dear Fellow Member of the River Oaks Homeowners Association,**

Recently, a Member of our Association initiated his own campaign to oppose the Association's recent Proposal to Restrict Short-Term Rentals. Dialogue and discussion are encouraged because at the end of the day, we all should want what is good for the Community as a whole. A Member who supports this proposal met with Mr. Thebeau and attempted to explain some questions that he raised in emails. During such conversation, it was learned that Mr. Thebeau was not happy with the proposal, as it may affect his future plans to provide his personal residence as a Short-Term Rental. It was also expressed that since the single Short-Term Rental near his property did not negatively affect him, he did not care if other Members had negative experiences with such Short-Term Rentals. Since Mr. Thebeau did not want to listen to reasoning, it was requested that Mr. Thebeau put his legal concerns in writing, and such would be passed on to the Board. The Board has planned on sending Mr. Thebeau's legal questions to the Association's legal counsel. Legal counsel works for the Association as a whole and not the Board or any personal Member and could offer the best legal response to ALL members. Again, open transparency should lead to confidence that every Member's concerns are being addressed.

Mr. Thebeau delayed such legal list to the Board and instead chose a campaign of disinformation to mask his real objective- that is his personal agenda of wanting to have the ability to use his own residence as a Short-Term Rental. He even stated that he might not have bothered to buy into River Oaks HOA Community if he had known that there would be restrictions on his right to provide Short-Term Rentals. Mr. Thebeau's has his right to voice his opinion, and to support his own personal addenda while not supporting the community as a whole. But when the method used is to mask his personal agenda with disinformation, the disinformation will be strongly identified and exposed. Opinions matter, but disinformation serves no purpose except to expose the selfishness of the author. As those in the audience of the Board Meeting on June 22, 2023, witnessed, the Members voiced changes to the pre-drafted proposal and the Board listened and made the changes requested by the Association. After all, this proposal is a product of the Members and whether it passes the 75% threshold or not will be determined by the Members being informed with truthful information. In communication with Collier County, they have eleven (11) homes in the River Oaks HOA property that are on their radar. Therefore, no reasonable person can expect 100% favorable votes in this proposal, as many of these property owners do offer lease opportunities for less than 30 day terms. This proposal does not want to restrict rentals beyond the stated constraints of a minimum of 30 day lease terms and no more than three (3) rental occurrences allowed per year. The Board welcomes Mr. Thebeau establishing his house as a Short-Term Rental Offering if he chooses to do so. But at the same time, if 75% of the Members support the proposed restrictions on Short-Term Rentals, he will need to comply with the Member's decision to restrict any lease term of less than 30 days and he will be restricted to only three separate rental occurrences per year. This will be true for all Members- they have the right to rent their property within the same restrictions.

The Board feels that the legal response from the Association's Legal Counsel should be made available not only to Mr. Thebeau, but to the Membership as a whole. After all, we all deserve factual answers.

Finally, Mr. Thebeau's disinformation makes false claims that in a separate email implies that property values and the tourism industry here in Naples will be negatively affected. Quite contrary, this Proposal intends to preserve value. As to the impact on the tourist town of Naples, if our small 170 lot Association restricts Short-Term Rentals, a reasonable person cannot infer that the tourism industry is concerned about River Oaks attempting to preserve its deeded community by restricting Short-Term Rentals.

Sincerely,  
Terry Wayland, President  
Faith Siwec, Secretary  
Tony Ruberto, Treasurer



July 11, 2023

**VIA ELECTRONIC MAIL ONLY**  
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Board of Directors  
River Oaks Homeowners Association, Inc.

Re: Proposed Rental Restriction Amendment  
**RESPONSE TO CONCERNS**

Dear Board:

As you are aware, this Firm has the pleasure of serving as general counsel for River Oaks Homeowners Association, Inc. (the "Association"). At the Board's direction, this Firm prepared a proposed amendment (the "Amendment") to the Declaration which regulates rentals within the community. It is my understanding that the Board requested that the Amendment be drafted at the request of the members of the Association who had been experiencing issues with short-term rentals in the community.

Our Firm is experienced in both drafting and litigating restrictions within Homeowners' Associations including rental restrictions much like the Amendment. We regularly represent *both* associations and homeowners and understand the dynamics of these restrictions from both the owner and the association's perspective. In concert with the Board, I have prepared the Amendment in order to create some common-sense regulation of rentals within the community.

It has come to my attention that James H. Thebeau, a member of the Association, has raised certain objections to the Amendment. The Board has instructed this Firm to draft this letter in order to ensure that there is full transparency as to the purpose and intent of the Amendment. I write this letter to respond to Mr. Thebeau's stated concerns so that the members of the Association have a full understanding of the meaning and effect of the Amendment.

First, Mr. Thebeau raises concern with Section 20.2.d. of the Amendment which provides that the Board may approve or disapprove a lease if an Owner fails to give the notice required by the Amendment. Mr. Thebeau asserts that the Amendment is overly broad in that it gives the power to the Board to penalize a member who fails to give the proper notice of a lease even if the lease complies with the rest of the Amendment. Mr. Thebeau argues that those who wish to violate the restriction will do so without regard to the Amendment or approval of the Board. Thus, Mr. Thebeau states that the approval process is unnecessary and places an undue burden on other members of the Association. Mr. Thebeau asserts that a simple ban on short-term rentals without a means or process for lease approval would suffice.

While Mr. Thebeau is correct that the Board has the power to nullify a lease that has not obtained proper approval, his concern over such a provision is misplaced. Approval must be sought for any lease so that the Association has the proper authority under the Declaration to enforce the proposed restriction against short-term rentals. The ability to nullify an unapproved lease and take appropriate action against any unapproved tenants gives the Association the necessary enforcement power to ensure compliance with the proposed restriction. Absent such an enforcement mechanism, the Association's only enforcement would be to fine the violating Owner and, if necessary, pursue injunctive relief with the Court.

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In addition to the foregoing, the approval process allows the Association to properly monitor rentals within the community to ensure compliance with all community regulations. Such a process also requires that tenants in the community agree to abide by the Declaration and related community rules and establishes the Association's ability to enforce the same against any violating tenant. I am uncertain why Mr. Thebeau would insist that any application and approval process may pose a threat to an owner's ability to rent their home. Many of the communities throughout Naples and Southwest Florida have a similar (if not more involved) application process for rental approval.

Mr. Thebeau then raises a list of specific concerns which are listed below along with my specific response:

1. **The Amendment should state that no lease of 6 months or more has to be submitted by a Member for review and approval.** In the absence of this provision, the Board will constantly have to determine whether a Member is protected against enforcement of the Amendment by the provisions of Florida Code 703.306 (h) (based on whether the Member voted for the Amendment or the date the Member acquired the property).

Mr. Thebeau's assertion is simply incorrect. § 703.306(h) provides as follows:

(h)1. Except as otherwise provided in this paragraph, any governing document, or amendment to a governing document, that is enacted after July 1, 2021, and that prohibits or regulates rental agreements applies only to a parcel owner who acquires title to the parcel after the effective date of the governing document or amendment, or to a parcel owner who consents, individually or through a representative, to the governing document or amendment.

2. **Notwithstanding subparagraph 1., an association may amend its governing documents to prohibit or regulate rental agreements for a term of less than 6 months and may prohibit the rental of a parcel for more than three times in a calendar year, and such amendments shall apply to all parcel owners.**

Pursuant to subparagraph 2, the Association has the authority to regulate leases which are for periods for less than six (6) months and may prohibit rental of a parcel for more than three times in a calendar year. The Amendment seeks only to regulate these leases and, as such, applies to all Owners.

2. **The Amendment needs to state explicitly that no lease application may be disapproved for reasons other than a violation of the short term rental ban or frequency provision.** This is also a one liner.

The Amendment allows disapproval of a lease if it violates the rental restrictions. The only other bases for disapproval would be a failure to comply with the restriction's notice requirement or a failure to pay assessments. These are common-sense rules which should apply to all applicants.

3. **The 20 day notice provision needs to be changed to 1 business day.** How long does the Board need to look at a lease to determine whether it is prohibited? One or two minutes? Unless it is the Board's intent to conduct a background check on the tenant. If so, the Board should have already informed the Members. Also, it is absurd to call for submission of a fully executed lease 20 days before, let's say, a 30, 60 or even 90 day lease.



A one (1) business day notice requirement is simply untenable. Twenty (20) days is a reasonable period of time in which to seek approval from the Association.

4. **The notice provision needs to be changed so that the notice period does not start over when the Board asks for information.** Again, what information does the Board need other than the term or frequency of the lease?

The Board or its agent needs time to process all applications and vet the information provided. Although the Board does not intend to delay this process, the Board or its agent need appropriate and reasonable amount of time to ensure compliance with the new restriction. If additional information is requested because it was left out of the original application, then the Board should be given sufficient time to review and process that information.

5. **The Board needs to delete the provision requiring the Member to submit proof of County or State licensing of a short term rental.** Does this Amendment allow a lease for which the County or State requires a license? I don't think so.

The provision requiring proof of local licensing ensures that any Owner who wishes to rent on a short-term basis must be registered with the proper local authorities. This ensures that all owners are compliant with local laws and ordinances surrounding said short-term rentals. This further ensures that if there are any violations of these local laws and ordinances, the county can seek appropriate enforcement action. This protects the broader community.

6. **The discretion of the Board to delegate the task of reviewing and approving the lease to any person must be deleted.** No one wants their neighbor to be reviewing their lease application. So if we must have this Amendment, choose the management company.

It is the Board's intention to delegate this duty to the management company; however, the provision gives the Board the ability to delegate this task to another agent should that be required. This allows the Board flexibility to ensure that all rental applications are timely reviewed and processed. For example, if the Board decides to change management companies at some point in the future, it can designate an agent to review applications should there be an intervening time period where there is no management company in place.

Respectfully,

**BOATMAN RICCI**

*Stephen C. Schahrer*

Stephen C. Schahrer, Esq.  
For the Firm