

Sec. 10.20. (p. 1): Leasing, Retroactive Rental Cap, ADU Prohibition, or Tenant Screening Overreach: Clause imposes retroactive rental caps on non-consenting owners, bans statutory ADUs/JADUs, compels prohibited tenant screening disclosures, or authorizes summary eviction exceeding TN statutory authority.

Statutory / Legal Reference: Tenn. Code Ann. Title 66, Ch. 27, Title 48, Ch. 51 - 68 & Tenn. Comp. R. & Regs. 1260-02-.09

Statutory Comparison: Under Tenn. Code Ann. Title 66, Ch. 27, Title 48, Ch. 51 - 68 & Tenn. Comp. R. & Regs. 1260-02-.09, an association may not enforce newly adopted rental caps retroactively against existing non-consenting owners where protected by statute, prohibit statutory Accessory Dwelling Units (ADUs/JADUs), compel prohibited tenant credit/criminal reports, or execute non-judicial summary evictions without statutory authority.

CURRENT WORDING IN DOCUMENT:

Accessory Dwelling Units Prohibited
(a) A "Dwelling Unit" is defined as any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Amend Section 10.20. to grandfather existing non-consenting Owners as required by Tenn. Code Ann. Title 66, Ch. 27, Title 48, Ch. 51 - 68 & Tenn. Comp. R. & Regs. 1260-02-.09, exempt statutory ADUs/JADUs, and conform tenant registration and lease enforcement to Tenn. Code Ann. Title 66, Ch. 27, Title 48, Ch. 51 - 68 & Tenn. Comp. R. & Regs. 1260-02-.09.

AMENDMENT
TO THE
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
PINE CREEK VILLAGE AT BRIARGATE

THIS AMENDMENT is made effective as of the date of recording.

RECITALS

- A. The Declaration of Covenants, Conditions and Restrictions was recorded on November 12, 1998, at Reception No. 098165891, with the El Paso County Clerk and Recorder ("Declaration").
- B. Article 15, Section 15.2 of the Declaration provides that a material amendment to the Declaration, requires the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing 67% of the total votes in the Association (excluding any votes held by the Declarant); provided however, that during the Development Period and for so long as the Declarant owns any Unit, the written consent of the Declarant to any amendment of the Declaration shall also be required.
- C. Article 12, Section 12.4(b) of the Declaration provides that a material amendment to the Declaration requires the approval of Eligible Holders of first Mortgages on Units to which at least 51% of the votes of Units subject to a Mortgage appertain. There are no Eligible Holders of first Mortgages.
- D. The Association desires to amend the Declaration regarding Use Restrictions.
- E. The requisite percentages of consents to this amendment have been obtained by the Delegates as required by Section 15.2 and certified by the Secretary of the Association.
- F. Eligible Holders of first Mortgages are deemed to have approved this amendment in accordance with the procedures outlined in Sections 12.4 through 12.8 and certified by the Secretary of the Association.

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. **Additional Provision.** The following is added as Article 10, Section 10.21:

Section 10.20. Accessory Dwelling Units Prohibited.

- (a) A "Dwelling Unit" is defined as any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating. Notwithstanding any provision in any applicable zoning regulations, each Unit may contain no more than one Dwelling Unit.
- (b) An "Accessory Dwelling Unit" is defined as a Dwelling Unit that is subordinate to the principal Dwelling Unit, that is located upon the same lot or Unit as the principal Dwelling Unit, whether located within the principal Dwelling Unit or detached from the principal Dwelling Unit, regardless of whether it remains under the same ownership as the principal Dwelling Unit. Notwithstanding any provision in any applicable zoning regulations, Accessory Dwelling Units are prohibited within the Community.

2. **No Other Amendments.** Except as amended by the terms of this amendment and previous amendments, the Declaration remains in full force and effect.

3. **Validity.** Any action to challenge this amendment's validity must be brought within one year of the effective date of the amendment.