

**ARMORY PARK DEL SOL HOMEOWNERS ASSOCIATION
RULES AND REGULATIONS PERTAINING TO
THIRD AMENDMENT OF DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS**

The Third Amendment of the Armory Park del Sol Homeowners Association (APdS HOA) Declaration of Covenants, Conditions and Restrictions (CC&Rs), recorded on June 1, 2001 at Docket 11561 at Page 838 amends Section 7.3 ("No Rentals") of the original Declaration and states:

"No Unit shall be rented or leased, nor shall a Unit be occupied by any person(s) other than the Owner and/or Family Members. As used herein, "Family Members" shall mean the spouse or ex-spouse of the Owner, or any of the following blood, half-blood or step-relatives of the Owner: brother, sister, children, grandchildren, parents, grandparents, great-grandparents, and great-great-grandparents. Provided the Unit is occupied by at least (1) Family Member on a full time basis, non-paying guests may also occupy the Unit."

Since the transition of the HOA to homeowner control, several issues of concern have been identified relating to this Amendment, and the APdS Board seeks to clarify these issues by adopting Rules that clarify and define the terms used in amended Section 7.3 in order to ensure that the intent of that Section is fulfilled, while reconciling it with the realities of Ownership of a home within Armory Park del Sol. Section 2.1 of the APdS CC&Rs supports the authority of the Board of Directors to promulgate Rules, and Section 3.1 of the Bylaws provides additional support for the adoption of such Rules. While the Board does not have authority to make a rule or policy that contradicts the terms of the Declaration, the Board may enact rules, polices and resolutions that expand on and are in keeping with the Declaration. Any item that clearly deviates or contradicts specific terms of the Declaration does require an amendment to the CC&Rs approved by at least 67% of owners. Arizona Revised Statutes (ARS §10-3302 and §10-3801) support the ability of Boards of nonprofit corporations to establish policies and rules to manage the affairs of the corporation. Further, case law (*Beachwood Villas Condo. v Poor, Lamden v La Jolla Shores Clubdominium Homeowners Assn*) has established the validity of rules enacted by a Board of Directors, and courts will generally uphold decisions made by the governing board of an owners' association.

Arizona has adopted the *Reinstatement (Third) of Property: Servitude, 6.13* which states that Boards of common interest community associations have the duty to "treat members fairly" and "act reasonably in the exercise of its discretionary powers, including rule-making, enforcement and design control powers."

Since the Third Amendment governs several different issues, each will be addressed here specifically, in a reasonable and fair manner. There will be four rules, with the fourth rule consisting of four parts.

Issue 1. No Rentals. The Third Amendment states clearly that renting and leasing of a Unit is not allowed. Nothing in these rules changes the proscription against renting or leasing, as such a change would require an amendment to the Declaration. For the purpose of clarifying the “No Rental” rule, renting or leasing a home means that the person residing in the home is providing the owner with payment ("rent") or other tangible consideration under a rental agreement (ARS §33-1310 defines a rental agreement as "all agreements, written or oral or implied by law...concerning the use and occupancy of a dwelling unit and premises”).

Rule 1. Renting/leasing will be defined as: someone, other than the Owner(s) or other authorized persons, who is permitted by the Owner to live in the entire house or any portion of the house, and paying something of value to the owner in consideration of this right to live in the house. This could include paying the mortgage or utilities in exchange for permission to live in the house.

Issue 2. Family Members. The Third Amendment lists specific "Family Members" who may occupy the home. The Board believes that the intent in using the term “family member” was to include those persons related to the owner by blood or marriage, as defined in legal dictionaries, and should include persons who are with the Owner in the capacity of a spouse, although the Owner may not legally be married to that person.

Rule 2. In addition to those Family members identified in the Third Amendment, Family Members may also include aunts, uncles, cousins, nieces, nephews and other family or step-family members.

Issue 3. Spouse.

Rule 3. Family Members, as defined in the Third Amendment, will include the Domestic Partner of the Owner, where Domestic Partner is defined as an individual:

- a) Who shares the same regular and permanent residence as the Owner, and***
- b) Who has chosen to share his/her life with the Owner in an intimate and committed relationship of mutual caring, and***
- c) Who is jointly responsible with the owner for the basic necessities of life, and***
- d) Who is not related to the Owner by blood to a degree that would prohibit legal marriage, and***
- e) Who is at least 18 years of age, and***
- f) Who is not legally married, and***
- g) Who is the Owner's sole Domestic Partner***

Issue 4. Non-paying guests. The Third Amendment states that non-paying guests may also occupy the Unit provided the Unit is occupied by at least (1) Family Member on a full time basis. The terms "occupy" and "full time basis" as used in the Amendment require further clarification so homeowners can better understand the application of this section of the CC&Rs.

a) Occupy. There is no consistent common or legal definition of occupy, occupied and occupancy, and the meaning often depends on the context in which the terms are found. Occupancy in the context of a home or real estate does not necessarily mean physical presence. Legal dictionaries include holding or possessing the home within the definition of "occupancy" in addition to residing in the home. ARS §33-1002, while not directly relevant to this issue but still serving as legal precedent, defines an owner-occupant as "a natural person who (1) holds legal title to the real property and (2) resides or intends to reside in the dwelling at least thirty days during the twelve month period immediately following."

Rule 4.1 The Board defines the term “occupied”, as used in the Third Amendment, as referring to the Owner(s) or other authorized person(s) in the home.

b) Full time basis. While a common interpretation of "full-time" would imply physical occupancy for the entire 12 months in any year, the term is subject to different legal definitions and interpretations. The intent of the person(s) referred to in Rule 4.2 may legally be defined and enforced based on location of voter registration and address shown on a driver’s license and motor vehicle registration. In cases of alleged violations of the Third Amendment, the Board has the right to request such documentation in its enforcement of the CC&Rs.

Rule 4.2. The Board defines “full time basis” as used in the Third Amendment: an Owner, Domestic Partner or Family Member who intends to live in the home as his/her permanent or secondary residence for the majority of the year.

c) Non-paying guests.

Rule 4.3. Non-paying guests may be hosted by the Owner when the Owner(s) are either present or not present. There will be no restriction on nonpaying guests in the home as long as the Owner and/or Family Member meet the requirements of Rules 4.1, 4.2 and 4.4.


d) House-sitters. The Board believes that the Third Amendment and rules regarding occupancy and non-paying guests reasonably allow Owners to use house-sitters when the Owner is out of town. A “house-sitter” is defined as a non-paying guest who lives in and cares for a Unit while the Owner or other permitted resident(s) are away. House-sitters do not pay rent or lease the home, as defined in 1.a.

Rule 4.4. Owners may utilize house-sitters. A house-sitter may not live in the Unit for more than six (6) months in any twelve (12) month period. Owners who arrange for a house-sitter to stay in their home must submit the following information to the Association office at least one week prior to the house-sitter residing in the home: the name(s), dates during which the house sitters will be in the home, and house-sitter contact information, including the house-sitter’s email address and cell phone number and a phone number at which the Owner can be reached in the event of an emergency. Such contact information will not be disclosed publicly and would be used only if problems are identified that require contacting the house-sitter and/or Owner. The Owner is still responsible for ensuring that all HOA rules (parking, noise, weeds, etc.) are followed.

The effective date of these rules is August 1, 2012.

Dated this 23 day of July 2012.

Armory Park del Sol Homeowners Association

By:  _____, Michael Katz, President

Witnessed by:  _____, Tom Skinner, Secretary