

New Ruling on Short-Term Rentals

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The Supreme Court of Texas recently issued an opinion that has a major impact on short-term rentals in Texas and the interpretation of deed restrictions.

In *Tarr v. Timberwood Park Owners Association, Inc.*, the Supreme Court of Texas held that phrases in deed restrictions such as “used solely for residential purposes” are not broad enough to prohibit short-term rentals. The case resolved a split among Texas courts relating to the interpretation of deed restrictions containing such language. Prior to Tarr, lower courts reached opposite results despite being faced with similar language.

Tarr concerned language in deed restrictions affecting San Antonio’s Timberwood Park subdivision. The language is very similar to language found in many residential deed restrictions. The restrictions stated that:

All tracts shall be **used solely for residential purposes**, except tracts designated ... for business purposes, provided, however, no business shall be conducted on any of these tracts which is noxious or harmful by reason of odor, dust, smoke, gas, fumes, noise or vibration

Further, the deed restrictions stated that:

No building, other than a **single family residence** containing not less than 1,750 square feet, exclusive of open porches, breezeways, carports and garages, and having not less than 75% of its exterior ground floor walls constructed of masonry, i.e., brick, rock, concrete, or concrete products shall be erected or constructed on any residential tract in Timberwood Park Unit III and no garage may be erected except simultaneously with or subsequent to erection of residence.... All buildings must be completed not later than six (6) months after laying foundations and no structures or house trailers of any kind may be moved on to the property.

The bolded language is important in the outcome of the case. Equally as important as the bolded language is the context in which such language appears because courts distinguish between use restrictions and structural restrictions and will not conflate these separate types of restrictions. The importance of this distinction in the Tarr case is that the first provision’s context is in respect to use restrictions and the second provision’s context is in respect to structural/architectural restrictions. The crux of the HOA’s argument was that the deed restrictions provided for a single-family, residential purpose. Under that argument, the HOA combined language from the two provisions copied above. However, the Court drew a distinction between use and structural restrictions.



A major takeaway from Tarr ...

is a restatement of a long standing principle of real property law - if a deed restriction does not expressly address or restrict a certain use, that usage must be permitted. In Tarr, the deed restrictions were silent on short-term rentals. The Court noted that words in a deed restriction cannot be "enlarged, extended, stretched or changed by construction." Simply put, Texas courts will not make up restrictions when a deed restriction is silent on the issue.

Moving forward after Tarr ...

deed restricted neighborhoods can address short-term rentals in a number of ways that best suit their distinct neighborhood. An important step to regulate short-term rentals would be to define "short-term rentals" within the deed restrictions. The most common approach is defining short-term rentals as a rental of less than thirty days or one month.

One approach to short-term rentals ...

would be a complete prohibition of short-term rentals. Although this may seem like an overreach on the part of a neighborhood, such prohibition would likely be permissible. The prohibition would typically be placed in the "prohibited use" section of the deed restrictions. The prohibition should be accomplished with clear language.

Neighborhoods, however, may choose to permit short-term rentals.

Neighborhoods wanting to allow short-term rentals have two primary avenues for achieving such results. First would be expressly stating that short-term rentals are permitted. Deed restrictions generally have a "permitted use" section, which lists the permitted uses within the neighborhood. A neighborhood, however, need not necessarily amend their deed restrictions to expressly permit short-term rentals. As Tarr shows, in many deed restrictions, short-term rentals are likely permitted through silence/vague language.

Neighborhoods can take a third approach ...

and allow short-term rentals subject to various restrictions. This approach would provide neighborhoods the opportunity to allow short-term rentals but subject to specific restrictions that best suit that particular neighborhood's needs. There are numerous ways a neighborhood could regulate short-term rentals. As a starting point, neighborhoods may apply different rules to owner-occupied short-term rentals and non-owner-occupied short-term rentals. The following are common restrictions: occupancy limits, use restrictions (e.g., a neighborhood may prohibit certain types of assemblies), time restrictions on certain types of uses (e.g., a neighborhood may permit weddings at a residency, but only within a certain time window); and/or where in the neighborhood short-term rentals are permitted.

Tarr was a helpful decision because...

it resolved a split among Texas cases. Neighborhoods and individuals desiring to engage in short-term rentals now have more certainty on whether such activity is permitted in any given neighborhood.

The first provision deals with use within the subdivision. It is important to note that it only states use for "residential purposes" and not "single family residential purposes." The Court found that residential purpose means using the property for living purposes as distinguished from using the property for business purposes. The Court found that renters do use the house for living purposes (i.e., one purpose of short-term rental is to provide short-term living arrangements). The Court also noted that the deed restrictions failed to address leasing, use as a vacation home, short-term rentals, minimum-occupancy durations or the like. At the most basic level, renting a home on a short-term basis is considered a residential purpose since the dwelling is used for a living purpose. The Court was unconvinced by arguments that making a profit from short-term rental is a business use. The Court noted that such use would likewise prohibit all leasing – whether short or long term.

The second provision deals with structural/architectural restrictions (e.g., contains language such as "erected or constructed" and contains sources of materials, building requirements, etc.). The Court found that "single family residence" pertains to the type of structure that must be on the lot (not the type of use that may be conducted on such lot). For instance, an apartment, duplex, triplex, or other similar structures would be prohibited on the lot since such structures are not a "single family residence". Although the structure must be single family residence, the use within such home was not expressly limited to single family residential use. Instead, the use was simply restricted to a "residential purpose." The Court did not combine the two provisions to read that the use was restricted to single family residential purposes.