

ENCINITAS RANCH COMMUNITY ASSOCIATION

9610 Waples Street
San Diego, CA 92121-2992
WWW.NNJ.COM

(858) 550-7900
(800) 448-7601
FAX (858) 550-7929

September 24, 2008

ADOPTED LEASE AGREEMENT POLICY

Dear Homeowner(s):

Attached is a policy that the Board agreed to adopt at the Board of Directors Meeting held on Monday, September 8, 2008. This adopted policy is for homes that are leased within our community and pertains to the terms of a lease: that a written lease is required, the Master Governing Documents must be incorporated into each lease, and must be for residential purposes. The term "residential" is usually expressed as a use restriction for "single family dwelling purposes". This has considerable notoriety because of the "dorm house" issue. "The San Diego Municipal Code's definition of 'family,' is two or more persons related through blood, marriage or legal adoption...or unrelated persons who jointly occupy and have equal access to all areas of a dwelling unit and who function together as an integrated economic unit." The Board agreed to base the residential use on this definition with one change; lowering the requirement to "one or more persons" allowing a single person to occupy a residence. The policy also addresses the discipline and eviction of lessees. This policy was developed by the Association's Board of Directors and legal counsel in an attempt to protect the Association and its members.

Thank you.

The Board of Directors

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Dear Homeowner(s):

The purpose of this letter is to clarify several misstatements regarding the Association's rental policy that were contained in a letter recently circulated by an Owner at Encinitas Ranch. The rental policy was enacted to preserve your home's value by enabling the Association to prevent and quickly abate nuisances posed by non-owner residents. Although the Board received almost no opposition to the rental policy during the 30-day comment period, the Board would nonetheless like to briefly respond to the misunderstandings expressed in the above-referenced letter.

This letter stated that "You could not lease your property to two people that are not related." This is incorrect. The City of Encinitas Municipal Code defines "family" in relevant part as:

"FAMILY shall mean one or more persons, an individual or two (2) or more persons related by blood, marriage or adoption, or a group including unrelated individuals bearing the generic character of and living together as a relatively permanent unit sharing such needs as cooking facilities."

Accordingly, as set forth in the Board's correspondence to Owners of September 24, 2008, if unrelated persons "jointly occupy and have equal access to all areas of a dwelling and ... function together as an integrated economic unit" they are considered a "family" even if they are not related by blood, marriage or adoption. Furthermore, the Board has clarified that single individual living by himself or herself would be considered a "family" (also defined in the Encinitas Municipal Code above).

The letter stated that, "The lease document must be approved prior to signing the lease. If you have a tenant ready to move in, you must wait for an approval by the association." This is also incorrect. The rule states that "A copy of the [written] lease must be provided to the Association before tenants occupy an Owner's Residence." There is no approval of the lease or the tenants required; the Owner must simply submit a written lease to the Association before their tenants move in.

The letter also states, "No subleasing permitted by your tenant is permitted." However, the rental policy allows subleasing of a residence so long as prior approval from the Board is obtained.

The letter states, "Without any hearing, the homeowners association can evict your tenant if they determine (at their discretion) that the tenant is in violation of any provision of the association regulation after a 20-day notice." The Board would clarify this statement by adding that the Association has always had the power to immediately commence a court action without a hearing against an Owner and or the Owner's tenants in order to abate a nuisance. (This Association has never exercised that power.) The rental policy simply strengthens the Association's ability to more quickly abate nuisances by evicting nuisance-causing tenants in the event an Owner refuses to cooperate.

The letter was correct that an Owner whose tenant is evicted is liable to the Association for any attorneys' fees incurred by the Association in abating a nuisance and/or evicting a tenant. Again, California law and the Association's governing documents already provided that the prevailing party in any action is entitled to its attorneys' fees. This rental policy simply clarifies that this same policy extends to actions by the Association to evict tenants who pose a nuisance to other Encinitas Ranch residents. The policy behind this is clear: responsible Owner should never bear the cost of abating nuisances caused by irresponsible Owners and their tenants. Conversely, this policy imposes restraints upon the Association, as the remedies afforded under the rental policy are not to be exercised lightly lest the attorneys' fees are awarded against the Association.

As stated in the Board's September 24, 2008 letter to the membership, the primary purpose of the rental policy is to preserve and enhance property values by prohibiting "dormitory" style housing within the Encinitas Ranch community and preventing and abating rare instances of nuisances caused by non-Owners. The rental policy further puts the burden of abating nuisances posed by tenants on the Owner of the property being leased rather than that Owner's neighbors.

If you have questions please do not hesitate to contact the Community Manager, Christina Jaeschke directly at (858)795-7028.

Thank you.

*The Board of Directors
Encinitas Ranch Community Association*

LEASES

Any Owner may delegate his or her rights to use and enjoy the Community Common Area to his or her family members, tenants, lessees or contract purchasers who reside in the Residence; provided, however, that any rental or lease may only be to a family for Single Family Residential Use and for a term not less than one year.

During any period when a Residence has been rented or leased, the Owner-lessor, his or her family, guests and invitees shall not be entitled to use and enjoy the Community Common Areas except to the extent reasonably necessary to perform the Owner's responsibilities as a lessor of the Residence.

Written Leases Required. Any and all rental or leasing agreements shall be in writing and signed by each person over the age of eighteen years actually occupying the Residence. A copy of the lease must be provided to the Association through the Community Manager before tenants occupy an Owner's Residence. All Owners who lease their Residences shall promptly submit names and contact numbers for their tenants to the Community Manager.

All leases and tenant name and contact information must be submitted to:

Encinitas Ranch Community Association
c/o NNJ
9610 Waples Street
San Diego, CA 92121

Governing Documents Incorporated Into All Lease Agreements. Every lease shall provide that the lease or rental is subject to the Governing Documents, and shall provide that any failure to comply with any provision of the Governing Documents shall constitute a default under the terms of the lease agreement. A copy of the Declaration and the most recent Community Rules and Regulations shall be presented to each tenant or lessee by the Owner. Failure of an Owner to comply with this Section or enforce these provisions upon a lessee shall constitute a violation of this Declaration. The default of the governing documents by a tenant shall be deemed a nuisance that may be abated by the imposition of fines upon Owner and any other remedies available at law or in equity.

Residential Purposes Only. The Owner of a Lot on the project may rent or lease their Dwelling, as a whole, to another single family for a residential purpose only. This excludes time-sharing, vacation rentals, boarding houses, dormitories, religious groups, or any other type of non-single family residential dwelling. All leases and rentals will require tenants to reside under a single lease and under no circumstance shall an owner be allowed to sublease any portion of their Lot without prior approval from the Board. Failure to comply with these provisions shall be subject to disciplinary action.

Discipline of Lessees. In the event of any such default, the Owner immediately shall take all actions reasonably necessary to cure the default including, if necessary, eviction of the tenant.

Eviction of Lessees. If any tenant remains in default after notice to Owner and lack of timely action by Owner to abate such nuisance, the Association may bring an action in its own name and/or in the name of the Owner to have the tenant evicted and/or to recover damages. If the court finds that the tenant is violating, or has violated any of the provisions of the Governing Documents, the court may find the tenant guilty of unlawful detainer notwithstanding the fact that the Owner is not the plaintiff in the action and/or the tenant is not otherwise in violation of tenant's lease.

For purposes of granting an unlawful detainer against the tenant, the court may assume that the Owner or person in whose name a contract (the lease or rental agreement) was made was acting for the benefit of the Association. The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies which the Association has.

If permitted by present or future law, the Association may recover all its costs, including court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action. All fees and costs incurred by Association shall be recoverable from Owner after notice and hearing and Associations right to collection from tenant shall also be assigned to Owner.

The Association shall give the tenant and the Owner notice in writing of the nature of the violation of the Governing Documents, and twenty (20) days from the mailing of the notice in which to cure the violation, before the Association may file for eviction.