

Answers in italics below.

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From: Calvin McDonald <7ndel3fr@gmail.com>
Sent: Thursday, July 24, 2025 2:14 PM
To: Darin Taylor <darin.taylor@subdivisionmaker.com>
Subject: Legal Opinion for Our HOA

Darin:

We need a legal opinion on the interpretation of our CC&Rs, *No charge*.

If this is a free-bee answer, great. If not, please give me a price so I can clear paying you with our HOA Board.

Here is the situation....

We have a HOA member who has built a bedroom and bathroom into the upstairs of their barn/shop (separate building from their home) and is AirBBing it - and has been for almost 2 years now. We are trying to determine if this member has followed all County building codes, we aren't asking you about that. We are having the member prove to us that they have followed County rules/requirements.

What we are trying to determine is if they are in violation of our CC&Rs. The applicable sections of the [CC&Rs](#) say (follow the link to see a full copy of the CC&Rs):

Article I

Section B

"Every lot shall be used only for single-family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling, with outbuildings approved by the Architectural Committee." *Assuming the Committee approved the shop, no violation. There is a house and shop, one address.*

Section I:

"No building of a temporary nature, trailer, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporary or permanent." *No echnical violation of CCRs unless there is a kitchen in the shop. However, county code now allows a second dwelling on a lot, which was not contemplated when subdivision was approved and CC&Rs written but has significant value. It makes sense to amend CCRs to allow the second residence on a lot consistent with county code. If desired the second residence could be required to be in a shop or barn.*

Section L:

"No commercial activity or condition shall be permitted upon any part of any lot, which may be or become a nuisance or annoyance to the neighborhood." *No violation, Air bnb is a residential housing business that, by definition, is not a nuisance in a residential subdivision absence .*

Questions:

1. Do our CC&Rs exclude a traditional ADU (a general question)? *Yes.*
2. What exactly is "a residence"? A place with a bedroom, bathroom, kitchen, etc? *Yes.*
Is a bedroom and bathroom rented out short term considered "a residence"? *No.*
3. Our CC&Rs are silent about short term rentals so given Idaho law, would short term rentals be allowed (ignoring what the CC&Rs are saying about one residence)? *Yes, absent a prohibition against rentals in the CCRs.*
4. Does Section L refer to any business, or just businesses that are a nuisance? And who defines what is and is not a nuisance? *Just nuisances and, if not defined in the CCRs, then whoever wants to bring and defend a nuisance claim defines it. A jury will define it is a reasonable person does ... a pattern of outrageous conduct or pattern of conduct contrary to*

CCRs.

5. This same member is also AirBBing his own home. We need to determine if that's in violation of the CC&Rs. It seems to us that there is nothing stopping him from AirBBing his primary residence. Your opinion? *Agreed, absent a prohibition in CCRs, or that will be in Amended CCRs that prohibit short-term rentals.*

6. If, for sake of argument, a full apartment was put in a building other than the primary residence that complied with all County regulations but was sitting empty, is it still "a residence"? Or, is it a residence only if someone is living (sleeping) there? In other words, if the apartment is sitting empty, is it in violation of the CC&Rs? *Yes, existence, not occupancy, determines use.*

Thanks

Calvin McDonald