

## Reversed: Short-term Rental Regulations Declared Void and Unenforceable

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I am happy to report that our real estate litigation team prevailed on appeal in the case of ***Chan, et al., v. The Association of Property Owners of The Hideout, Inc.*** ("The Hideout Appeal"), involving a group of Homeowners challenging unauthorized regulations restricting short term rentals ("STR") adopted by **The Association of Property Owners of The Hideout, Inc.** ("The Hideout"). The Commonwealth Court of Pennsylvania reversed the Wayne County Court of Common Pleas and remanded the case to that court with instructions to enter a declaratory judgment voiding the STR regulations rendering them unenforceable.

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### Why This Matters – Summary

This ruling is significant because it reinforces homeowners' rights against overreach by community associations, particularly regarding short-term rental restrictions. By voiding unauthorized regulations, the court upheld the principle that bylaws cannot conflict with the original declarations of a community. This decision sets a crucial precedent, ensuring that similar restrictions cannot be imposed without clear, explicit authority in the governing documents, thereby protecting the interests of property owners across Pennsylvania.

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In interpreting The Hideout's **declaration of covenants**, the Commonwealth Court first held that the "single-family dwelling" restriction found within the declaration constituted a building restriction and not a use restriction, in that the

restriction applied only to the type of building constructed, not the use of that building. In **The Hideout Appeal**, the Court cited longstanding Pennsylvania Supreme Court precedent regarding deed restrictive covenants, and compared building restrictions and use restrictions. Building restrictions being “concerned with the physical aspect or external appearance of the building[.]” *Jones v. Park Lane for Convalescents*, 120 A.2d 535, 538 (Pa. 1956). Use restrictions on the other hand involve “the purpose for which the buildings are used, the nature of their occupancy, and the operations conducted therein[.]” *Jones* at 538. The Commonwealth Court recognized that “a building restriction and a use restriction are wholly independent of one another” and that one does not include the other “unless the intention to do so is expressly and plainly stated[.]” *Schulman v. Serrill*, 246 A.2d 643, 646 (Pa. 1968) (quoting *Jones*).

The Court noted the reservation of the right to rent found in the prefatory language of the declaration, and that no provision within the declaration thereafter limited that rental right. Consequently, the Court rejected that the “single-family dwelling” building restriction in the **declaration** somehow prevented use of a unit for STRs.

Second, in striking the unauthorized bylaw, the Commonwealth Court also applied the statutory mandate of **68 Pa.C.S. § 5203(c)** that holding that the bylaw amendment restricting STRs conflicted with the declaration. Under **Section 5203(c)** of the Pennsylvania Uniform Planned Community Act a declaration prevails over a bylaw when such a conflict exists.

Importantly, third, the Court held that, despite long standing regulation of rentals by **The Hideout**, the claims of the Homeowners were not waived. The Hideout’s **declaration** specifically provides a savings clause that does not allow delay or the passage of time to cause the Homeowner’s claims to be lost. The declarations of many planned communities across Pennsylvania contain such a provision allowing enforcement of a continuing violation of a declaration even after the passage significant time.

Moreover, it is notable that the Commonwealth Court did not address the zoning case of *The Slice of Life LLC, et al. v. Hamilton Township Zoning Hearing Board, et al.*, 207 A.2d 886 (Pa. 2019). Although repeatedly raised by counsel for The Hideout at all phases of this dispute, the Commonwealth Court did not even address *The Slice of Life* argument, further demonstrating its complete inapplicability to community association law and building restrictions.

Should you have any questions about **The Hideout Appeal** or feel that your community association is wrongfully regulating Short Term Rentals, or otherwise violating its declarations or covenants through overreaching bylaws or rules and regulations, feel free to contact **Eric B. Smith**, Esquire at 215-540-2653 or [esmith@timoneyknox.com](mailto:esmith@timoneyknox.com). You may also view Eric’s prior article **Putting Short Term Rental Regulations In Focus**.

Mr. Smith, a partner of Timoney Knox, LLP, serves as Chair of the Firm’s Litigation Group and has been consistently recognized by Super Lawyers and Best Attorneys since 2005. In 2017 Mr. Smith served as the President of the Montgomery Bar Association. His commercial and real estate litigation practice spans across the Commonwealth of Pennsylvania.