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ATTORNEY GENERAL

October 2, 2012

The Honorable Floyd Nicholson
Senator, District No. 10
P.O. Box 142
Columbia, South Carolina 29202

The Honorable Michael A. Pitts
Representative, District No. 14
327-C Blatt Building
Columbia, South Carolina 29201

Dear Senator Nicholson and Representative Pitts,

By way of letter, you both request an opinion of this Office as to the meaning of the phrase "for residential purposes only" as used in the Restrictive Covenants of Crystal Bay Subdivision located on Lake Greenwood in Laurens County. It is our understanding this question is being asked on behalf of constituents who wish to know whether the restrictive covenants prohibit the use of a house as a vacation rental home, yet allow a house to be rented to a tenant for period of 90 days or longer. The relevant provision states, in part:

> Except as otherwise provided in these Restrictions, **the lots shall be used for residential purposes only**, and no structure shall be erected, placed, altered or permitted to remain on any lot other than one detached, **single-family dwelling** and related structures incidental to the residential use of the lot ....

(emphasis added).

As our Supreme Court has explained, "[r]estrictive covenants are contractual in nature." Hoffman v. Cohen, 262 S.C. 71, 75, 202 S.E.2d 363, 365 (1974). Thus, "[t]he language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution." Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006) (citation omitted). "A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of the property." Hamilton v. CCM, Inc., 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980) (citations omitted). However, "the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenants." Hardy, 369 S.C. at 166, 631 S.E.2d at 542.

Here, the term "residential purposes" is not expressly defined by the restrictive covenants. "When a term is not defined within a contract, evidence of its usual and customary meaning is competent to aid in determining its meaning." Anderson v. Buonforte, 365 S.C. 482, 490, 617 S.E.2d 750, 754 (Ct. App. 2005) (citation omitted). The term "residential" has been defined as "[o]f, relating to, or having residence." The American Heritage College Dictionary 1161 (3d ed. 1997). "Residence" has been defined as "[t]he place in which one lives; a dwelling." Id. Furthermore, the restrictive covenants in this case expressly provide that the subdivision was intended exclusively for single-family dwellings.

The Supreme Court's decision in Hoffman is particularly instructive with regards to the issue of whether the use of a house as a vacation rental home is permitted in a subdivision with covenants restricting the use of property to residential purposes and single-family dwellings. In that case, the Court addressed whether the respondent's proposed construction of a 62-unit high-rise condominium complex violated the restrictive covenants of the subdivision the property was located in. The restrictive covenants provided that no lot shall be subdivided without the written consent of the grantor and that the property shall be used for residential purposes only. Id., 262 S.C. at 74, 202 S.E.2d at 365. Noting it is proper in construing restrictive covenants to consider "the overall plan of the subdivision as conceived and carried out," the Court found the subdivision was "a rather fully developed subdivision consisting almost exclusively of single-family residences." Id. at 77, 202 S.E.2d at 366. In light of this overall plan of development, the Court found the restrictive covenants were designed to prevent the use of the land in a commercial nature such as for the development of condominium units:

> We think that the building of 62 dwelling units on what amounts to approximately three building lots is entirely inconsistent with the overall scheme of the subdivision. Though a condominium is not strictly speaking a commercial project, it involves congestion and many of the undesirable characteristics incident to a commercial undertaking such as a hotel. It is common knowledge that beach residences, especially apartments (conventional or condominium), are often rented to temporary guests at least a part of the year. When so used in a building of this type, the property would become a commercial-type operation, inconsistent, we think, with the whole tenor of the restrictions.

Id. at 76-7, 202 S.E.2d at 366.

In light of the above authorities, we believe a court would find the use of a house as a vacation rental home is inconsistent with the plain language of the restrictive covenants applicable to the subdivision. The restrictions expressly limit the use of property in the subdivision to residential purposes and single-family dwellings. Consistent with the Court's holding in Hoffman, the use of a house as a vacation rental home would constitute a commercial-type operation which was not contemplated by the restrictive covenants at the time they were executed. As to the question of whether a property owner may still rent a house in the subdivision to a tenant, we believe a court would undoubtedly resolve such a question in favor of the free use of the property. Therefore, we do not believe the restrictions prohibit the use of property for such purposes. We cannot, however, say that the line of demarcation between the use

of a house as a vacation home or a rental home is whether the rental period is for 90 days or more. No such minimum lease period can be derived from the express language of the restrictive covenants.

Very truly yours,

Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General