

Rental Policy FAQ No. 2

All Owners

- 1. Why is the board pursuing rules that include a Rental Cap? What will happen if the building exceeds 49% rentals? How would it affect the value of my home, and my ability to sell or refinance?**

It is in the best interests of all homeowners in the building to ensure that no more than 49% of units are rented in order to maintain property values at NEXUS.

Fannie Mae and Freddie Mac will not purchase mortgages in condominiums if fewer than 50% of the units are occupied as primary residences or second homes. If the building violates that limit, the building becomes “non-warrantable” for Fannie Mae and Freddie Mac purposes. This means that neither conventional nor jumbo mortgage lenders will lend on new transactions in the building, making it difficult for owners to re-sell units in the building and lowering property values.

The Board has become aware that a significant number of owners who represented to the developer that they were buying their unit as a Primary Residence or Second Home have listed their units for lease. This is putting the 49% rental limit at risk of being exceeded. This is not an acceptable outcome for our building, and so the HOA board is taking measures to keep the number of rentals in the building within the 49% limit while providing owners who represented they were Investor buyers a reasonable priority to lease.

- 2. Can the Board enact a Rental Cap via the rules? Doesn't a rental cap require a Declaration Amendment which would require a vote of the Owners?**

The board can enact a rental cap by rule if the rental cap is designed to meet the underwriting requirements of the mortgage market. This is set forth in WUCIOA (RCW 64.90.510(9)(c)) and in Section 10.3.9 of the NEXUS Declaration. Generally speaking, a broader rental cap that was not tied to mortgage market requirements would require an owner vote.

- 3. Is the Rental Cap permanent?**

No. The rental cap rules expire on December 31, 2020 unless extended by the board. At that time, the board can extend or modify these rules, or let them lapse. Also, since this is a policy adopted by the board, the board has the authority to modify or terminate the policy at any time.

4. Did the board make any changes to the proposed rules in response to comments received?

Yes. The board received comments from 61 unit owners. Some commented that they supported the rule. Many owners commented that they represented themselves as investor buyers and it was unfair for non-investors to penalize them. Many owners commented that they thought they would be able rent their unit even though they represented they were buying their unit as a primary residence or second home. Some owners commented that the rules should not apply to them. The board also conferred with a respected lending broker to understand the impact on owners if the project becomes “non-warrantable.”

After considering the comments, the board made three changes to the proposed rules. First, it changed the expiration of the required occupancy period in section 4.1 from May 31, 2021 to December 31, 2020. Thus, the priority window for investors to rent their units will expire on the date that all owners who were investor buyers have leased their units, or in approximately six months, whichever is earlier. Second, it modified the definition of hardship to eliminate voluntary relocations and permanent involuntary relocations. Third, it added a “sunset” clause to the rules so that the rules will expire on December 31, 2020, unless extended by the board. The board believes that these changes will allow a sufficient period for individual rentals to stabilize at a rate that does not harm the collective community, while not unreasonably delaying the ability of individual owners to rent their units, and while ensuring that the board re-visits the policy by the end of the year.

5. When is the Rental Cap effective?

The rental cap rules are effective from June 1, 2020 through December 31, 2020. Owners must comply with the rules during that time period unless they are amended or extended by the board. Refer to sections 2.1 and 2.2 of the rules.

6. What does the revised policy say?

The following is only a summary. The language of the rules controls. Before renting a unit, an owner must apply to the board and obtain approval to rent. Applications are processed on a first come, first served basis. Owners who represented to the developer that they were Investor buyers will have a priority period to lease their units until (i) the date that all such owners have leased their units, or (ii) December 31, 2020, whichever is earlier. A rental will only be approved if the number of rented units is below 49% (currently 190 units). The board has the power to grant exceptions to the rental cap for hardship, as defined in the rule. Refer to section 6.2 of the rule, relating to hardship exceptions.

Under the rules, once all of the investor owners are approved to rent their units, then other owners can proceed to rent their units, up to the 49% cap.

7. What happens if the rules are violated?

An owner who leases in violation of the rules will be subject to the fines set forth in Section 7.1 of the rule, which begin at \$100 per day of violation.

Investment Owners

1. Does the Rental Cap apply to me if I told the developer I was an Investment buyer?

If you represented to the developer that you were an Investment buyer you are still required to apply to lease your unit and still subject to the 49% rental cap. However, you will be given a priority period to rent your unit until the end of the year, during which time other owners will have to wait to rent their units.

2. Can I sell my unit, which has an Investment ownership status, to a new buyer while retaining Investment status?

Units do not have status as “investment” units under the rules. If you sell your unit, no matter how you represented yourself to the developer, then the buyer must apply to rent. A lease in place at the time of sale must terminate within 90 days of the sale. If the new owner wants to rent but there is no availability within the 49% rental limit, the new owner will be placed on the rental waiting list in accordance with the rules. Refer to section 5.5 of the rules.

3. I purchased as an Investment buyer and I am now concerned that those who purchased as Primary Residence or Second Home buyers are leasing their units. Does the Rental Cap acknowledge my Investment Buyer status?

The Rental Cap allows an initial period until December 31, 2020 during which an owner who was an Investment buyer will be allowed to rent their units before other owners will be permitted to rent their units. If all the investment buyers are approved for rent before that date, other owners can also be approved for rent. Refer to section 4.1 of the rules.

Primary or Secondary Homeowners

1. I represented that I was a Primary Residence or Second Home buyer but was told by the agent at time of purchase there was no rental cap and I would be able to rent out my unit. Why would I not be able to lease my home?

The board cannot comment on statements made by sales agents. While it is true that there is no rental cap in the declaration, section 10.3.9 of the declaration states that all rentals will be subject to rules adopted by the board to meet mortgage market requirements. Homeowners in all condominium buildings are subject to rules adopted by the board and declaration amendments adopted by the owners, from time to time.

The board has become aware of a number of owners who purchased as Primary Residence and Second Home buyers who have listed their units for rent immediately after closing, which is putting the condominium at risk of exceeding the 49% rental limit, and damaging property values for all owners, which is not an acceptable outcome.

2. Would it be considered loan fraud if I purchased my unit as a Primary or Secondary home and then leased my unit?

Representing to your lender that you were purchasing your unit as a Primary Residence or Second Home buyer while knowing that you intended to rent your unit might be considered an act of fraud. The board has not accused any owners of fraud. The board is not in a position of giving legal advice. You should consult with your attorney if you have any questions about this issue.

3. If I am a Primary or Secondary owner but I have already rented out my unit, am I in violation of the rules and will I be held to the cap once my tenant moves out?

The rules do not attempt to “un-do” leases that commenced before the effective date. The board has the power, however, to enforce the rules against owners who back date leases or otherwise try to game the rules. In addition, all rentals count towards the 49% rental cap, and once a rental terminates, any new rental must be made pursuant to the rules and rental application process. Refer to section 5.5 of the rules.