



EADS MURRAY
& PUGH P.C.



Rental Restrictions

Types and Process for Amendment
Of Covenants and Restrictions for
Community Associations

Disclaimer:

This document is for informational purposes only and does not constitute legal advice. The facts and circumstances surrounding each community are unique and an attorney should be consulted with specific questions regarding a proposed action. Anyone using the information provided in this material without seeking legal advice from an attorney does so at their own risk.



Enforceable? YES!

- *Villas West II of Willowridge HOA v. McGlothin*, Indiana Supreme Court in 2008.
- HELD: Rental ban in Kokomo condo was enforceable.



Do your Covenants address rentals?

- Unlikely if developer drafted documents
- Common language regarding no “transient” or hotel type uses
- Indiana law: “Residential Use” requirement/prohibition against “Commercial Use” does NOT mean no rentals.



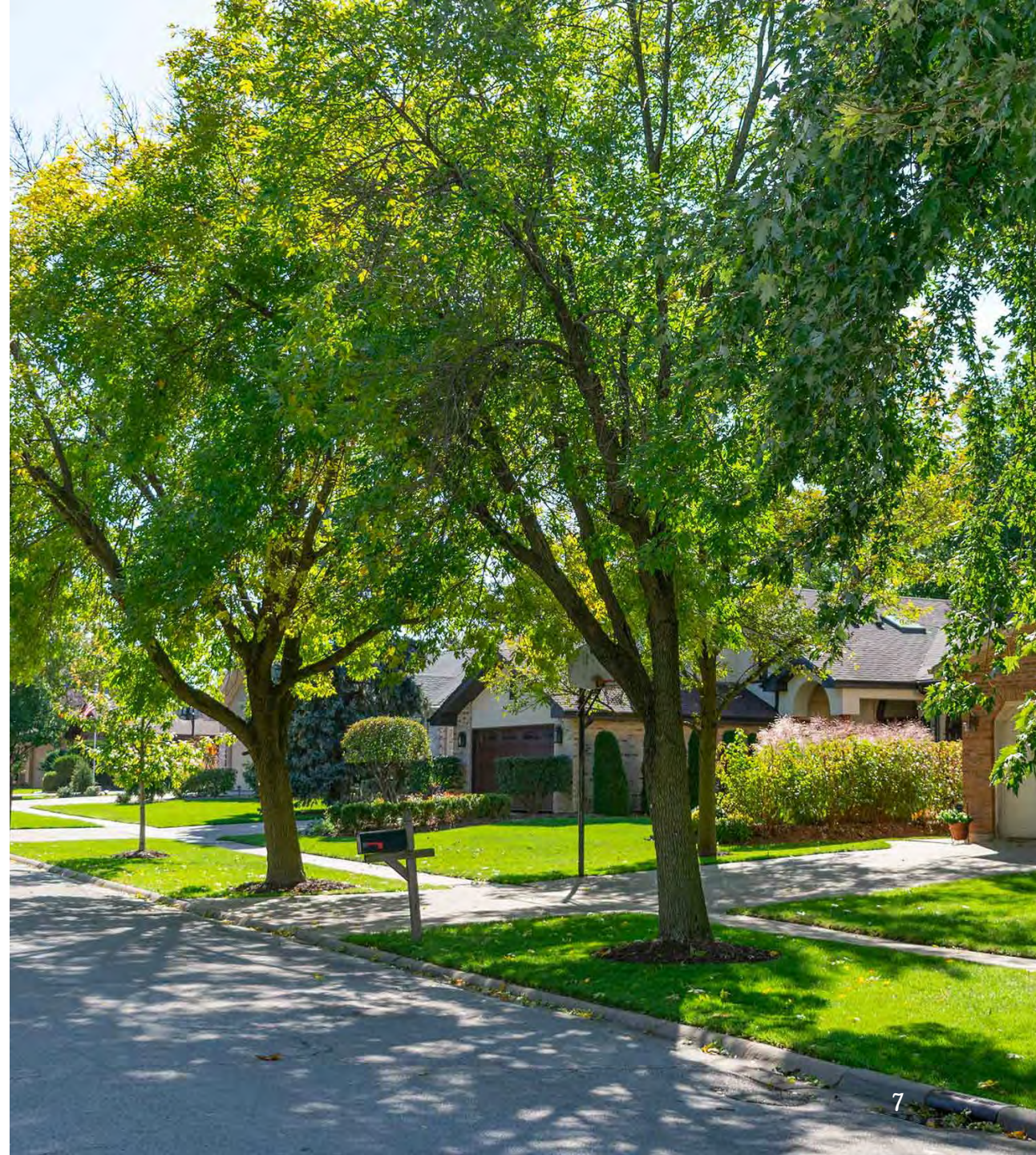
TYPES of Rental Restrictions

- Total Rental Ban
- Rental Cap (% of Lots/Units)
- Waiting Period
- Short-term rental ban
- Hybrid Approach (cap AND a waiting period)



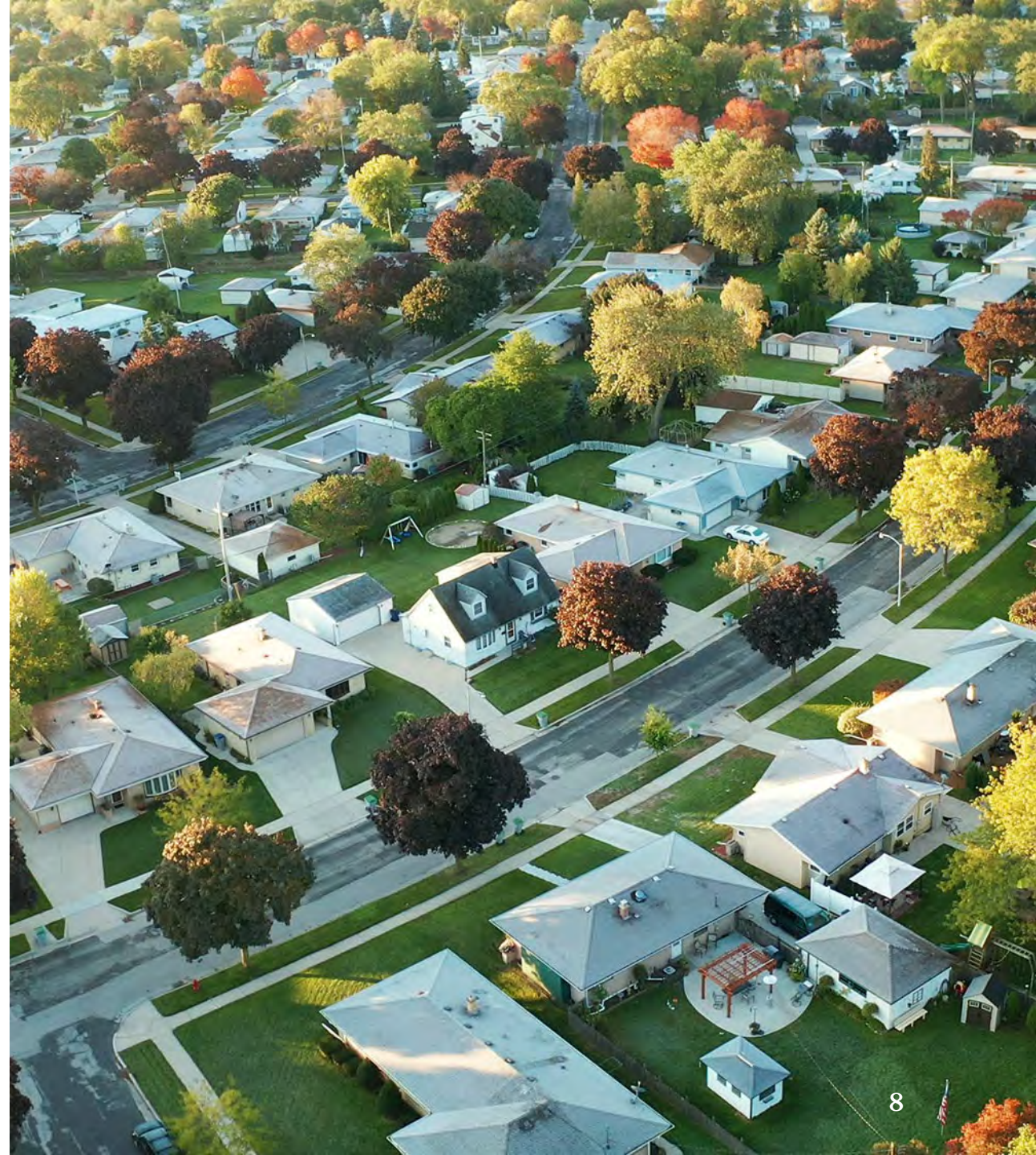
Total Rental Ban

- No rentals or leasing permitted
- Pro: Straightforward & simple; easy to administer & monitor
- Con: Harder to get owner approval; fear that it limits owners options



Percentage Rental Cap

- Only specific percent of homes may be rented at any given time
- PROS: permits some rentals;
- Easier to convince owners to adopt;
- Keeps number of rentals low
- CONS: administrative difficulties / oversight;
- Not easy to have accurate and updated list of rentals
- Maintaining a waiting list



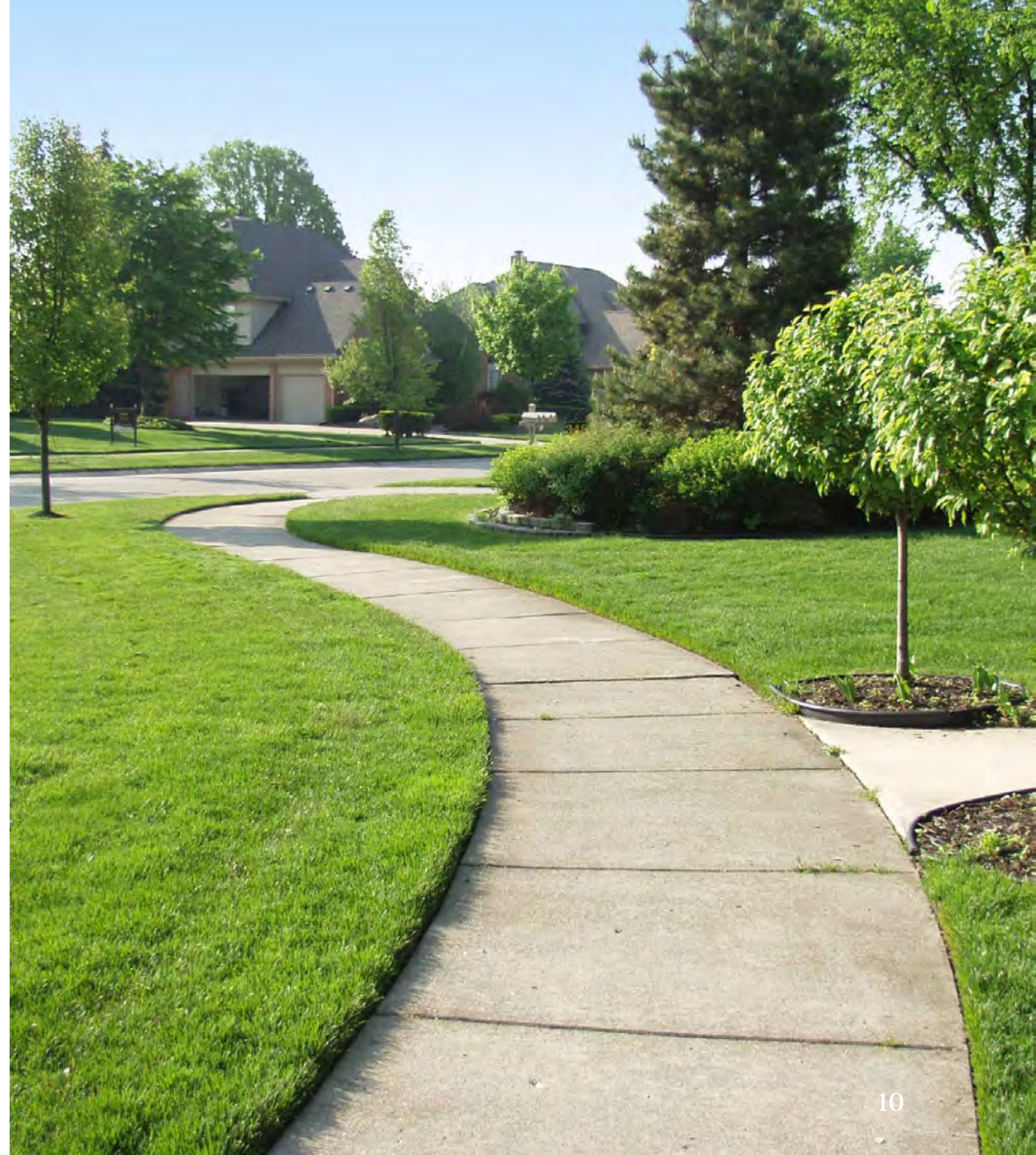
Waiting Period

- Property must be owned or owner occupied for specific time period before eligible to rent or lease
- PROS: keeps investment companies at bay;
- Permits an owner-occupant the ability to rent if needed;
- Keeps rental numbers low
- CONS: there is no cap on the number of rentals;
- Total number might rise higher than desirable.



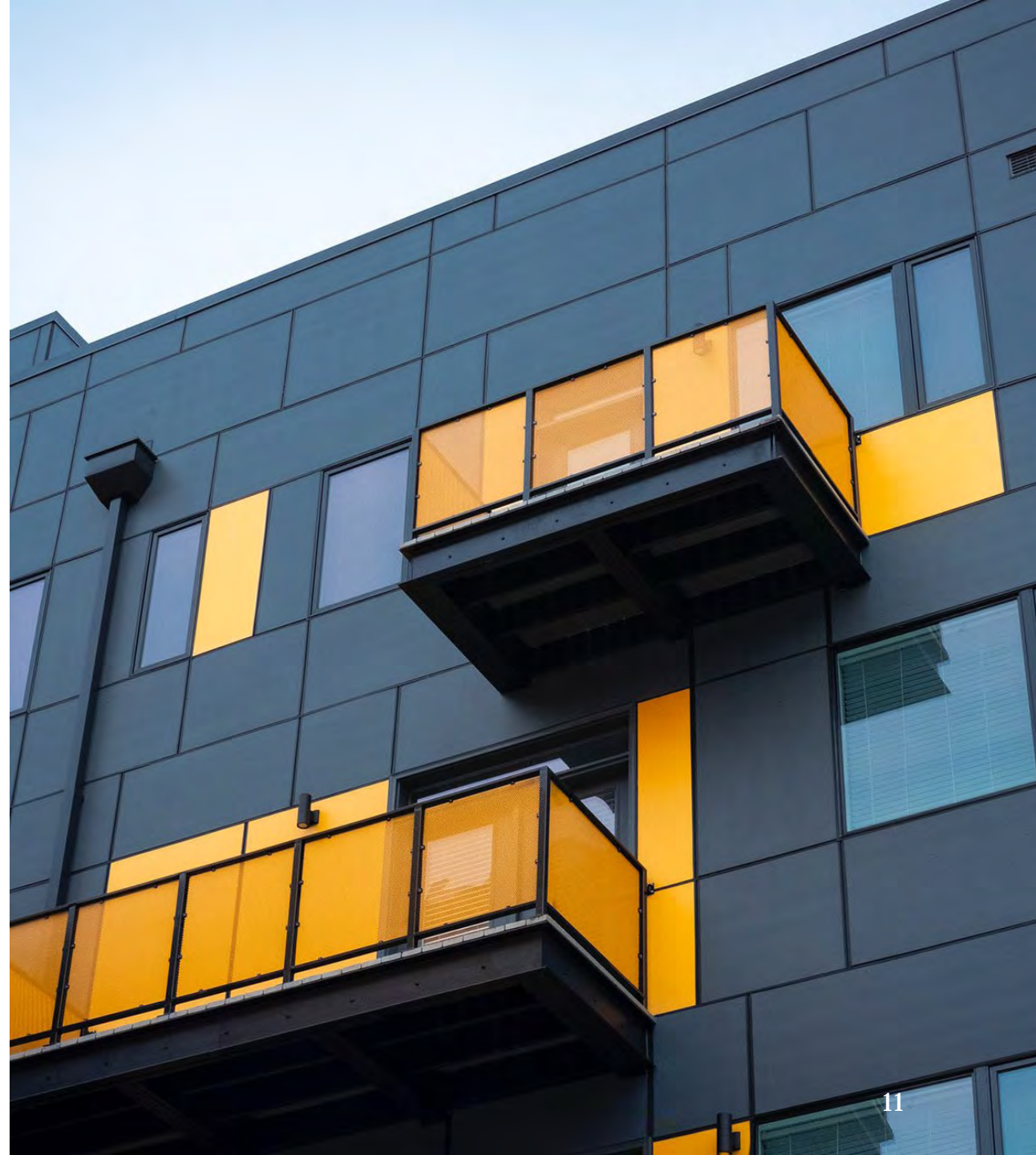
Hybrid Approach

- Implement two of the options together
- Percentage Cap & Waiting Period



Common Additional provisions

- Minimum term of 12 months
- Must lease the entire home
- No sub-leasing
- Landlord must give copy of lease to the HOA
- Owner must notify HOA of intent to lease
- Owner must provide covenants/rules to tenant



Exceptions

- Grandfathering for current landlords
- Hardship Exceptions (not required but used as a selling point)



Common Types of Hardships

- Relocation in excess of 50 miles
- Active military
- Death
- Divorce
- Transfer to assisted living
- Inability to sell property after attempts at listing



Enforcement

- Enforceable just like other restrictions.
- If violated, HOA can file suit and pursue order for removal of the tenant plus ask for attorney fees (if permitted in the covenants).



Adoption Method

- **CANNOT** just adopt a rule
- Covenants will need to be amended
- Owner approval will be required based on document requirements



Strategies for Adoption

- Discuss with owners informally to gauge interest
- Discuss as a Board-be honest; think about future boards
- Determine current rate of rentals
- Ready?? Call legal counsel!



The Legal Process

- Review the amendment requirements to know how many “yes” votes you will need!!!
- Ask the HOA’s attorney to help draft the language of the rental amendment
- Board review of the draft and revise if needed
- We strongly recommend a town hall meeting with the owners to present the draft for Q&A



The Legal Process- continued

- If positive response, prepare the final draft
- Coordinate with the HOA attorney the documents that will be necessary for the vote
- Voting could be done in different ways
- Once approved, the attorney will prepare it in recordable format
- Once signed and notarized, **RECORD IT!**



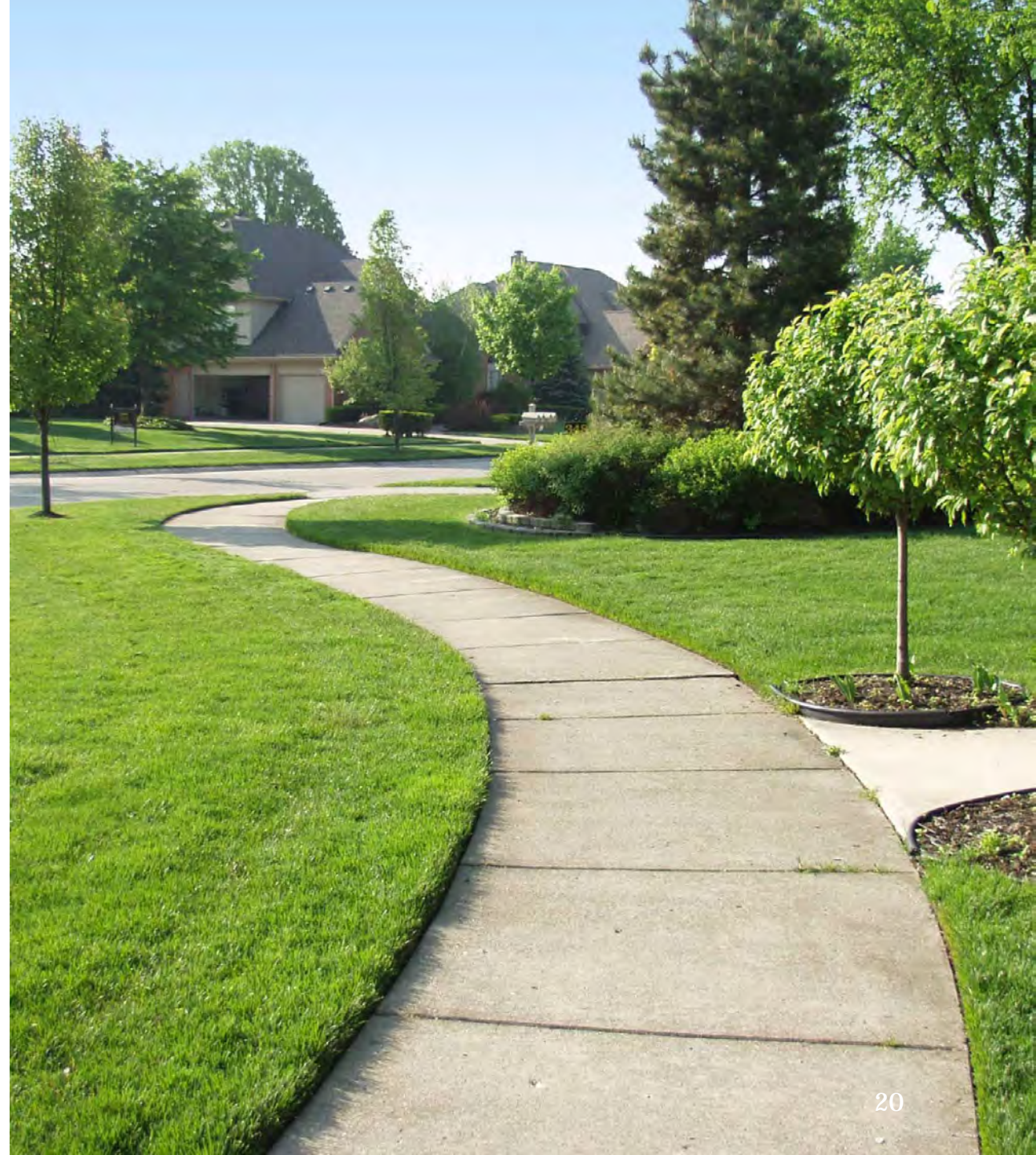
Voting Methods

- Owners vote in person or by proxy at an Owners Meeting
- Mail in Ballots in accordance with Indiana Non-profit Corporations Act
- Electronic Voting-Only if permitted by the governing documents



Take-aways

- Really consider your community's needs
- Be strategic
- Involve owners early
- Listen to feedback and adjust where necessary



THANK YOU!

- Contact us:



- Kim@IndianaHOALaw.com
- www.IndianaHOALaw.com
- 317-536-2565





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