Difficulties and Risks of Imposing a Rental Cap in a California Condo HOA

1. The Statutory Floor: California Civil Code §4741

Civil Code §4741 allows an HOA to place a ceiling on the number of rentals that may exist in the HOA at any one time, but that cap cannot be set lower than 25% of the separate interests.

For our 150-unit community, that means the lowest permissible cap is 38 units. If our community currently has 75+ units rented (50%+), a cap at any % would reduce permissible rentals — but far in the future and you cannot get there overnight. The law creates a hard floor that limits how aggressive any cap can be.

---

2. The Grandfathering Problem: Civil Code §4740

This is the most practically disruptive obstacle to a rental cap. Civil Code §4740 makes one thing clear: HOAs cannot enforce new rental restrictions against owners who bought their property before the restriction was adopted — unless they expressly agreed to such a restriction in the original CC&Rs when they purchased. This is understood by the cap committee by their acknowledgement of grandfathering.

In plain terms: if we adopt a 25% cap today, every current owner who is already renting is likely grandfathered and immune from enforcement. As per Civil Code §4740, newly imposed restrictions apply solely to owners who make their purchases after recording the restrictions.

For a community already around 50% rentals, this means the cap could be functionally **unenforceable for years — perhaps decades — until grandfathered landlords sell**. The cap would only "bite" on new buyers, making it a **very slow and uncertain** mechanism for actually reducing the rental ratio.

---

3. The Amendment Process Is Difficult. Expensive and Slow

Adopting a rental cap requires amending the CC&Rs. Amendment of the CC&Rs requires compliance with the Davis-Stirling Act, including voting by secret ballot and related procedures, which can take several months to accomplish. **The last time Laurel Bay amended the CCR's it cost $5500 for the amendment draft and another $2000 to run the election. It took many months to complete. This proposed amendment would be more complex, expensive, and fraught.**

In a community where over 50% of owners are investors, which is what the rental cap committee alleges, **getting the required majority vote to impose a rental cap is politically challenging at best and may be mathematically impossible**. Once investor voting blocs form, amending CC&Rs becomes psychologically and politically uphill — even for economically rational restrictions. Those blocs are forming right now.

---

4. Litigation Exposure from Affected Owners

Even a properly adopted cap invites legal challenge. Although it is fairly settled that most properly drafted lease restrictions will be upheld by a court, some owners could threaten or proceed with litigation in the hopes of getting the association to give up on any attempt at enforcement. Lost revenue and a perceived reduction in market value of the property may encourage some owners to seek relief from the restriction through a **court action**. The rental cap committee's **proposal is a litigation magnet!**

Poorly written or improperly adopted rental restrictions can lead to legal disputes. Boards may face lawsuits from owners claiming the rules are unreasonable or improperly enforced, which can be costly, time-consuming, and divert focus from other priorities. **Do we want to expose our board of**

directors to this mess? Can we even recruit board members in the face of this situation? And don't think that a management company will take on this work.

The HOA itself faces financial exposure: if an HOA willfully violates Civil Code §4741, it is liable to the affected party for actual damages and must pay a civil penalty of $1,000. https://echo-ca.org/hoa-rental-restrictions-laws-and-best-practices/

---

5. Selective Enforcement Risk

Once a cap and waitlist are in place, **the board must administer them with rigorous consistency. HOAs must apply their lease restrictions fairly and consistently**. Selective enforcement occurs when an HOA allows some property owners to rent their homes while denying others the same right. Examples include: allowing some homeowners to lease while denying others under similar conditions; enforcing restrictions against individual homeowners but not against board members or HOA-favored residents; or granting exceptions to certain investors but enforcing rules against resident homeowners. If an HOA is engaging in selective enforcement, affected owners may have a strong legal case.

---

6. Waitlist Administration Is Operationally Burdensome

Tracking leases, exemptions, and compliance **adds ongoing work for board members or management**. Some communities may need to invest in software or staff time to handle the additional oversight, which **increases costs and operational complexity**. Inconsistent grandfathering, when rental caps are introduced, creates different rules for different owners, which can cause confusion and resentment.

In California, rental cap restrictions are often written such that rental permission is permitted until the owner transfers or sells the unit, and upon sale the new owner goes to the back of the line. "Your right to enforcement is really important," one management expert notes. "If you have this system and people are doing what they want, you'll be above the cap, and the whole system goes to crap."

---

7. "Reasonableness" Is Legally Undefined and Still Evolving

Rental caps are a gray area with real legal risk. The HOA world is at odds with the real estate profession on this issue. Civil Code §4741 prohibits governing document provisions that "prohibit, have the effect of prohibiting, or unreasonably restrict" rentals. It will take a few more years for the courts to figure out the boundaries of "reasonableness." https://www.smdp.com/hoa-homefront-reader-questions-can-we-limit-rentals/

All of these types of rental provisions are affected by recent amendments to Civil Code §4740 and the enactment of §4741. These provisions undermine, or have a potential and as yet undetermined impact on, much of existing case law on these issues. In short, your board could adopt a cap that seems reasonable today and still face a challenge based on evolving judicial interpretation. https://calawyers.org/real-property-law/recent-developments-in-california-law-relating-to-rental-restrictions-in-ccrs-unanswered-questions-and-lurking-suspicions/

---

8. Limited Buyers Reduce Your Property Value

A rental cap can harm the very property values it is meant to protect. Rental restrictions can limit the pool of prospective buyers, especially investors or buyers who want flexibility. This will affect resale value and lead to longer listing times, particularly in markets where rental income is a common consideration.

In a community already majority investor-owned, reducing the eligible buyer pool by eliminating investor buyers could suppress prices for all owners, including those who want to sell.

Bottom Line for Our Board

A rental cap in California is a legally constrained, operationally complex, and politically difficult tool — especially in a community that might be near 50% rentals.

The grandfathering rules under §4740 mean that a cap adopted may not produce meaningful results for many years. We question:

(1) whether the votes exist to amend the CC&Rs. That’s why we need a survey of owners.

(2) whether the administrative and litigation costs are justified given any questionable insurance benefit or