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## Skirting Condo/HOA Short-Term Rental Bans? What to Know About Selling Shares in Homes

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Pacaso is a company that's growing—and it has the potential to change your community as it does.

According to [news reports](#), Pacaso sells shares of homes to multiple investors. See where this is going? Homes in your community could have tons of owners coming and going, even if you have [rental restrictions](#).

Here, we explain the basics and ask if there's anything you can do now to stay ahead of the challenges this could cause in your community.

### Wait and See for Now

According to Pacaso's website, the company creates a limited liability company for each home in its program, finds and vets co-owners, and handles all the sales details. Once the co-owners close on their purchase, they can schedule access to the home.

The concept doesn't worry our experts too much—yet. “This just recently hit the news, and the business model appears to be based on higher-end luxury homes,” reports Todd J. Billy, CCAL, an attorney at The Community Association Lawyers in St. Louis, who is licensed in Missouri and Illinois and has more than 1,000 active condo and HOA clients. “When I saw it, I had a bit of a hair-on-fire moment. But I've calmed myself down.

“I realized their business model works only in the high-end home market,” he adds. “But that doesn't mean it won't work everywhere.”

That's also the opinion of Jeff Vollmer, a partner at Makower Abbate Guerra Wegner Vollmer PLLC, whose firm advises nearly 2,000 associations throughout Michigan. “I hadn't seen this and had to investigate,” he explains. “It hasn't really hit Michigan yet, and it's probably not going to fall into many communities

beyond the luxury market. So I'm keeping an eye on it, but it's not something that's concerning me yet."

### **We've Seen This Play Before**

Here's the thing: This has been happening already in condos and HOAs for a long time.

"I'm not familiar with Pacaso, but I don't think it's unique," says Zulema Mendoza, LCAM, regional vice president at KW Property Management, who oversees about 20 condo and HOA communities in Southwest Florida and North Carolina. "We do have condos with eight or nine owners. Maybe all the family members are listed on the deed. We find that more in the condo world. Or perhaps there's a trust that comes in, and there are several owners involved in the trust.

"In those cases, the association can't deny those owners access to the units," she says. "And they don't have to follow the [use restrictions](#) for renters because they're all owners. We hope they'll treat that unit the same way they'd treat their primary home.

"So I'm not yet alarmed," says Mendoza. "I've seen something similar, and it hasn't been a problem."

That's also what [Michael Kim](#), of counsel at Schoenberg Finkel Beederman Bell Glazer in Chicago, who represents about 500 associations, has seen in his practice.

"I've not formally seen this company," he says. "The concept, which I've come across for about 10-15 years now on a very individualized scale, is that an association in a very attractive resort-type area will have maybe three or four families decide they're going to do their own individual time share, so to speak. They all chip in and are listed as owners.

"That was years ago, before Airbnb came about, and was a very isolated situation," he adds. "People in that community were used to having a number of their owners be second-home type people. But they were uncomfortable with so many people sharing ownership of one home.

"As a practical matter, an association and the neighbors in it really don't care about that situation unless there are disruptions," says Kim. "If a property is owned by three or four families who are responsible, they're probably not going to create that much of an issue. If owners are maybe not responsible or respectful, that's when problems arise.

"Many of my clients are also worried when corporate ownership of units arises," he states. "But if the employees of that corporation staying temporarily in those units are responsible and nonproblematic, it really doesn't create an issue. So on its face, I'm not really worried about this company. When it becomes a problem, that's when I'd consider it a worry."

## **What Could Become a Challenge**

Our experts aren't saying they haven't seen creative ways to get around rental restrictions or ownership situations that give them pause.

Mendoza says that if several shareholders owned several units in a property, each with 10 or so shareholders, she'd be concerned. "That would be more likely to be a business they're establishing rather than being residents," she explains. "That's a new situation. We have a condo property in which developers have bought 45 units. We've explored how we could restrict them from buying more. As of yet, we haven't found a way to do that. Legislation is probably the best way to handle that type of situation."

Kim has seen a scheme, as he calls it, in which an owner has conveyed something like one-tenth of one percent of ownership to technically make short-term renters owners of the unit. "It's rather transparent that it's not a bona fide ownership situation," he says. "In that case, the association didn't want to take the time and money to contend that issue. And that can be risky to that owner, even conveying that percentage of title to a stranger. You don't know what baggage those other owners bring.

"That's a very obvious subterfuge, and I've recently seen a resurrection of this scheme," he adds. "Clients have wanted to know whether we could require that the amount conveyed could be a certain percentage minimum. We haven't worked that through—how much could you require for a percentage share of ownership, particularly in a condo setting, that would qualify you as an owner?"

## **Tighten Your Documents Now**

Billy is giving his clients a heads up about this company, and he has updated his template [governing documents](#) based on what he knows now. "It seems to me that the whole idea of this company is to get around timeshares," he explains. "One reason is probably because of the bad rap and the bad perception of the timeshare marketplace.

"The other reason they probably did it is because most states have statutes on how timeshares work and have certain disclosures that must be made in relation to timeshares," adds Billy. "So I amended my documents to try to flush out whether owners are trying to do some type of timesharing model. I say that's prohibited and that we're going to call such ownership structures timeshares. I also have a short-term occupancy prohibition for people who aren't the record owner. That's what I've come up with so far.

"If this company's concept landed in court, a court could say this looks like a timeshare and quacks like a timeshare, so we're going to call it a timeshare," says Billy. "That would be fine, and it would have a nominal impact in the community association world. But if a court didn't do that, we're back to a hair-on-fire moment, and I want to be sure we have updated governing documents as much as possible to address that situation."