



Texas court upholds ruling against short-term rentals

By [Nancy Sarnoff](#)

November 17, 2016 Updated: November 18, 2016 9:46am

Thinking about leasing your home during Super Bowl LI? You might want to check your neighborhood's deed restrictions first.

This week, an appeals court in San Antonio ruled in favor of a homeowners association that argued a homeowner was violating deed restrictions by renting out his house for short-term stays.

The court said such short-term rentals violated a restriction that said properties must be used for a residential use, according to Frank Carroll, the Houston attorney who represented the homeowners association.

"Short-term rentals, by their nature, are not residential," Carroll said.

The judge's opinion, which conflicts with the ruling of a similar case in Austin, puts the legality of

residential rentals of all sorts into question, said J. Patrick Sutton, the Austin-based attorney who argued for the homeowners in both cases.

In the San Antonio case, Kenneth Tarr began renting out his house after his employer transferred him to Houston in 2014. He advertised it online and rented it 31 times that year, according to a court document.

When his neighborhood's homeowners association said the rentals were not permitted based on a restrictive covenant, Tarr sued, asking a judge to determine that he was in within his rights. The covenant at issue states that "all tracts shall be used solely for residential purposes"

[Jury sides with homeowners association in Tanglewood property](#)

Tarr's lawyer argued that there was nothing in the language of the covenant that prevented a homeowner from leasing his home on a short-term basis.

The court, however, sided with the association, and this week, the 4th Court of Appeals in San Antonio upheld the ruling. It said the rentals were prohibited because the residential use cited in the covenant requires "an intent to remain." Since the leases were short-term, that was not the intent.

"The agreement thus shows that the home is being used for transient purposes rather than residential purposes," the opinion reads.

"My client respectfully disagrees with the San Antonio court of appeals," said Sutton.

He said Tarr may decide to appeal the ruling to the Texas Supreme Court.

The case could have widespread ramifications on homeowners who attempt to rent out their properties, whether for a short- or long-term basis, Sutton said.

Since the court did not specify a length of time a homeowner would be allowed to lease a property, all types of leases could come into question.

"What tenant intends to remain permanently?" Sutton said.

Fifteen other states that have decided the issue have agreed with the appellate court in Austin, he said.

"Texas would be the only state that reads residential use to bar short-term rentals," he said.

Carroll said similar cases are popping up across the state and residents should be familiar with what their communities allow.

"I think homeowners are going to become more aware of this," he said. "I think there will be some self policing from associations and residents."

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