

**MEMORANDUM OF LAW REGARDING DEED RESTRICTIONS  
FOR NEGAUNEE LAKE SUBDIVISION**

**Issue:** Do the Restrictions and Agreements for Negaunee Lake Subdivision prohibit owners from using their property as vacation rentals?

**Answer:** Yes

**Analysis:**

Negaunee Lake Subdivision (“Negaunee Lake”) is a development comprised of four contiguous plats. Negaunee Lake is and has been regulated by recorded restrictions. The current “Restrictions and Agreements” document was recorded in December 2001. The pertinent language of the Negaunee Lake documents is contained in the Restrictions and Agreements, paragraph seven which states:

7. No buildings or other accommodation shall be used for purposes of sale or acquirement of new or used automobile parts, for automobile or machinery repair or wrecking; public garage, or gasoline filling station; dealing in junk or used materials of any kind; for rental of trailers, parking of trailers for rental purposes, erection of tents or other accommodations for rental purposes, or living quarters of any description.

It is strictly prohibited to conduct any commercial activity of any nature on or within any building of other accommodation or any lot.

All other provisions of the subdivision restrictions deal with construction dimensions and materials, and setback and permit requirements, etc. Taken as a whole, the language in the restrictions expresses a clear and unambiguous intent to preclude any business or commercial use whatsoever within the subdivision.

The Michigan Supreme Court in *O’Connor v Resort Custom Builders, Inc.*, 459 Mich 335; 591 NW2d 216 (1999), set out a thorough analysis for

reviewing the applicability of deed restrictions. The *O'Connor* court noted that one of the guiding principles in enforcing deed restrictions is that public policy favors restrictions that limit use for residential purposes, as long as that is clearly established by the documents containing the restrictions. Furthermore, Michigan case law also supports the general notion that, a restriction allowing residential uses is generally viewed as permitting wider uses than a restriction prohibiting commercial uses. *Beverly Island Ass'n v Zinger*, 113 Mich App 322; 317 NW2d 611 (1982).

Two recent, unpublished opinions have also addressed deed restriction language containing *both* residential use and commercial use prohibitions; *Enchanted Forest Prop. Owners Ass'n v. Schilling*, 2010 WL 866148 (2010) and *Torch Lake Protection Alliance v. Ackermann*, 2004 WL 2726072 (2004). In both cases, the Court of Appeals found the restrictive covenants prohibited vacation rentals. These cases seem consistent with the holdings in well accepted reported cases.

In the instance of Negaunee Lake, the deed restrictions are even more straightforward, as there is no potential conflict between permitted residential use and prohibited commercial use. Nor are there any other bylaws or Association documents which would cause confusion by referencing renters or lessees. Rather, the deed restrictions prohibit use of the property for any commercial use at all. The restrictions further provide that no rentals of any kind, whether tents, trailers or other accommodations are allowed. It is difficult to imagine governing documents which would more clearly express an intent to restrict use of the property in the development to private residential use.

To the extent one might argue what constitutes a commercial use is ambiguous, numerous Michigan courts have reviewed this issue in the context of deed restrictions. See *Terrien v. Zwit*, 467 Mich 56; 648 NW2d 602 (2002), *Lanski v. Montealegre*, 361 Mich 44; 104 NW2d 772 (1960). Relying on the common and legal meanings of the term "commercial", the Court in *Terrien* stated:

"Commercial" is commonly defined as "able or likely to yield a profit." *Random House Webster's College Dictionary* (1991). "Commercial use" is defined in legal parlance as "use in connection with or for furtherance of a profit-making enterprise." *Black's Law Dictionary* (6<sup>th</sup>

ed). “Commercial activity” is defined in legal parlance as “any type of business activity which is carried on for a profit.”

In *Lanski*, the court concluded a nursing home was a commercial use because a “fee was charged, a profit was made, the services were open to the public, and such an operation subtracted from the ‘general plan of the private, noncommercial resort area originally intended.’”

Given the particular language of the deed restrictions at issue here, as well as cases interpreting similar deed language. It is our opinion that vacation rentals are prohibited in Negaunee Lake Subdivision. Any action to enforce such a prohibition under the restrictions, appears to be strongly supported by the law.