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## MAKING TENANTS PART OF YOUR COMMUNITY

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**R**enters can, and should, be treated as valued residents of any community. However, when nonresident owners within planned residential communities lease units to tenants, controversy frequently occurs. Leasing highlights the separate and often divergent perspectives of resident owners, non-resident owners/landlords, tenants, and community associations. This article explores issues often associated with unit leasing, as well as strategies and guidelines that can reduce these potential conflicts. These issues are:

- Differing perspectives of resident and non-resident owners and their tenants,
- Using community governing documents to guide residents,
- Understanding/using governing documents for lease-related issues.

### DIFFERING PERSPECTIVES OF RESIDENT AND NON-RESIDENT OWNERS AND THEIR TENANTS

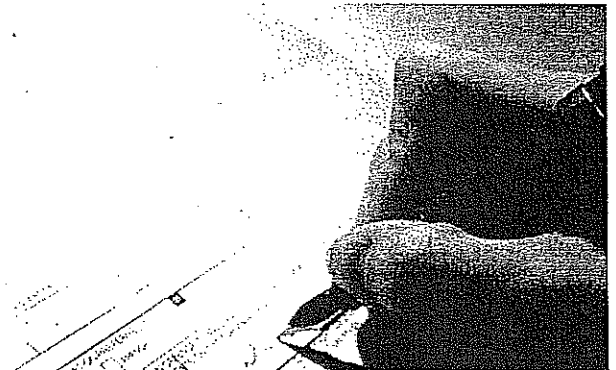
A common sentiment is that a planned community should be a haven for homeowners - not a place for tenants. Tenants, or "transients," are perceived as having less of sense of "equity" and consequently, viewed as less concerned about their home's condition. Generally owners purchase their units for personal occupancy. However some owners will purchase units for investment purposes or find themselves involuntarily cast into the landlord role. Often investor-owners see unit rentals as a potentially easy source of rental income and fail to consider that as landlords they are still primarily liable for all owner/resident obligations, including

their tenant's compliance with an association's rules. Therefore, in the case of rental agreements, greater enforcement efforts are often required by the association and its managing agent to ensure tenants' compliance with the community's rules and regulations

Generally, the tenant's perception is that their lease agreement dictates the full extent of their rights and responsibilities. As such, the tenant is not fully aware of the association's rules, regulations and expectations, nor the consequences of violating these rules. It is vital that all rights and responsibilities are fully communicated and understood by all parties. The following section of this article provides further guidance on these issues.

### USING COMMUNITY GOVERNING DOCUMENTS TO GUIDE RESIDENTS

The master deed or declaration creating a community and the related association by-laws establish the respective rights and obligations of the owners, tenants and the community association. The governing documents regulate behavior in the community to protect property values and ensure the residents' expected lifestyle. To meet these objectives, the governing documents may give the association the ability to enforce either the unit owner or tenant's compliance and to exercise any applicable remedies against either party. The extent of the remedies may allow the association to bring suit for an injunction compelling the owner to evict a tenant for violations or appoint the association as attorney-in-fact for the owner and allow them to bring action against the tenant.



Although no one desires disputes, they can occur. Dispute resolution procedures, as a litigation alternative, are often delineated in the association's documents and should address the respective parties' rights. These procedures are worthy of inclusion in the association's governing documents, and should address disputes involving the association and unit owners as well as tenants. Dispute resolution provisions must ensure that the unit owner, not the tenant, remains primarily responsible for compliance with the association's rules and regulations.



## Tenants *(Continued from pg. 2)*

As community residents, tenants should be expected to follow the association's documents' requirements, which should be clearly established and understood by resident and non-resident owners and their tenants. For example, owners who lease their units should be informed of tenant registration requirements for usage of parking, recreational amenities, and mailboxes. Owners should also be aware that when they grant these usage privileges to tenants, they forego their own access and usage rights.

Tenants should receive a complete set of all governing documents, rules and regulations, and confirm receipt in writing. The governing documents should specifically address the tenant's participatory role, if any, within a community. While most documents limit association membership and voting rights to unit owners, some do offer an "associate membership" category, affording tenants limited participation in association activities or governance, such as serving on committees.

While the governing documents provide a framework for the landlord/tenant relationship, their specific application to a lease, and landlord/tenant expectations is equally important. The next section of this article further discusses these issues.

### UNDERSTANDING/USING GOVERNING DOCUMENTS FOR LEASE-RELATED ISSUES

Most governing documents specifically address the conditions that the owner must include in the lease or that must be satisfied to lease a unit. The governing documents might dictate the terms of the lease, with respect to:

- Lease duration,
- Notice to the association of a unit rental,
- Delivery of a lease copy to the association,
- Use of the association's form of lease rider.

Community leasing restrictions may allow the association to require that the owner enter into a written lease with the tenant subject to the association's review/approval or require the owner to append to, and incorporate into the lease, a form rider delineating only those provisions where the association has an interest. Regardless of the situation, the overriding issue is that the lease documentation confirm the tenant's agreement to comply with the association's governing documents, rules and regulations and without releasing the owner of their obligation, to pay any applicable fines and other penalties imposed for violations. Leases should anticipate these fairly common violations:

- Pet and parking restrictions,
- Unit occupancy by individuals other than those identified in the lease and permitted under the governing documents,
- Improper use of the unit and/or the common facilities such as the clubhouse and swimming pool.

Anticipating such circumstances can help deter detrimental rental situations. The inclusion of specific guidelines for tenant behavior in the lease documentation helps clarify landlord/tenant responsibilities and offers an approach to remedy undesirable rental arrangements.

*"The owner, tenant and association's understanding of each party's respective rights, roles, and expected behavior is crucial to successfully maintaining a sense of community."*

As previously mentioned, some associations suggest, or even require, the use of a standard form of lease itself (rather than a form of lease rider addressing the points of association concern). The former approach may not be prudent since the association's interest in the lease is limited to compliance by the tenant with the association's governing documents and rules and regulations, as part of the landlord's rules under the lease. Insistence on the use of a form of lease developed by the association may expose the association to liability if the landlord or tenant subsequently alleges loss or damage as a result of reliance on the association's lease form. I recommend that an association consult with counsel to determine the best approach for its situation.

If the landlord cannot get the tenant to remedy lease violations, some lease riders appoint the association as the landlord's attorney-in-fact so that it can begin eviction proceedings against the tenant on behalf of the landlord. If the association is given this authority by the governing documents, the lease rider (or lease itself) may also expressly delineate the powers, if any, the association will have against the tenant for the payments of all common expense assessments due for the unit from the landlord/owner. Specifically, the association may require assessments be paid by the tenant to the association if the landlord/owner defaults, with the related right to evict should the tenant refuse to make these payments.

Associations should be mindful of the extent of legal precedent for rental regulations. With regard to the governing board's ability to regulate rentals, New Jersey courts have upheld the regulation of the rental of units within a community as long as the regulations are reasonable and non-discriminatory. Policies cannot be arbitrary and directed toward a limited class of owners. (NOTE: Although beyond this article's scope, co-op rentals are very different with respect to their owner/tenant treatment from a governing document/legal perspective.)

### CONCLUSION

The owner, tenant and association's understanding of each party's respective rights, roles, and expected behavior is crucial to successfully maintaining a sense of community. Clarity in the governing documents and lease documentation, as well as, open communication, will only enhance the success of such relationships. ■