

Leasing Dance - Condominium Leasing Policy Protections & Regulations for Associations

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This article focuses on general leasing considerations for those condominium associations where the trustees have the power to establish, regulate, and enforce rules regarding the rental of units.

Condominium associations face difficult decisions regarding the rental of condominium units. Some Master Deeds, Declarations of Trust, Bylaws, and Rules and Regulations have specific guidelines already in place at the creation of the condominium trust, while others are silent as to rentals. Regardless, if you sit on the board of trustees, you inevitably are going to struggle with whether to allow or not allow the lease of units, what the leasing policy and procedures should be, and what policies should be enforced.

LEASING POLICY CONSIDERATIONS

The existence of a leasing policy is essential to the security and safety of the other unit owners and the condominium. In today's world, you have short-term rentals such as Airbnb, HomeAway, and other services that provide transient short-term rentals. If your leasing policy fails to restrict and/or regulate such short-term rentals, your association could be facing issues with multiple tenants moving in and out of the complex on a transient basis. This leads to discord between unit owners who have a primary residency on site and those who lease their unit to residential tenants.

Leasing considerations—especially in long established condominium trusts—should be reviewed by the trustees. The trustees should adapt their leasing policy to match today's residential rental reality. Each condominium trust is governed by its own set of rules established in its organization documents, such as the Master Deed, Declaration of Trust, Bylaws, and Rules and Regulations.

A leasing policy should be clear and concise. It should set out the procedure for application by the unit owner who seeks to lease a unit, the review of the application by the trustees, and the requirements and responsibilities of all parties.

The following is a basic—but not a comprehensive—summary of what a reasonable leasing policy should include.

1. Trustee Approval of Lease Must Be Required

- Any unit owner who intends to lease a unit should be required first to send a written request to the condominium's management company. Each written request to lease a unit

should include a copy of the proposed lease agreement and all related documents.

- Trustees should have a reasonable time to review the application, i.e. seven to 10 business days.
- All leases should be subject to the approval of the trustees. If not approved, the lease should be null and void. If disapproved, execution of the lease by the unit owner would be a violation of the condominium association bylaws, and could result in the unit owner being subject to a fine, if allowed by the governing documents of the condominium.
- Trustees should have a fully executed copy of the lease on file for the leased unit.
- It must be clear that leasing a unit is the responsibility of the unit owner. It should be clear that each unit owner is solely responsible for checking the credentials of his or her prospective tenants and is legally responsible for the acts, omissions, and negligence of his or her tenants and for events or incidents that may occur.

2. Requirements of Written Lease

- All leases should be required to be in written form.
- The description of the leased premises should make clear that the lease is for the entire unit. Moreover, to avoid overburdening the common areas (e.g. pools), unit owners no longer in residence should not be able to use common areas for their own benefit during any approved lease term. The unit owners' right to access the common areas will be transferred to the tenant for the duration of the lease.
- All leases should be for a term of not less than 12 months; transient or short-term rentals of any kind, such as hotel, motel, rooming house, vacation rental and/or Airbnb, VRBO, HomeAway, or similar short-term rentals should be prohibited. Unit owners should be prohibited from advertising their units for short-term or vacation use, and further prohibited from listing their units with a company in the business of acquiring tenants for such short-term use. This is important because it is the only way the trustees can prevent transient occupants.
- It should be clear that every lease is subject in every respect to the Master Deed, the Declaration of Trust, the Bylaws and the Rules and Regulations. Any amendments to these governance

documents will also amend the terms of the lease even if that lease was executed before the amendment. To enforce this, each lease that is approved by the trustees should be required to contain a statement to this effect.

- Unit owners should be required to notify the trustees when a lease is terminated and/or the property is vacant for any reason.

3. General Requirements Concerning Tenants, Fees and Fines, and Responsibilities of Unit Owner

- The trustees or their management company should have model rental forms in place. These should include a Unit Owner Agreement/Application that the unit owner files when requesting approval of a lease, and in which the unit owner agrees to be bound by the leasing policy. A reasonable fee for processing could be considered as well. Additionally, there should be a Tenant Agreement in which the tenant also acknowledges that they shall be subject to the leasing policy. Finally, there should be a Unit Owner and Tenant Information sheet with contact information for all parties to enable proper and efficient communication.
- A leasing policy should be clear that it is the responsibility of the unit owner to inform tenants and other third parties of all rules and regulations. Moreover, the Tenant Agreement discussed above should make it clear that the tenants must abide by all the terms and conditions of the Master Deed, Declaration of Trust, Bylaws, and Rules and Regulations of the condominium and are responsible for the payment of fines and actual damages arising from their violations of same.

4. Powers of the Trustees to Deal with Tenants

- A leasing policy should authorize the trustees to take action to enforce the Master Deed, Declaration of Trust, Bylaws, and Rules and Regulations in the event of a default by the unit

owner or tenant. In the Master Deed, Declaration of Trust, Bylaws, and Rules and Regulations, the leasing policy should extend the authority of the trustees to call for the following remedies:

- The trustees should have the right to give written notice of the default to both the tenant and the unit owner.
- The trustees should have the right to levy fines against the owner of the unit in accordance with the provisions of the Declaration of Trust, and to terminate the tenancy by giving notice to quit in writing to the tenant in any manner permitted by law, in the name of the landlord (unit owner) or, in the name of the trustees, or both. The trustees should be entitled to follow a notice or notices to quit with a summary process action or actions.
- All of the expenses of the trustees in giving notice and notices to quit, and maintaining and pursuing summary process actions and any appeals therefrom, should be entirely at the expense of the unit owner, and such costs and expenses, including reasonable attorney's fees, should be charged to and collected from the unit owner and unit as if the same were common expenses owed by the unit or unit owner.

The above narrative summarizes some of the main provisions of a sound leasing policy. While other important rules should be considered, the key point is that the existence of a leasing policy is essential. It should require an application process, the exchange of information regarding the rules and regulations, restrict the type of leasing options available to unit owners, and should allow the trustees to enforce the leasing policy. Such a policy will help to avoid any potential pitfalls or ambiguities in the condominium documents that otherwise could create discord between unit owners or impose additional unexpected liability on the association.



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