

Condo Insights - Lease Fees – Part 2

In Part 1 of of this column, we discussed the legality and rationale behind why some condo associations impose fees on owners that rent their condos. In Part 2, we will explain how to identify and quantify expenses directly and indirectly related to or caused by the permitting of rental activity.

An exercise to help identify and quantify costs directly related or caused by the permitting of rental activity can best be performed by considering how operating costs would change if rental activity was prohibited and only owner use permitted. If the association were solely a private non-rental community, how would operating costs be different? Would homeowners change their expected service levels if there were no rental activity? If the association were a non-rental community, would the need for addition seasonal staff or services change? If the answer is yes, identify the affected services and calculate the related costs.

Likewise, continue the exercise to identify what positions and services would remain the same if the Association were a non-rental community. Leasing and rental activity does not affect the hours of operation of the swimming pools and many recreational amenities such as gyms or tennis courts. If the Association were a non-rental community, quite likely the hours of operation of the pools and gyms would remain as is. While it could be reasonable to consider that unit owners might make the decision to eliminate or reduce aquatics or security staffing in a non-rental community, the counterargument can be made that security guards, lifeguards and pool attendants provide a sense of comfort and safety, particularly at family-oriented condominium resorts.

It's far more difficult to qualify and quantify cleaning efforts between a rental and non-rental association. Would seasonal cleaning service levels change if the Association was a non-rental community? Does the community retain staff or cleaning services working both day and evening shifts? Is it reasonable to consider that demands on the evening shift would be less in a non-rental community? Or while the shift would remain, the number of staff members working during evening hours might decrease. Regardless, since cleaning services are a function of potential occupancy and use, lease fees should not be calculated based solely on cleaning costs.

In some associations, owners have permanent parking tags or passes but rental guests and guests of owners may be provided a disposable or temporary parking pass during their stay. If there were no rental activity, the number of these temporary parking passes might be reduced significantly, reducing the costs to print these temporary tags or passes. Security is also responsible for ensuring that the permitted occupancy/density of an individual unit is not exceeded.

Can an association segregate or differentiate between rental guests and unit owners? No. Such measures such as segregating more desirable parking spaces for use only by owners who do not rent, or by having different color or types of recreational bands or tags that identify owners and non-owners are examples of discrimination solely against one class of owners, renting owners, to the exclusion of other non-renting owners. The rental guest has the same rights and responsibilities as the unit owner during their occupancy.

Tracking and recording of the rental guests involves time and effort. Who performs this service now for the association for the homeowners that rent their units? The mere record-keeping of leases and reconciliation of lease fee payments involves hours of office staff time. This time can be quantified and used in the determination of lease fees.

A few realtors deduct the lease fee from the owner's rental distributions and forward the lease fees to the association. This service saves the association office staff time and effort that otherwise would be passed through to owners that lease to short term renters.

More recently, insurance companies are increasing costs of general liability insurance for associations where 25% or more of the units are rented. Associations are encouraged to discuss this with their agent. If the additional costs can be quantified the basis may exist for including the incremental liability insurance cost in determining the lease fee.

In most South Jersey municipalities, homeowners that make their residence available for rental must obtain an annual mercantile license and fire inspection. As a result of complaints from neighboring residents about disturbances at rental houses, some municipalities engage an outside agency to assist in identifying homeowners that are renting and not obtaining the required mercantile license or fire inspection. While not equivalent to the challenges faced by a municipality, the association is likewise often unable to identify and record 100% of all leasing activity by homeowners that manage their own rental activity. But armed with a few years of historical information, associations can get close to identifying most if not all of the homeowners that make their condos available for short term rental during summer months and the percentage of homeowners using their condo as their primary or secondary residence.

What about an owner who rents and does not pay a lease fee to the association? In most cases the governing documents are silent on this point so the association board should establish a lease fee policy as part of its rules and regulations. This policy should be provided to all owners at the start of each rental season or each fiscal year. The policy should stipulate that violation of the lease and lease fee policy could subject the unit owner to a fine or penalty for violations of this rule.

An association board must be cognizant not to allow or create a climate where separate classes of ownership exist that benefit the resident owner at the expense of the non-resident owner. At the same time, the board should make sure condo fees are not used to pay for any expenses that directly benefit the renting owner that would not be incurred in a non-rental association.

Leasing activity is an issue that can easily create division within a condominium association. The association board is strongly encouraged to seek and rely on professional advice and guidance from its manager and legal counsel in establishing and implementing policies regarding leasing and renting of units.

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