

*When nuisances flare...*

PROPRIETARY LEASE

## GO BACK TO THE BASICS

I find it interesting that many of the board members of co-ops we represent ask me to look at their proprietary leases to see if they can be improved. In order to amend a lease, it usually requires approval by shareholders owning at least two-thirds of the outstanding shares. Some require more than that – 75 or 80 percent, or the consent of the holders of unsold shares. So the easier step to take may be to amend the house rules. But be careful not to do so in a way that is inconsistent with the proprietary lease.

Here are some of the most common examples of issues which prompt board members to question whether or not a lease should be amended:

**Smoking odors permeating into shareholders' apartments.** Many boards state to me, "We cannot stop smoking in apartments because we do not have no-smoking language in the proprietary lease." Generally, leases forbid causing "strong odors and nuisances."

**Noise complaints.** It is a difficult situation when you have one resident versus another. But again, there are provisions in the lease which allow boards to take action. There is a cure period in all leases, which generally requires the person to stop such actions within 10 to 30 days from the date of notice. Failing to do so can result in a termination of the lease generally five days later. In cases of incidental floor-related noise, we have suggested amending the house rules to require that not only 80 percent of the floor must be covered by carpeting, but also that there be efficient sound insulating padding underneath the carpeting. Some apartments have a carpet

that is barely visible, maybe a tenth of an inch thick, and offers no muting of footsteps or other sounds.

**Water damage.** Many shareholders' apartments suffer water damage caused by their neighbors. I recommend that co-ops amend their proprietary leases to require shareholders to have insurance. Shareholders who do not have insurance and experience water damage frequently sue the co-op despite the absence of any basis for such claims. If they had insurance, they would not sue. If your co-op feels it will not obtain the necessary shareholder approval to amend the proprietary lease, then amend the house rules. It is a step down from amending the lease, but we have had very little pushback and much success enforcing such rules.

**Transient use.** This is a hot topic – short-term sublets. Review the use clause. It provides for specific people who are allowed to live there, including the lessee, certain immediate family members, and others, as well as guests. In all of the leases I have reviewed, the lessee or a permitted occupant must be there when there are guests.

Hopefully, your proprietary lease and bylaws, along with the house rules, provide the remedies that you need. But if they do not, then boards have the option to seek an amendment

to the lease and/or to change the house rules, which the board may do without the consent of the shareholders.



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