

L&J QUICK FACTS

LEASING

COMMON LEASING PROBLEMS

- **WAIT LIST NEVER MOVES:** Many communities with older leasing restrictions have provisions allowing owners with leasing permits to lease until they either sell their homes or fail to lease their home for 90 or even 180 days. The effect of this provision is the same handful of owners continue to lease their homes for years, while those who need to lease are stuck on the waiting list indefinitely.
- **LEASE-PURCHASING AGREEMENTS:** Prior to the act, associations were free to pursue a lawsuit against any builder or contractor relating to a defective design or faulty installation. However, now there are a number of procedural hurdles an association must clear in order to file a lawsuit against a contractor. Additionally, association may only bring claims for defects to common elements or limited common elements.
- **UNDUE HARDSHIP LEASE PERMITS:** These permits are designed to allow an owner to lease a property when a community's leasing cap has been met and the owner must lease to avoid an undue hardship. Although the leasing restrictions for most communities will outline examples of situations that may be considered a hardship, the definition of what constitutes an undue hardship has to remain flexible, as any number of situations can fall within a hardship.

MANAGING LEASING CAPS AND THE WAIT LIST

- Associations can revise the existing provisions to limit the duration of leasing permits or revoke permits of delinquent owners. These conditions help ensure some movement on the waiting list, while preventing those investor owners from taking up all the available leasing slots.
- The association can require owners to have lived in the community for a certain number of years prior to being eligible to lease.
- The association can revise the existing restrictions, or in the case where there are no leasing caps in place, to add restrictions allowing for a fluctuating cap on the number of properties that may be leased at any one time, based on market conditions. Most current leasing regulations place a fixed percentage cap on how many homes can be leased, without regard to economic conditions. A more feasible solution during tough economic times is to allow the board, in its discretion, to raise the leasing cap an additional 10%. Once the market recovers, the board can lower the cap.

DEALING WITH LEASE-PURCHASE ARRANGMENTS

- The lease-purchase agreement (whether an option to purchase or a contract to purchase) is a lease under most community leasing restrictions. Owners should apply for and receive a permit to lease before signing a lease-purchase agreement.
- If the association's leasing cap is met and there are no permits available, or if the owner has entered into a lease-purchase arrangement without following the leasing provisions, one possible solution is to impose fines against the owner for the lease term and waive the fines if/when the sale closes. If it appears that the lease-purchase is an attempt to circumvent the leasing restrictions, the association can collect the fines and/or sue to stop the leasing violation.

HANDLING UNDUE HARDSHIP REQUESTS

- When dealing with hardship requests the Board must ensure that all owners are treated fairly and equally. For example, if the board issues a one-year hardship permit for an owner who proves that her company is requiring an out of state assignment for a year, the board generally should issue a hardship permit for any other owner coming forward with the exact same scenario and supporting documentation.
- Even while maintaining some degree of flexibility, in order to ensure that the requests are being handled on a consistent basis, it is smart for the board to maintain internal policies and procedures for hardship leasing requests. Any such policy should outline those situations that definitely fall outside of a considered hardship. For instance, most boards do not consider it a hardship if the situation was created by or was within the control of the owner. As an example, many boards deny hardship leasing requests when an owner claims an economic hardship because he/ she purchased another home before selling the current one.
- The policy can also outline the supporting documentation that the board will require for hardship requests. For example, if an owner has placed his home on the market and cannot sell it and is requesting a hardship, a board may require an analysis of the comparable homes in the surrounding area and the owner's listing agreement to support the claim that the owner has made reasonable efforts to sell the home.