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THE LEASING DILEMMA

Dealing with Leasing During Tough Economic Times!

The fall of the housing market continues to affect everyone. Although some housing experts are predicting some recovery as early as 2011, the fact of the matter is that it is going to be a long time before the housing market fully rebounds. In the meantime, the current state of the market is wreaking havoc in communities across the nation. In an environment rife with bankruptcies and foreclosures, community associations are also having to deal with a new challenge: leasing.

Communities that never had an issue with rentals all of a sudden are finding themselves flooded with leasing requests, while other communities with leasing restrictions are all of a sudden finding it a challenge to uphold their leasing restrictions while balancing the needs of the homeowners. The problem is that what worked in a good economy doesn't work in this one. As a result, many boards of directors are scrambling to adjust their community regulations on leasing to find a happy medium. Though the leasing woes will vary greatly from community to community, there are a few common issues that many communities face.

Managing Leasing Caps and the Waiting List. The number of owners looking to lease their homes has risen dramatically over the past few years. Some associations that already have leasing caps in place are finding that their caps may be too restrictive or that there are not enough turnovers on the waiting list so that all owners have a fair opportunity to lease their homes. Other communities are seeing the number of leased homes rise at an alarming rate, and are looking to put some restrictions in place. Either way, boards of directors are having to find creative ways to find the right balance for their communities.

Some communities, particularly those with older leasing restrictions, are finding that the restrictions are drafted in a way that does not allow for any turnover on the waiting list, making the restrictions ineffective in this market. Specifically, many of the older provisions provide that, once an owner is permitted to lease, she has the right to lease until such time as she either sells the home or fails to lease the home for 90 consecutive days. The effect of this provision is that the same handful of

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owners end up leasing their homes for years, while those who need to lease are stuck on the waiting list indefinitely.

There are a number of solutions that can be used individually or in any combination to address this issue and allow associations to handle leasing requests and the waiting list in a more efficient and fair manner. First, associations can revise the existing provisions to limit the duration of leasing permits or revoke permits of delinquent owners. Conditions such as these help ensure some movement on the waiting list, while preventing those investor owners from taking up all of the available leasing slots.

Second, the association can place other conditions on the granting of permits, such as requiring owners to have lived in the community for a certain number of years prior to being eligible to lease.

A third option is to 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 units 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, for example, during tough economic times such as this, would allow the board, in its discretion, to raise the leasing cap an additional 10%. Once the market recovers, the board can lower the leasing cap.

While all of these options will require some grandfathering, communities that have adopted some or all of these approaches have found that it gives their homeowners

much needed relief while preserving the community's interest in being predominantly owner occupied.

Dealing With Lease-Purchase Arrangements.

A lease-purchase agreement is a contract where the tenant/buyer leases the home for a specified period of time, after which the tenant/buyer has the exclusive right to buy the home at an agreed upon price. The tenant/buyer is usually required to pay a non-refundable deposit that may or may not be taken from the monthly lease payments during the term of the lease. The goal of the lease-purchase agreement is to culminate in the sale of the property. Although lease-purchase agreements have been around for years, many associations are facing this situation for the first time. For those communities with leasing restrictions in place, dealing with lease-purchase arrangements can be difficult. Many owners who choose to go the route of a lease-purchase agreement are often doing so as a last resort, and many view the lease-purchase arrangement as a sale of the home, and therefore do not follow the leasing guidelines for the community.

However, the fact of the matter is that the lease-purchase agreement, whether an option to purchase or a contract to purchase is a lease under most community leasing restrictions. This leaves many boards of directors stuck trying to uphold the restrictions, while balancing the desire to ultimately have an owner-occupied house. The best way to handle this situation is to treat the lease-purchase arrangement as a lease under the leasing regulation.

This requires the owner to apply for and



receive a permit to lease. 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, then a possible solution is to allow the lease, with the understanding that it is a violation of the terms of the restrictions and that the owner will be subject to fines for the violation. If it is a valid lease purchase, and the sale goes through, the association has the option of waiving the fines. In the alternative, if it appears that it is an attempt to circumvent the leasing restrictions, the fines stay in place and the association can enforce accordingly.

Handling Undue Hardship Requests.

Associations also have been flooded with requests for leasing permits to avoid undue hardships. When the leasing caps in most communities have been met, this is the only option available to most owners who want to lease. In most cases, undue hardship lease permits are allowed over and above the leasing cap for the community. As a result, some communities are shocked to realize that once it counts those homes with a hardship lease permit, the number of leased homes in the community can approach 30% to 40% or even more. Still other communities are finding the lines between regular leasing permits and hardship leasing permits blurred as the boards of directors attempt to accommodate all the requests by its owners.

Undue hardship lease permits are designed to allow an owner to lease a unit when a community's leasing cap has been met and she simply must lease to avoid an undue hardship. What constitutes an undue hardship is, for many boards of directors, a grey area. 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. It is a fine line for many boards to maintain flexibility but also to have solid guidelines in place to deal with hardship requests.



The rule of thumb for boards of directors in dealing with hardship requests is to 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.

However, even with the understanding that some degree of flexibility must be maintained, in order to ensure that the requests are being handled on a consistent basis, a good solution is for the board to maintain internal policies and procedures for hardship leasing requests. Any such policy can outline those situations that will definitely fall outside of a considered hardship. Many boards choose not to recognize situations created by or within the control of the owner to be undue

THE FACT OF THE MATTER IS THAT THE LEASE-PURCHASE AGREEMENT, WHETHER AN OPTION TO PURCHASE OR A CONTRACT TO PURCHASE IS A LEASE UNDER MOST COMMUNITY LEASING RESTRICTIONS.

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hardships that justify granting a hardship permit. As an example, many boards deny hardship leasing requests where an owner claims an economic hardship because she bought another home before selling her current home.

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 comparables in the surrounding area and the listing of the owner in support of the fact that the owner has made reasonable efforts to sell the home.

Necessity is the mother of invention, and when it comes to adapting to the market conditions, this has certainly proven true. Many community associations have found that creativity and flexibility helps to successfully navigate the leasing dilemma and create a system that will serve the community for years to come.



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