

Association of Condominium,
Townhouse, and
Homeowners Associations



ACTHA NEWS

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Inside This Issue:

Tip of the Month	3
Question of the Month continued	3
Hardship Requests continued	4
Legislative Corner	5
Spring Conference Program	6
Conference Registration Form	7
Question of the Month	8

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Upcoming ACTHA Events

ACTHA's Spring Conference & Trade Show— Saturday, March 20

**"LEARN & LEAD:
 ACTHA's Certified Leader"**
 program begins March 27 in
 Schaumburg and April 21 in Oak Park

Navigating the Issue of Hardship Request Provisions: A Guide for Associations

By Kelly Elmore of Penland & Hartwell

Introduction

In the recent economic climate, many associations have begun to modify their strict rental policies and guidelines to provide unit owners to expand the owners' options regarding the rental of their units. One of the options associations have begun to employ in an increasing amount is the enactment of a hardship request provision. Such a provision allows a unit owner, who owns a unit in a no-rental building, to rent his or her unit upon a showing of a financial or other hardship to the Board.

Pros of Hardship Request Provisions

There are certainly benefits to an association to allow for the provision of hardship exceptions. Enacting a hardship request provision allows unit owners who find themselves unexpectedly facing financial difficulty the ability to rent out their units and begin receiving income for a period of time. Allowing a unit owner to rent out his or her unit may prevent an owner from having to file foreclosure. In addition, the inclusion of a hardship request provision may make a condominium building more attractive to potential purchasers who may be concerned about a strict no-rental policy.

Cons of Hardship Request Provisions

On the other hand, increasing the amount of rental units in a condominium building makes it increasingly difficult for potential purchasers to obtain loan financing. More importantly, a serious drawback in allowing hardship exceptions in a building is that it may potentially open up the association, and the Board members in particular, to

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liability to those unit owners who have sought a hardship exception and have been denied. This may occur because, when a unit owner submits a hardship request to the Board for approval, the burden is placed upon the board members to make a determination as to what constitutes a hardship. This determination can lead to more complicated issues, and the decision could be challenged as arbitrary or discriminatory. In addition, the Board may potentially open itself up to liability in situations where it grants the hardship request of one unit owner, and not the request of another owner. What may be a hardship to one person, may not be considered a hardship to another and therefore, conflict is certain to arise.

Perhaps the most significant problem for associations in allowing hardship exceptions is the result that allowing certain unit owners to rent their unit, owners and not others may be deemed to be creating two classes of ownership. Such a result is a direct violation of the Illinois Condominium Property Act, which expressly prohibits an association from creating two classes of ownership. Put another way, if an association has a policy prohibiting rentals, and the association then allows certain unit owners to rent out a unit based upon a hardship request, the resulting effect is the creation of two classes of ownership—those owners who are allowed to rent and those owners who are not allowed to rent.

Recommendations

The Board should consider the advantages and disadvantages in considering whether to implement a hardship request provision. If the Board ultimately does enact such a hardship request provision, the Board must first ensure that the Declaration is properly amended to include such a provision, which may require a 2/3 vote of the unit owners to obtain such approval. It is important to note that an association may not simply amend the rules and regulations and modify its current rental policy to include a hardship provision, an amendment to the Declaration must be properly executed and recorded.

In addition, the Board must create a standard by which it will evaluate all hardship requests (i.e. those elements or factors that a unit owner must show in order to demonstrate a hardship). Further, the Board should decide on the

application process, i.e. whether the board is going to require unit owners to produce documents in support of the hardship request, or simply rely on the verbal statements of the individual making the request. Finally, the Board should create a set of guidelines for Board members to evaluate hardship requests to ensure the evaluation process is handled consistently with each and every owner who submits a hardship request.

Perhaps the simplest way to solve the problem of an association that wishes to limit rentals, but also maintain a mechanism to allow unit owners some relief in the face of financial difficulty, is allowing all unit owners the opportunity to rent their unit once, for a limited time period, during that owner's duration of ownership, regardless of hardship. Many associations have successfully enacted amendments to their Declarations which generally prohibit leasing, but allow a unit owner to rent out their unit for one or two years during the duration of the owner's ownership of the condominium unit. This policy solves the problem of creating two classes of ownership, but also takes into consideration those situations when a unit owner simply cannot pay his or her assessments due to a financial hardship.

When making a decision whether to enact a hardship provision or simply allow rentals on a limited basis, each Association should consider the particular needs of its unit owners and carefully consider the advantage and disadvantages of each option.

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Related to the issue of Rentals are collections and loans. Both of these topics will be offered at ACTHA's Spring Conference on March 20. See page 6.

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