

When a neighbor doesn't pay ...

MAKE SURE OLD RULES DON'T TIE YOUR HANDS

The section of the proprietary lease dealing with termination of the proprietary lease is one of the most important sections. It gives a board of directors the ability to evict and foreclose upon a shareholder who is not complying with the proprietary lease.

Many proprietary leases were drafted 40 to 50 years ago. They have not necessarily kept pace with the times, with changes in laws, or with how the court system now deals with landlord-tenant issues.

Consider the situation where there is a monetary default under the proprietary lease. Most proprietary leases provide that you can serve a 10-day notice to cure followed by a notice of termination. Once that occurs, you have effectively canceled the shares. Although we do recommend that you commence a holdover proceeding and get some type of judgment from a court so that your action can't be challenged much later on, if you want to be aggressive without the imprimatur of a judgment from a court, you can actually proceed directly to a non-judicial foreclosure.

However, most of the judges in the housing courts will not allow you to bring a holdover proceeding for nonpayment of maintenance. They relegate you to the "nonpayment summary proceeding," which requires the service of a three-day demand for rent by a process server followed by the service of a nonpayment petition. The problem with that nonpayment summary proceeding is that it is incomplete from the perspective of the proprietary lease and the foreclosure process. If the shareholder does not pay the maintenance, a judgment and

a warrant of eviction will be issued, and you will then be able to evict the shareholder based upon the cancellation of the proprietary lease.

However, the problem arises, under the proprietary lease, where in order to foreclose you also have to cancel the stock interest in the apartment. A shareholder owns shares in the corporation and has a proprietary lease interest. In order to complete a foreclosure, you must also cancel the stock, which requires that you serve the notices required by the proprietary lease, typically found in Paragraph 31, which requires a notice to cure and a notice of termination. In doing that, you are potentially reviving a shareholder's right to cure after the court has issued a warrant and perhaps even after you have evicted the shareholder.

When we have cooperatives that are looking to amend the proprietary lease, we recommend that they carve out an exception in the termination section recognizing that once a court issues a warrant of eviction, that triggers the termination of the lease, such that the cooperative can serve the termination notice without the necessity of serving a cure notice. ■



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