Q&A: Buyer Beware

Q I recently bought a co-op in Kew Gardens, and I am now living what is starting to seem like it will be a nightmare. When it came to the closing, I was only told of an assessment of an extra $60 each month, and, while this was a complete shock, my lawyer was able to come to an agreement with the sellers to split the cost of the remaining months. There seems to be a lot of problems that the seller never told me about, in regards to the co-op being behind with their mortgage and a lot of general animosity among the people living here due to the fees.

I have now received my October statement requesting my co-op fees, in addition to my regular (agreed upon) fees of $664.40, which I had thought was a little excessive to begin with. And there is the assessment of $60.80—that I found out about at the closing, plus an additional co-op abatement assessment of $308.11. I never received any notice of this assessment. It was the first I had heard of it. What are my rights here? Can I refuse to pay this? Is there any way of getting it reduced? I have no idea what this money is for and why I'm expect to pay so much more when I only moved in here three months ago.

A "This issue is one by and between the buyer and seller and not the co-op," says attorney Al Pennisi of Daniels Norelli Scully & Cecere, P.C. "If the co-op has a proprietary lease, which grants the board powers to pass an assessment. The tenant shareholder that signed a lease at closing is bound to pay all maintenance and assessments. The contract of sale by and between buyer and seller should contain representations as to the maintenance and assessments and therefore the buyers remedies are against the seller. The only liability of the co-op to the buyer would be if specific questions were asked to the co-op by the buyer as to the assessments or finances and the co-op did not give the buyer the information."

Q&A: Transferring Shares to a Trust

Q My wife and I own the shares for our co-op apartment jointly. We wish to establish a revocable living trust for our assets and the apartment. Our co-op board is unwilling to make the transfer to the trust. How can we convince the board to do so? And if we are unable to do so, what can we do? A friend of mine in his co-op was permitted to do so without any difficulty."

A "The ability to transfer ownership of shares in a cooperative in a stock and lease varies from co-op to co-op," says attorney and partner Geoffrey Mazel of the New York-based firm Hankin & Mazel, PLLC. "The transfer does not serve any corporate interest and is an accommodation to the shareholders of the cooperative. Many co-op boards argue that the proprietary lease requires the owner/lessee to occupy the unit and in the case of trust ownership of the shares this provision of the lease is in technical violation.

"In addition, there are issues such as service of process; maintenance collection; proxy voting and uncontrolled occupation of the unit which may make trust ownership problematic for the co-op board.
"Many co-ops have found ways to overcome these problems. The easiest way to do this is to have the current shareholder and the trustee of the trust sign an agreement at the time of transfer which in effect requires the current shareholder to be the only occupant of the unit and the guarantor of the maintenance. Of course, this document should be drawn by the cooperative's attorney and approved by the board of directors."

Q&A: Without Warning

Q I am a co-op owner of 8 years and our management has raised the late fees from $25 to $50. Can this be done without any warnings? This affects me as I am not able to pay the maintenance and parking by the 10th of each month. I have written my management and informed them that I can only pay the maintenance and parking by the 15th of the month. Can anything be done about this? I do not see anything stipulated in my proprietary lease.

A "According to the standard proprietary lease, maintenance is due on the 1st day of the month. Most cooperatives impose fees for the late payment of maintenance after a grace period, most usually ten (10) days though I have seen as little as five (5) days and as much as fifteen (15) days," says attorney Jeremy J. Deutsch, with the Manhattan-based law firm of Tane Waterman & Wurtzel, P.C. "This is a decision that is made by the board of directors. The writer here says it was imposed by management, but I assume the decision was made by the board of directors as the managing agent would not have the authority to impose such a fee on its own.

"Shareholders must be given written notice of the imposition of a fee as well as of an increase in the amount of the fee or a change in the applicable grace period prior to the fee's imposition or any change to it. Such notice should be given at least thirty (30) days prior to the change to avoid any argument that there was insufficient notice given. An increase in the amount of the fee from $25 to $50 is not out of line with what many cooperatives charge. The writer concedes that his or her problem is that he or she can't pay the maintenance and parking fees within the ten (10) day grace period allowed by the cooperative. The writer should remember that the proprietary lease mandates that maintenance is due by the 1st day of the month and any time given after that for payment is a grace period allowed by the cooperative. While, of course, the writer may try and make special arrangements for his payment to be by the 15th of the month without imposition of a fee, I think it unlikely that the cooperative would consent to avoid setting a precedent of treating shareholders differently and because it would be unwieldy to handle shareholders differently."

Q&A: Illegal Roommate in a Rental?

Q I received a letter, dated May 4, 2015, stating that I have an illegal tenant occupying my unit. It stated that all unit owners must inform management about any tenants and provide proper paperwork, including names, phone numbers, and copy of executed lease, which I do not have. I am being assessed a monthly rental fee of $150.00, retroactive from February 2015, which will appear on my May monthly maintenance statement, and continue each month thereafter.

The condo unit upon which management is imposing a monthly rental fee was purchased in 1988, solely as an investment-owned rental property. The original loan application states "owner non-occupied."

The offering plan, original governing documents, provided purchase of the condo unit without leasing/occupancy restrictions and did not impose a fee for non-residence owners. The condo unit was never intended to become an owner-occupied property. At no time was my unit owner-occupied. Up until the past few years, the condo unit was rented, sporadically, with an executed lease. After many years of tenants' destroying all the appliances, carpeting, floors, and even breaking the broiler, I had been forced to make costly repairs, replace appliances, more than once, and even renovate the kitchen and the bathrooms. There came a time when I could not find a tenant and/or was skeptical towards dealing with prospective tenants, due to my previous experiences. When my son and his friend decided to rent my unoccupied unit, I did not hesitate. Management was well-aware of this arrangement and never requested an executed lease. At no time did I ever have a present roommate or was able to secure another person, in the meantime, and both of them are there without an executed lease because of the tenable circumstances. In addition, the condo continues to be furnished with all of my son's original belongings.

Upon information and belief, condo units are deemed by law to be real property. Therefore, it is a "credible argument where a unit is defined as property that may be acquired, held, leased, mortgaged, and conveyed as any other real property, such as outright restriction on leasing is untenable." Furthermore, "an owner's expectation arguably would be dashed by an amended leasing restriction and/or imposing ongoing monthly fees."

To conclude, in actuality, the condo unit in question was and always has been a non-owner rental property, despite the fact that my son, a non-owner has lived there and paid rent with his—interchangeable—roommates.

Also, I have and continue to receive an insignificant amount of rental income, but I do not have to worry about my unit being trashed anymore. If I am forced to pay management $150.00 monthly rental fee, I will be at a deficit after paying my mortgage, maintenance, taxes and homeowners insurance. I, also, feel that this is a discriminatory act, and am at a loss, as to what additional services management provides non-occupied unit owners, for an additional monthly fee of $150.00, that are unavailable for owner-occupied units.

A “Regardless of what your loan documents, the offering plan, or even the original governing documents may have included regarding rentals at the time you purchased the unit, if the current declaration and bylaws give the board the power to institute procedures and fees regarding rentals, as a unit owner, you must abide by those rules and fee schedules,” says Leni Morrison Cummins, an attorney and member of the Manhattan law firm of Cozen
O’Connor.

“When you purchase a condominium unit, you are purchasing subject to the right of the unit owners to change the declaration and bylaws by amendment and the right of the board to change the rules and regulations or house rules. You should review the current version declaration, by-laws, and rules and regulations or house rules to determine whether your board has the power to institute these procedures and fees. Regarding your concern about discrimination, courts hold that condominium boards must treat all owners equally. This means that the board must apply the procedures and fees pertaining to rentals in a uniform manner. If you believe you are being singled out, you should request a meeting with the board to inquire about the issue.”