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Limitations on condominium and cooperative fees

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Condominium associations and cooperatives charge unit owners and shareholders various fees besides monthly common expenses. The power of a community association board to impose particular fees, however, may be limited by the association's governing documents or New Jersey law.

Late fees, interest and reasonable attorneys' fees. The New Jersey Condominium Act permits an association to collect late fees, interest, and reasonable attorneys' fees from unit owners who default on their obligation to pay common expenses, but only if expressly authorized by the association's master deed or bylaws, not merely by a board resolution.

Although the Condominium Act does not limit the amount of monthly late fees that can be assessed, most associations charge between \$25 and \$50. A court may invalidate a higher fee, especially one that multiplies or escalates each month that an owner remains in arrears, that is deemed excessive or unreasonable.

Capital contributions and membership fees on sale of a condo unit. Many condominium associations collect a capital contribution, membership fee, or other charge upon the initial sale or subsequent resale of a unit. Under a 2007 amendment to the Condominium Act, an association may levy these fees only if they (1) are expressly authorized by the master deed or bylaws, (2) are "earmarked for the purpose of maintenance of or improvements to common elements to defray common expenses or otherwise," and (3) do not exceed "nine times the amount of the most recent monthly common expense assessment" for the sold unit.

Flip taxes, flip fees, transfer fees, and subletting fees in cooperatives. Most cooperatives collect a "flip tax," "flip fee," or "transfer fee," from a shareholder on the re-sale of an apartment. This fee commonly is calculated based on the number of shares that a shareholder owns in the cooperative corporation (e.g., \$5 per share), and may exceed \$1,000.00. Under New Jersey law, a cooperative cannot assess these fees unless specifically permitted by its by-laws, certificate of incorporation or proprietary lease. The fees are not valid if imposed pursuant to only a board resolution or the public offering statement; a broad, general grant of power to the board to manage the cooperative's affairs; or even a bylaw that permits the cooperative to collect its "incidental expenses" and attorney's fees incurred in connection with the sale of an apartment.

Similarly, a New Jersey appellate court has ruled that a cooperative board's resolution that required shareholders who subleased their apartments to pay a monthly "sublet privilege fee" was unenforceable, because the fee was not specifically authorized by the proprietary lease or bylaws.

Rental review fees, security deposits, and discriminatory fees. Some condominium

associations charge an owner-landlord a “rental review” fee each time the owner leases his unit. Under New Jersey law, the fee must be reasonably related to the association’s legitimate, actual costs incurred in conjunction with the transaction, such as reviewing the lease to assure it complies with the master deed, by-laws, local ordinances and building codes; inspecting the unit to assure that the common elements have not been damaged; and checking a prospective tenant’s prior rentals for claims of damage to property and other pertinent information. A fee that exceeds such costs may be rejected by a court as an illegal, discriminatory “revenue-raising device,” because it reduces the common expenses of resident owners by making owner-landlords pay a disproportionately larger share of those expenses.

In one analogous case, the New Jersey Supreme Court held that a condominium could not charge investor-owners \$50 more than resident owners to rent a monthly parking space, in part because the higher fee resulted in the investor-owners effectively paying more than their proportionate share of the association’s common expenses. In a similar case, a trial court struck down a condo board regulation that required owner-landlords to pay a security deposit to cover the perceived increased maintenance costs caused by tenants.

If you have a question about your community association’s fees, contact the association’s property manager.