

The **COOPERATOR**
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**Aggressive Board Clamps Down
On Unapproved Tenant**

Q I am a non-resident owner in a 10-unit co-op in Manhattan. I have been renting out my unit for the past 7 years. Recently, while I was away from the country on work, my son inadvertently rented my apartment to a tenant without first getting board approval. I know we violated co-op board rules and immediately stated we wanted to be in compliance. I submitted the rental lease to the co-op board, as required. But now the co-op board is saying that my tenant must vacate by October 31 (they gave us 30 days' notice) and that if she continues to stay we have to pay a fine of \$1,000 for every month she stays. There is no mention of any fine or penalty in the proprietary lease or the bylaws or in any other written rules. I have complied by turning over the rental lease to the board. This is a first and only time violation on my part of the renting rule. The board has also threatened me with forfeiture of my shares. What should I do? The board seems to be acting illegally and in an excessive use of its power.

—Irritated Unit Owner

A "Subletting without prior board approval is a violation of most cooperative bylaws, says Leni Morrison, an associate at the firm Adam Leitman Bailey, P.C.



Leni Morrison

"Boards of cooperatives have broad power to fix the procedures and liabilities for handling shareholder bylaw violations. Therefore, if governing documents provide for such

power, a board may (1) impose fines or (2) terminate a lease and cancel shares for bylaw violations or (3) both.

"For a board to fine a shareholder for a violation of the bylaws, the proprietary lease must explicitly define the violation and grant such authority to the board. A court will not enforce a monetary fine if it views it as an unreasonable financial penalty. Boards must also treat all shareholders equally and proportionately.

"To determine whether the board can legally assess fines, you will need to review your proprietary lease to ascertain whether the board has the power to institute fines. If it does, you should determine whether the \$1,000 fine per month is a reasonable approximation of the actual loss or expense the cooperative would incur if you continue to sublet. You should also find out the amount of fines the board historically assessed to shareholders who violated the subletting provisions of the proprietary lease.

"Generally, a board does have the right to take the steps to terminate a proprietary lease for subletting without following the procedures of that lease. However, as an outside investor, you may be exempt from those procedures. To determine how successful the board will be in terminating your proprietary lease as it threatens, you should review the procedural terms of the termination provision of your proprietary lease and also see if they apply to you."