

Illegal Short-Term Rental and Subletting Tip Sheet

*Note: The locations of the clauses cited below vary among HDFCs,
so read your governing documents thoroughly!*

Some of our shareholders are using their apartments as profit-making enterprises. What do we do?

1. Show them your HDFC's **Certificate of Incorporation**:

"The Corporation is organized exclusively for the purpose of developing a housing project for persons of low income located at the building." (Section II)

"All income and earnings of the Corporation shall be used exclusively for corporate purposes, and no part of the net income or net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm, corporation or association." (Section IX)

2. Show them your **Proprietary Lease**:

"Cooperation: The shareholder shall always in good faith endeavor to observe and promote the cooperative purpose for the accomplishment of which the Corporation was incorporated."
(Section V, 5.02 (c))

"Restrictions on Shareholder's Use: The shareholder shall not occupy or use the apartment or permit it or any part of it to be occupied or used for any purpose other than as a private residence for the shareholder, shareholder's spouse, children, parents, brothers, sisters, grandparents, grandchildren, and domestic employees. Occupancy of the apartment by any other person shall require prior approval in writing by the Corporation on such conditions as the Corporation may prescribe." (Section V, 5.03 (a) – Use of Premises)

3. Remind them of the **consequences of not complying** with your Certificate of Incorporation, Proprietary Lease, House Rules, and other governing documents:

"Termination of Leases" (Section VII, 7.01 (c), (e), and (f) – These sections allow your HDFC the right to terminate a shareholder's lease and all rights associated with it. They also outline the prohibitions against subletting and unauthorized occupancy, as well as default in other covenants, and shareholders' objectionable conduct.

Board members are among those who are using their apartments or rooms as short-term rentals. They have even commandeered the building's common areas for private businesses. How can we get all shareholders to follow HDFC rules and regulations?

- Educate yourself and fellow shareholders by closely examining your Proprietary Lease and other governing documents. If necessary, amend these documents. For instance, consider instituting rules against selling large apartments to small households (such as a three-bedroom to a single person who might use her apartment for short-term rentals).

- Direct your attorney to send pre-emptive notices outlining the illegality of short-term rentals in HDFCs and stating the consequences.
- Use sections of your Proprietary Lease to address the collateral damage and related issues caused by the illegal use and occupancy of your HDFC. For example,

Quiet Enjoyment (Section V, 5.01)

Shareholders have the right not to be disturbed by the increased traffic and noise caused by strangers coming and going from short-term rentals of rooms and apartments in your HDFC.

Compliance with the House Rules (Section V, 5.02 (b))

Breach of House Rules is a breach of the Proprietary Lease. If you maintain and update your House Rules to include prohibitions against boarders, short-term rentals, bed & breakfasts, private businesses in common rooms, etc., this will strengthen any legal battle you may have to wage.

Primary Residence (Section V, 5.03 (b))

This clause explains that shareholders must use their apartments as their main home and must reside there for at least 183 days each year.

Subletting – Transfers and Pledges (Section V, 5.05)

Most HDFCs with governing documents that address subletting clearly state that shareholders are not permitted to sublet for more than 10% above the maintenance fee and that all people approved to sublet must adhere to the co-op's income limits. If your building has no sublet policy, you need to create one and strictly enforce it.

Right of Entry (Section VI, 6.02)

An HDFC board has the right to enter shareholders' units (without notice, in the case of an emergency), to facilitate repairs, cure defaults, and address other issues. Maybe you suspect that a shareholder has constructed walls to advance short-term rental business, for instance, or perhaps you are just there to allow the plumber to fix a leak. During any inspections, be sure to be on the lookout for any telltale signs of illegal use.

Waiver by Corporation (Section VI, 6.03)

This critical section explains that an HDFC has the right to address any breach at any time, whether or not the corporation has failed to address that breach for whatever period of time before now. So do not let anyone tell you that you have given up your right to enforce your governing documents and policies simply because you have previously allowed shareholders to sublet for longer than they are legally permitted, for example, or you have known that a shareholder was operating a short-term rental out of her apartment.

Objectionable Conduct

To learn how this issue successfully played out in a court case, Google 40 West 67th Street Corp vs. Pullman.