



GAME PLANNING

Residents will be tempted to sublet their apartment homes during the week of the Super Bowl – and you'll need a game plan to intercept any issues that may come along.

IT'S ALREADY NOVEMBER; football season is in full swing. There are 32 NFL teams fighting for the right to travel to Houston in February. Who else will be visiting? Where will they all be staying?

The Super Bowl is one of the biggest sporting events in the world. The week leading up to the game has become a show all on its own. Companies host events for business associates and customers. Celebrities party at restaurants, clubs and private venues. People travel to one city from all over the world for a good time.

While we in the apartment industry like to have fun as much as the next guy, there are concerns. You know, a lot of money can be made by anyone subleasing your units for the week. At the same time, you want to get through the week without jeopardizing your relationship with current residents, losing control of how your property is being advertised or properly screening those who live at your property.

Addressing these and other concerns takes planning and preparation. You need a game plan.

Issues that Might Arise

A lot of things could happen when thousands of people with a common mission – to have a good time – embark on our city for an entire week. At the very least you can expect:

- Corporate housing providers will want to secure units to rent out during the week.
- Residents will want to sublet their units.
- Companies and residents will want to use your property and its amenities for business and social gatherings.
- Residents and occupants will have visitors come to town for the weeklong festivities.

Here are some tips to deal with these issues:

Setting up a Corporate Housing Program

The “corporate” tenant typically refers to a number of different types of organized entities. The most popular forms of a “corporate”

tenant are a corporation, a limited liability company or a limited partnership. No matter how the tenant is organized, you will want to be sure that the tenant is legitimate, has the ability to pay rent and will attract occupants that won't cause problems at the property. Although this type of tenant typically won't have a rental or criminal history (at least not in the customary sense), you will want to make sure that the entity is not using your program to house people that would not otherwise qualify to rent a unit.

As a starting point, the “corporate” entity should fill out an application form that identifies the taxpayer identification number for the organization, the state of incorporation, the purpose of the organization, the purpose of the organization's use of the corporate housing program and any other information you deem appropriate that will allow you to confirm the legitimacy and credibility of the organization.

You may also want to obtain credit card or bank information, similar to the type of information that you obtain on individuals applying to be residents at your property. This should give you an idea of whether the organization is real or simply using your corporate housing program for an individual (usually identified as the principle of the entity) to avoid liability under the lease.

Once you obtain as much information as you can on the organization, it may be beneficial to confirm that the organization is in good standing with the Texas Secretary of State's Office. Whether the organization is foreign or domestic (with respect to Texas), if it is the type of organization that is required to register with the secretary of state's office (such as a corporation, limited liability company or limited partnership), the organization should be regis-

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tered to do business in Texas. You may also want to confirm that any assumed name used by the organization is valid. It is essential that you know whom you are doing business with.

Once you have checked out the organization, you will need to decide what documents you should be using for your housing program. Although the TAA lease can be used in conjunction with another agreement, you probably do not want to solely use the TAA lease for a corporate housing program. The TAA lease is designed to be a residential lease. It is not written to identify the “resident” as a corporate entity. For example, in section 2, the resident agrees that the apartment will be occupied only by the resident and the listed occupants. Obviously, a corporate entity would not be physically occupying a unit.

In section 30.1, the resident agrees that replacing a resident or subletting is allowed only when the owner consents in writing. Without written permission, the entity could not allow others to sublet a unit under the standard lease. Section 30.3 provides that the resident agrees that the resident will not rent or offer to rent all or any part of the apartment to anyone else, will not accept anything of value from anyone else for the use of any part of the apartment and will not list any part of the apartment on any lodging rental website or with any service that advertises dwellings for

rent. This also runs contrary to how many corporate housing entities advertise.

If a company is interested in securing the opportunity to lease a package of units, you may want to have a master leasing agreement. If an entity desires to lease units one at a time, you may want to consider some type of lease rider to the standard TAA lease. No matter which approach is used, the contract between the corporate housing tenant and the owner should make sense.

Whether you have a master lease arrangement or an individual lease rider, it would be beneficial to include: (i) A leasing process by which occupants will be identified and properly checked out. (ii) An agreement that either the entity or you will confirm the rental and criminal history of occupants.

(iii) If you will confirm rental and criminal history of occupants, implement a process that will allow you to obtain certain information on occupants, such as names, dates of birth, social security numbers, etc. to allow you to properly screen the occupants.

(iv) An agreement that the entity and all occupants will comply with customary conduct-related lease obligations.

(v) Insurance and indemnification requirements, as appropriate. With respect to compliance with lease obligations, it may be beneficial to incorporate the TAA lease to the extent that it is not inconsistent with the terms of the leasing agreement.

To control how your property is being portrayed, you may want to restrict the entity's ability to lease on certain social media site or publications. You may also want to restrict the contents of advertising to be sure that the entity is not representing things that should not be represented to the public, such as that the property provides security, or something that would be inconsistent with or a violation of applicable fair housing laws. The leasing agreement between you and the entity should address whatever is agreed to with respect to advertising units.

You should also have provisions in your master lease or lease rider that allow you to take the appropriate action against an occupant that causes problems. You would want to have the right (similar to your right under the TAA lease) to evict a corporate tenant and all occupants if the occupant causes problems. If the entity leases a unit in conjunction with a

corporate leasing program for a number of units at the property, you may want to address whether a default with respect to one unit is a default with respect to all units. Ideally, you would want to have the choice of either requiring the corporate entity to get rid of a particular occupant or terminate the corporate entity's right to sublease any unit.

Resident Subletting Issues

As indicated above, the TAA lease restricts a resident's ability to sublet a unit. Section 30.1 states that subletting is allowed only when the owner consents in writing. Section 30.3 restricts a resident's ability to rent or offer to rent a unit on any lodging rental website or with any service that advertises dwellings for rent. Section 2 provides that the unit is to be occupied only by the resident and listed occupants.

Whether you choose to allow residents to sublet during Super Bowl week is up to you. However, if you do, you may want to establish certain rules that will grant you the opportunity to know who is living at your property and create boundaries on the type of conduct that is allowed.

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You may want to send out a preemptive letter to residents advising them of their obligations under the lease and whether or not you will allow subletting. If you allow subletting, you may want to require residents to identify who is living in the their unit and have the appropriate background checks on those residents. This may depend on how long these residents will be living at the property, which may be already dictated by how many days a resident can have an overnight guest in section 2 without obtaining your prior written consent.

Controlling Conduct

You may also want to send out a preemptive letter reminding residents that they are responsible for the conduct of occupants and guests. Pursuant to section 13.1, the resident is required to promptly pay or reimburse you for loss, damage or cost of repairs or service in the apartment community because of conduct by the resident, occupants or guests. Section 20 prohibits conduct of the resident, occupants or guests including: (i) criminal conduct; (ii) behaving in a loud or obnoxious manner; or (iii) disturbing or threatening the rights, comfort, health, safety or convenience of

others (including the owner's agents and employees) in or near the apartment community. The resident should be reminded that, if occupants or guests cause problems, they could be responsible for damages as well as be evicted from their home. If a resident is advised of these things in advance, you may have a better shot at controlling the type of conduct that could occur during Super Bowl week.

Allowing the Use of Amenities for Business and Social Gatherings

In the upcoming months, you may find yourself fielding requests for the use of your clubhouse, swimming pool or other amenities for private parties during Super Bowl week. These could come from corporate tenants as well as individual residents. The decision of whether you want to allow private social gatherings in your amenities is up to you. However, if you decide to do so, you should be prepared.

It will be beneficial to know in advance what type of requirements you will have if somebody wants to rent out space in your community. Your requirements might include:

- (i) Maintaining a certain level of insurance.
- (ii) Requiring an indemnification agreement

whereby the tenant or resident will indemnify you for any claims, damages or loss associated with the use of the amenity. (iii) Whether you will allow alcoholic beverages to be served.

(iii) (iv) Whether you will require the user of the space to hire off-duty police officers or other type of security personnel to be present during the time that the amenity is in use.

(iv) (v) Whether you will require an extra deposit to be paid to secure you against damages to the area.

Several concerns have been rising as a result of Super Bowl week. The time to plan is now! Don't be caught off guard next February. 🐼

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