

**Non occupancy charges as per bye laws**

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Is non occupancy charges legal. Rules for non occupancy charges. Why non occupancy charges. How much non occupancy charges.

In some apartments complex, it is a practice to charge two different rates of Monthly Maintenance (MMC). While the owners who reside in the company are charged a certain basic rate, tenanted apartment owners are charged an additional amount. This additional amount is indicated as Non Occupancy Charges (NOC) – not to be confused with No Objection Certificate. They are also interchangeable called Tenancy or Tenancy Differential. This practice is usually the cause of acrimonious relationships between the Management Association and the owners who rented their property. The situation remains verifiable until expenditure is limited to a reasonable rate. The problem begins when managers start charging the differential amount at exorbitant rates, which in extreme cases can be up to 100-150% of the basic MMC or even more. Despite the rates, non-resident owners always feel discriminated. Your management can provide many justifications, such as additional expenses that are for the additional resources involved in managing tenant issues, such as employees, security guards and staff applying the discipline et al. But, what are these non-employment expenses / Tenancy? Your management may also mention that they are permitted to collect additional expenses according to the Supreme Court ruling, which is often cited incorrectly. The case in question is the Court known as Mont Blanc Co-operative Housing Society Limited, Mumbai & anr vs State of Maharashtra &Ors (WP- 2635/2001), which is discussed in detail here. The example of Maharashtra Although practice prevails in many states, the problems in Maharashtra, especially Mumbai have remained more focused. Some important facts of this case are:- (a) Many real estate companies in Maharashtra were charging exorbitant rates of non-occupational charges to the owners who had rented their apartments. (b) The additional Registrar of the coop housing companies, Maharashtra issued a circular on 13 August 2001, placing a ceiling of more than 10 % of the MMC. This order has been challenged by the Management of the Cooperative Housing Company of Mont Blanc Limited (Society Mont Blanc for a short time) on the basis that the State Government has not had powers to overlap with their resolutions of law and majority of Bye. The case progressed as follows:- (a) The Hon'ble Mumbai High Court rejected the petition (2635 of 2001) based on being devoid of merit and confirmed the order of the Maharashtra government. (b) The Society of Mont Blanc deposited a Special Petition of the Leaf (SLP 7391) in the Supreme Court against the High Court of Mumbai. The Apex court gave the following INTERIM ORDERS: (i) The judgment of the High Court of Mumbai is confirmed that, among other things, it is clear that there will be a uniform rate of non-occupational charges throughout the State of Maharashtra, i.e. 10% of service costs. (ii) The SLP of the Society of Mont Blanc and all others are converted Civil Ordinary Appeal to be heard in turn. (CA 4089 of 2009) (iii) The Civil Appeal CA 4089 of 2009 is still pending in the Apex Court. Right to Karnataka There are also cases in Bengaluru, where executives are charging extra from the owners of the rented apartments, in the name of NOC. In some places the difference is nominal and therefore there are no problems. But there are also a large number of cases of companies where managers are loading an unrealistically high rate of NOC. The logic used by these companies in most cases is the ruling of the Supreme Court in the case of the ME BLANC CO-OP HOUSING SOCIETY LD. & ANR VS STATO DI MAHARASHTRA & ORS in the Supreme Court of Hon'ble In SLP (Civil) 7391 against the order of the High Court of Mumbai of 02 Mar 2007 in Writ Petition n. 2635 of 2001 incl. a couple of other similar petitions such as SLP 7964, 7965 and 7966 marked for consolidation. Legal reasons against NOC in Karnataka If you are one of the interested owners, you have reason to contest the decision of the management for the following reasons: (a) There is no order of the state government Karnataka that specifically addresses for any additional charges to be recovered from the owners who rented their apartments (b) Any order issued by the Maharashtra government including its subordinate bodies is not applicable in the state of Karnataka. e) The decision of the High Court of Mumbai is of a nature RESTRICTive for the companies located within its jurisdiction, that is, Maharashtra and therefore cannot be taken as a law in Karnataka. d) The provisional order and relief of the Hon'ble Supreme Court are RESTRICTED, INTERIM and CASE SPECIFICATIONS for the Maharashtra Society and therefore cannot become Precedence or Case Law for all States until the final judgment is come and more depending on what is established in the final judgment. In addition to the above, it is also necessary to consider the above points: (a) A Group Housing Society functions on the principles of the common Bonum Le Common Good. Therefore, each member must pay for his part of maintenance of structures common to all, but at the same time the Company should not indulge in profiteering at the cost of members who give their apartments for rent. b) The management of the Company must not operate towards unjust enrichment, the costs of some benefits to a group of owners, should not be at the cost of others. (c) The interests of the minority group should not be made to feel exploited. d) In the case of government housing companies, most owners are prevented from occupying their apartments due to their service compulsions and not just for profit. In such cases, the charge of NOC to members serving elsewhere must be negative in the law. So any collection on this count is subject to legal and administrative control.the bottom line is that the noExpenditure shall not be charged at least in the State of Karnataka. As such, with the RERA-2016 that applies from 01 May 2016, the law of the apartment will undergo some substantial changes, requiring a de novo to look at the problem immediately after the government of the State does the same applicable through the publication of the official gazette. Disclaimer: The above article is purely an academic exercise and in no way makes it a cause of action in any way. Although the maximum attention was taken to mention the details of the case as accurately as possible, but the error if found is repented. All readers are advised not to take this as an authority for any purpose. If they do, they do it at their own risk and cost. Bangalore propertybangalore real estateRWA Non-occupational expenses are provided by accommodation companies on owners of member apartments that do not reside in their respective premises. Such non-residents may be because the apartment is vacant or rented. If a flat owner chooses not to reside in his apartment and gives the same for rent or keeps it vacant, then the company can impose non-occupation expenses on him. How to calculate non-employment costs? According to a circular issued by the Maharashtra government, pursuant to Article 79A of the Maharashtra Cooperative Society Act, 1960, the amount of non-occupational charges cannot exceed 10% of the company's service costs (excluding municipal taxes). For example, suppose that the total maintenance bill of a company for a member amounts to Rs 3,500 and includes the service costs of Rs 2,500. Then, the company will highlight a quantity of Rs 250 as non-employment charges, which is 10% Rs 2,500. What are the criteria for the withdrawal of non-occupational expenditure? If a flat owner is himself resident in the apartment, then, he is not responsible for paying non-employment expenses. In the event that the apartment is occupied by the members of its immediate family, namely, son, daughter (married or unmarried) or grandchildren, then, will also be exempt from payment of non-occupational expenses. How much can companies charge as non-occupational expenses? Before the Maharashtra government captured the amount of non-wage costs at 10% of service costs, the arbitrator was rampant in its withdrawal and collection. The companies would charge exorbitant rates with respect to Rs 9 per sq ft, as non-occupants. This had the negative impact of increasing rents and becoming a financial discharge on non-resident flat owners. Non-resident Indians (NRI), many of whom are greedy investors in Indian properties, were particularly impressed. Cases also came to light, where the withdrawal of non-occupational charges was highly disproportionate, up to several lakh rupees per year. In the case of Bhartiya Friends Cooperative Housing Society, it was discovered that in a building with 49 apartments, the owners of two apartments had paid Rs 2.5 lakhs to non-occupational expenses for their respective units. However, most of this amount went to pay the property taxes of the remaining 47 units. unit.He was highly ethical and equals cheating. Similarly, in the case of the Cooperative of Mont Blanc Housing Society vs. state of the Maharashtra, the Bombay High Court observed that on 51 apartments in the building, only three to six apartments were rented at any given time. From these apartments, non-employment costs vary from Rs 3 lakh to Rs 24 lakh were collected. This has been attested in sharp contrast to the company's tax bills, which came to only Rs 16 lakhs per year. Thus, it was evident that non-occupational expenses, rather than being considered as a marginal amount, had actually become a harassment tool. Excessive amounts collected in a non-occupational manner, were indebted to pay the debts of other unfulfilled members. Any amount charged to any additional item, apart from the fixed expenses of 10%, is considered illegal. In this case, the company may be persecuted under the Consumer Protection Act, by deliberate negligence and lack of services and overload of the amount with abuse of power and harassment. The license is required to adhere to the procedures envisaged and to present relevant documentary evidence, while at the same time starting a legal action. What happens if the flat owner does not pay for non-employment costs? The real estate company will send a reminder notice, in case the flat owner does not pay or refuse to pay the non-employment costs. You may declare the owner a defect if the amount is not paid. In addition, the no-two certificate will not be provided by the accommodation company. Government resolution on non-occupational expenditure The housing companies in the Maharashtra are governed by the Maharashtra Cooperative Housing Societies Act, 1960 (MCS Act 1960). The law establishes a legal and regulatory framework, to supervise and administer the affairs of real estate companies. Disputes between housing companies and their respective members may also be judged according to the provisions of the Act. Section 79A of the MCS Act 1960 allows the state government to issue circulars that prescribe guidelines for the operation of companies. Circulars issued under Section 79A are binding in nature. Section 79A was invoked by the Maharashtra Government to curb the withdrawal of non-occupational charges exorbitant by real estate companies on their members. The circulation under 79A, which was issued on 13 August 2001, has stopped the quantum of non-employment expenditure at 10% of the company's standard service rates. Service expenses of a company include elevator, common area electricity, safety and maintenance costs, but exclude municipal taxes. Compliance with the circular was mandatory and any violation would have merited criminal action, which would include removal of carriers of society. Circular non-employment expenses and the Maharashtra Cooperative Societies ActThe said 79A circular came to be challenged by the Cooperative Housing Society Mont Blanc in the Bombay High Court. The company challenged the hat at non-occupational costs as unconstitutional and andArticle 19 of the Constitution of India. It also argued that the circular was an interference not enshrined in the internal affairs of housing companies. In the meantime, the state of Maharashtra claimed that its protected minority members circulated by majority oppression. The circular also protected the right of ownership under Article 300a of the Constitution, because a member's apartment is his personal property and the company does not have the right to interfere with his use or his enjoyment. The state also argued that the withdrawal of non-employment exorbitant charges worked against the spirit of the cooperative movement and would have raised ownership rents, therefore, undermining the real estate market. Court judgment In a reference judgment, a division bench comprising jurisdictions BH Marlapalle and JH Bhatia, argued the circular 79A which covered non-employment costs to 10% of the company's basic service costs. The circular aimed at preventing the exploitation of minority members who were called to pay exorbitant and non-occupational charges. In addition, it represented an exercise of confidence by the state to avoid disputes and disputes, imposing a uniform rate for the withdrawal of non-occupational charges and delinking from the rental income earned by the apartment. However, the judgment of the High Court had an amendment. The Judge reduced the scope of the exemption for members exempt from payment of non-occupational charges. It considered that the exemption from non-occupational expenses could extend only to the flat owner and members of his immediate family, namely, his son, daughter or grandchildren. The members of his extended family, if they resided in the apartment, could not claim any exemption in this regard and should have paid the expenses of non-occupation as prescribed. Since today, non-occupational expenses required by housing companies cannot exceed 10% of the service component of the monthly maintenance bill. Such charges would be levied, at the time when the apartment is given on leave and license, or falls vacant. It is also recommended to check whether the contractor was free before the sale. The non-employment tax refers to a sum which is elected by cooperative housing companies on members who do not reside in the premises of the company. The owner of the unit (a member of the company) must pay non-employment costs. As with Law No 68 of the new law, service costs constitute wages and allowances to staff, sitting fees to members of the commission, common electricity and exits to the company's office. (The writer is a practicing lawyer in the Bombay High Court, specialized in litigation propertyFinancial. )