

## Flat Legal Fee Pass-Along Assessed Tenants Ruled Illegal Fee Splitting

Green vs. Morgan Properties (A-3202-10)  
Decided November

The state appeals court reinstated a class action on behalf of apartment tenants who were charged a flat \$400.00 attorney fee any time the landlord consulted an attorney to enforce lease provisions. The class action was brought on behalf of the tenants at the Willows in Barrington and Colonial Apartments in Cherry Hill, New Jersey.

Morgan Properties, the landlord, provided in its 2010 lease agreement a provision that permitted it to charge tenants \$400.00, plus costs, as additional rent any time an attorney's services were used in connection with the tenancy. It appears this included services involving preparations and service of notices concerning breaches of the lease, as well as eviction actions. An earlier version of the lease reduced the fee to \$200.00 if the matter was resolved prior to a court appearance.

From a motion to dismiss granted by the lower court, the Appellate Division Panel comprising Judges Francine Axelrad and Mitchel Ostrer reversed, finding that the plaintiffs set forth viable claims for consumer fraud and negligent representation in the context of its allegations that the landlord imposed charges for legal services exceeding the representation cost. The court stated that the charge of a flat rate, which exceeded the actual cost of the representation of the landlord, "runs afoul of the general proscription that an attorney's fee may not be shared with a non-attorney", the court citing to Advisory Committee on Professional Ethics Opinion 93.

It is advisable that all landlords review their form leases carefully in the context of the Morgan Properties ruling, in order to insure that any designated flat fee for attorney services has a direct and accurate nexus with the actual time spent on a particular matter. Indeed, rather than articulating a flat fee, this case suggests language referencing a "reasonable fee" tied to the actual time the attorney spends on a given case.

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If you have questions or concerns related to real estate matters, please contact Arnold D. Litt, Esq., Shareholder and Chair of Archer & Greiner's Real Estate Department in Hackensack, N.J., at (201) 342-6000, or via email at [Alitt@archerlaw.com](mailto:Alitt@archerlaw.com).

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