

KITCHEN LEASE vs. VOLUNTEERS

Should we consider leasing our kitchen? This seems to be a question more lodges are asking themselves recently. Before delving into this topic there are numerous issues that should be taken into account. First and foremost, **the 501(c)(8) designation MUST be protected** (see Internal Revenue Publication 554, Internal Revenue Publication 598, Federal Section 501(c)(8) Tax Exempt Status Grand Lodge and Subordinate Lodges of Benevolent and Protective Order of Elks of the United States of America, Auditing and Accounting Manual, Chapter 6 and Chapter 10). Placing this in jeopardy could cost a lodge the loss of its Charter. In addition to protecting your 501(c)(8) designation you must protect the integrity of your lodge and its members, your property tax exemption, if applicable and your license to sell liquor. **Remember this is a members and guests only organization. This is not an organization open to the public, except under certain conditions.**

It is important that you review Statutes Annotated Section 16.050(g) which states:

“A lodge, whether incorporated or not, or any corporation, club, social parlor or other facility under control of the Lodge, must obtain a permit from the Board of Grand Trustees before it may lease its real property, or any portion thereof, for a term of more than five (5) years, whether it be an original term or under any arrangement for renewal or extension.”

Other documents to thoroughly review are the Internal Revenue Publication 598, page 10, “Rents” and “Mixed Leases”, which addresses Taxable Income and Unrelated Business Taxable Income, and the Grand Lodge Auditing and Accounting Manual paragraph 4-106 “Financial Operations”, paragraph 10-103 “Unrelated Business Income” and, Exhibit D, “Club Management” of the Auditing and Accounting Manual.

Now that the referenced documents have been thoroughly reviewed, you should evaluate why renting the kitchen might be in the best interest of your lodge. Ask yourselves, is the lodge experiencing:

1. A loss of volunteers,
2. The inability to maintain control of inventory,
3. The inability to find a member capable of achieving an acceptable ratio of income and expenses.

Now that you have determined where the problems lie it is time to decide if you, as the governing body of the lodge, have done everything in your power to correct the issues, and after evaluating the pros and cons, that you feel entering into a Lease Agreement for your kitchen is your only option. Remember, every action connected in any way to your lodge ultimately falls on the shoulders of the governing body of the Lodge. **All positive, and more important, all negative action becomes the responsibility of your Lodge.**

Keep in mind, in accordance with Grand Lodge Statutes, Section 12.070(b), only the Board of Trustees or the Board of Directors may execute a lease. Opinion 7 of this Section also states:

“The Board and governing body of the Club should handle the day-to-day matters without Lodge direction, but these bodies need Lodge approval for binding contracts and major expenditures of an unusual nature.”

Some points to consider when deciding the amount of rent to charge is:

1. Budgeted amount for income and expense to the kitchen
2. Music to be charged against the kitchen
3. Bar income (if any) for the kitchen and/or dining room
4. Utilities and Maintenance attributed to the kitchen
5. Bartender and waitress wages, including Employer State and Federal Taxes

Other areas to be considered:

1. Term of lease. If unsure about the decision you might enter into a 6 month, instead of a yearly lease. Keep in mind the documents previously reviewed.
2. No sub-leasing is allowed.
3. There will be no catering by the Lessee. The kitchen is for the benefit of the members and guests of the Lodge only. Outside catering could cause a liability issue for the Lodge.
4. The day and time Lessee is to serve and sell meals at the Lodge. Do not put yourself in a position of not being able to use volunteers for a specific event when necessary. Also, the Lessee of the kitchen should understand they do not dictate when they will or will not cook. The obligation to serve and sell meals for the Lodge are set out by the Contract and can only be deviated from with the agreement of the Lessee and the Lessor.
5. The kitchen should be professionally cleaned every six (6) months with the cost to be split 50/50.
6. Lessee is operating the kitchen as an independent contractor and will be responsible for ordering and payment of all supplies and food items the Lessee will need to maintain the kitchen. Lessee shall employ all cashiers, dishwashers, cooks and servers and shall be responsible for their workers compensation insurance (if applicable), wages, taxes, and all paperwork for employee filing.
7. Lessee shall be responsible for cleaning of the kitchen following each meal service, including but not limited to trash removal, laundry and cleaning of equipment.

8. Lessee, at his own expense, shall carry liability insurance for any damage caused by the Lessee or any employees, suppliers, or customers.
9. Lessee shall be in compliance with all Laws of the State of Florida and all Statutes of the Benevolent and Protective Order of Elks.

This covers only a portion of items that should be considered if a lodge enters into a Kitchen Lease Agreement. This is not something that should be taken lightly.

Sonja S. Lopez, PER
Member FSEA Business Practices Committee
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