“Limit on Charging Transfer Fees? ,” Naples Daily News

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By: David G. Muller

Q: My condominium association imposes strict limitations on the rental of units. The condominium documents include a requirement for the board to review and approve all proposed leases and tenants. The condominium documents also permit the association to charge a fee up to the highest amount the law allows to cover the cost of the background check and other expenses.

The board is aware of the statute that limits any transfer fee charged to a maximum of $100. Previously, this was not of consequence. However, the new management company charges an administrative processing fee for its assistance in administering the review of the lease application. Consequently, the board has been forced to pay these additional costs out of the general funds. Is it possible to impose another charge in the nature of a general fee, processing fee, etc. to cover this additional expense? R.H.

A: No. Section 718.112(2)(i), Florida Statutes, confirms that no charge shall be made by a condominium association in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, but in no event may such fee exceed $100 per applicant other than husband/wife or parent/dependent child, which are considered one applicant. The statute further states that if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made.

Since the condominium documents permit your association to charge a transfer fee, the association may do so. But the association is not permitted to charge the applicant more than the $100 (per applicant) statutory cap. If the

association's contract with the management company requires the association to pay the additional administrative fee you reference, the association will be required to make this payment, but the association cannot require the applicant to pay more than the statutory cap amount referenced in the statute.

Q: Five of the seven board members at my condominium association are related to each other. Is this legal? M.P.

A: It depends. Section 718.112(2)(d)(2), Florida Statutes, states that in a residential condominium association of more than 10 units, or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. This means that simply being related to other directors is not, in and of itself, prohibited. As an example, if each of the related directors you reference owns their own unit (and their family member who also serves on the board is not a co-owner of the subject unit), then there is no statutory prohibition on all five of these related directors serving on the board at the same time.

Q: Does the condominium act supersede the restrictions contained in the condominium documents? S.K.

A: This is a complex question and one that depends on which provision from the condominium act is being referenced. On some issues, such as insurance (see Section 718.111(11), Florida Statutes), the intention of the statute is to apply the respective requirements and obligations upon every residential condominium association in the state, which means that the requirements of this statute will supersede any conflicting language contained within the condominium documents. On other issues, such as the authority required to approve a material alteration to the common elements (see Section 718.113(2)(a), Florida Statutes), the statute requires the approval of 75% of the unit owners if the declaration is silent but this statute also gives deference to any applicable material alteration voting threshold contained in the declaration. This means that if the declaration specifically addresses material alterations the association must follow the applicable voting threshold contained in the declaration. The answer to this question will also depend on other factors, such as when the condominium documents were recorded and whether the condominium documents incorporate future changes to the condominium act.

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have questions about any of the issues raised herein. The hiring of an attorney is a decision that should not be based solely on advertisements or this column.

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