

Transfer approval fees restricted by law



Condo Q&A

Joe Adams
Guest columnist

Q: My condominium association states that under Florida Statute 718.112 they can charge a fee when someone is buying a condominium of \$100.00 per applicant. They call it a transfer fee, yet in reading the statute one cannot charge husband/wife and parent/dependent child as two separate people. They said that they have every right to charge each person under the law \$100.00 and considered it a background check. I understand the need for background checks. However, I question the legality of charging each person \$100.00? (*B.C., via e-mail*)

A: A condominium association can order a background check for each of the proposed unit occupants, if the declaration of condominium authorizes pre-sale investigation of potential new owners.

Section 718.112(2)(i) of the Florida Condominium Act authorizes a condominium association or its agent to charge a fee of up to \$100.00 per applicant in connection with its approval of a sale, mortgage, lease, sublease, or other transfer of a unit, if the condominium documents require the condominium association to approve such transfer and the transfer fee is specified in the condominium documents. As you note, this section of the Florida Condominium Act further provides that married couples, as well as a par-

ent and dependent child, are to be treated as one applicant and pay a single transfer fee. Further, if the transfer being considered by the condominium association is a renewal of a lease or sublease with the same lessee or sublessee, the transfer fee cannot be charged.

Although it does not apply in the context of your association, the Florida Homeowners' Association Act does not prohibit (or for that matter permit), nor limit transfer fees. Accordingly, the prevailing view is that a homeowners' associations may charge a reasonable transfer fee if authorized by the governing documents.

The \$100.00 transfer fee is intended to reimburse the association for outside expenses incurred (such as the background or credit checks) and otherwise cover the association's administrative costs. No extra fees may be passed on to an owner or prospective owner (or prospective tenant) by either the association or its agents (such as management companies). Alleged violations of this statute have generated class action litigation in other parts of the State.

I would note that the \$100.00 cap in the statute is over 40 years old, and times have certainly changed as has the cost of doing business. I am aware of pending efforts by certain groups to seek a change to the statute authorizing a higher transfer fee, which would seem to make sense.

Q: Can a condominium renter see the current financials? (*R.C., via e-*

mail)

A: A renter is only entitled by law in his or her own right to inspect the declaration, articles of incorporation, by-laws, and rules and regulations.

A renter could only inspect the financials and other official records in the same manner as an association member if the renter is authorized by an association member to act as the owner's authorized representative.

Q: I am a seasonal resident. I sent a letter to the manager of my condominium association requesting that certain records be e-mailed to me. In response, the manager advised that I would have to come into the office to look at the records. Since I am out of town, don't they have to send the documents to me by either mail or e-mail? (*J.B., via e-mail*)

A: No. The Florida Condominium Act requires the association requirement to keep records and make those records available for inspection and copying by unit owners. If records are available electronically, the association may, but is not required to, provide the records electronically.

Pursuant to the terms of the statute and interpretations by the applicable state regulatory agency, there is no obligation to send records to owners by mail, e-mail, or otherwise.

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