CONDOMINIUM AND HOMEOWNERS ASSOCIATION TRANSFER FEES; LIMITATIONS OR NOT

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By: Jeffrey R. Margolis

Transfer fees are those fees a homeowner's or condominium association may charge a unit owner or homeowner in connection with the sale, lease or other transfer of a condominium unit or home. There are significant differences between transfer fees which are permitted for homeowner's associations as compared against condominium associations. With respect to transfer fees for condominium associations, Florida law provides that transfer fees may not exceed $100.00 per applicant. Unlike condominium associations, there is no statutory limitation on transfer fees charged by a homeowner's association.

Section 718.112(2)(i), Florida Statutes, provides 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 must be present, 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 Condominium Act also prohibits transfer fees upon the renewal of a lease or sublease. However, the law permits a condominium association to require a prospective lessee to place a security deposit, not to exceed the equivalent of one month's rent, into an escrow account maintained by the condominium association.

It is important to note that the Condominium Act requires that the condominium documents provide authority for the condominium association to approve a transfer and to impose a transfer fee. If such authority is not provided for in the condominium documents, a condominium association may not charge any transfer fee. If the condominium documents provide for a transfer fee, then the condominium association may only charge the amount set forth in the condominium documents, but in no event more than the $100 statutory maximum.

The statutory limitation on transfer fees may not be circumvented by referring to or calling the fee something other than a transfer fee, such as a "screening fee", "move in fee", or something similar. Any fee charged in connection with the sale, lease, or other transfer of a condominium unit is considered a transfer fee subject to the statutory limitations and requirements. Charging more than the statutory maximum can have significant consequences for a condominium association, including liability for the amount of the excess fees charged as well as attorneys' fees incurred by the unit owners in seeking a return of excess fees.

The statutory maximum amount of transfer fees, however, only apply to condominium associations. There is no statutory maximum amount of transfer fees imposed on homeowners' associations. Homeowners associations, however, are not without some statutory limitations. Section 689.28, Florida Statutes, declares that transfer fee covenants violate public policy by impairing the marketability and transferability of real property. However, section 689.28(2)(c)7, Florida Statutes, does allow a homeowners', condominium, cooperative, mobile home, or property owners' association to charge a fee if the governing declaration allows such a charge. Therefore, a homeowner's association may charge a transfer fee if the authority is granted to the homeowner's association in the declaration. If a homeowner's association declaration specifies a set fee, the homeowner's association is limited to the fee provided for in the declaration.

Condominium associations and homeowners' associations should review their governing documents to confirm compliance with the statutory requirements.

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Jeffrey R. Margolis