



Screening Fee Charged Every Year

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Q: If the same people rent a condominium unit every year, does the board have a right to charge a screening fee each year? In every year the unit is rented in the summer and then the owners return in the winter, isn't that just a renewal? **M. R. (via e-mail).**

A: The Condominium Act does allow the association to charge a transfer fee for leases as long as the association has the authority to approve leases and the authority to charge a fee is contained in the governing documents. The Condominium Act limits the amount of the fee to one hundred dollars per applicant. Therefore, an association can charge each applicant one hundred dollars, but the statute specifically provides that a husband/wife or parent/dependent child are considered one applicant.

The Condominium Act does not permit the charging of a transfer fee on renewals of leases. However, in order to qualify as a renewal, it must be a continuation of the same lease and the lessee must be the same. When applied to your facts, if the unit was rented for the summer under a lease that had a duration of three years, as long as the tenants were the same, the association would not be able to charge a fee each summer. On the other hand, if the duration of the lease was only for one summer, and the tenants were required to execute a new lease each time they wished to occupy the

unit, this would be considered a new lease and the association could charge a fee.

The Condominium Act also allows the association to charge a security deposit as long as the authority to do so is contained in the condominium documents. The security deposit can not exceed the equivalent of one month's rent and must be kept in an escrow account maintained by the association. The purpose of the security deposit is to protect against damage caused by the tenant to common elements or association property. Associations should take note, however, that payment of interest on a security deposit, claims against the deposit, refunds, and disputes regarding the deposit must be handled as set forth in the Florida Residential Landlord and Tenant Act.

Q: We live in a new community operated by a homeowners' associations. The association is currently under the control of the developer, and most likely will not be turned over to the lot owners for a couple of years. What rights do we, as homeowners, have in terms of attending board meetings, speaking at meetings, seeing agendas, etc.? We understand that the board of directors is appointed by the developer, but I think, since we pay assessments, we are entitled to see the budget and annual financial reports. **B.D. (via e-mail)**

A: The developer of a community governed by the Homeowners' Association Act is not required to permit parcel owners to elect a majority of the board until 3 months after 90% of the parcels in all phases of the community that will ultimately be operated by the homeowners' association have been conveyed to members. The specific voting rights of members are determined by the provisions in the governing documents of the association, but the statute does prohibit any provision in the association documents that attempts to give the developer the right to cast votes in an amount that exceeds 1 vote per residential lot after the transition of the homeowners' association control to non-developer members.

However, prior to the time that non-developer members are entitled to the board, you do have other rights secured by the Homeowners' Association Act. To the extent the developer-appointed board holds board meetings, it is required to give at least 48 hours posted notice of such meetings, and you are entitled to attend. The right to attend, however, does not apply to board meetings between the board and the association's attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege, or to meetings between the board and the association's attorney with respect to meetings held for the purpose of discussing personnel matters.

In a homeowners association, the members are not legally entitled to speak at a board meeting unless the agenda item at issue was placed upon the agenda by the petition of at least 20% of the total voting interests of the association, or unless the association bylaws confer the right to speak at

board meetings. In such a case, members are entitled to speak for three minutes on these agenda items.

Also, the only members meeting that must be called during the period of developer control is the annual meeting. As a member of the association, you are entitled to notice of the annual meeting and you have a right to speak on each item opened for discussion or included on the agenda (there is no requirement that items be added to the agenda by petition, as with board meetings). Also, notwithstanding anything to the contrary in the governing documents or any rules adopted by the board or the membership, a member or parcel owner has the right to speak for at least three minutes on any item so long as the member or parcel owner submits a written request to speak prior to the meeting.

Perhaps the most important right that you always have as a member of the association, even during the period of developer control, is the right to inspect and copy official records of the association. These official records include all documents relating to the association, with the exception of attorney-client privileged communications, information obtained by an association in connection with the approval of the lease, sale, or other transfer of a parcel, any disciplinary, health, insurance and personnel records of the association's employees, and medical records of parcel owners or community residents that the association may have in its possession.

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

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