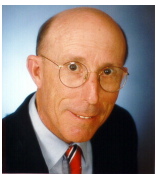


apm NEWS

A Publication of Associated Property Management - Fall 2002

INSPECTION OF RECORDS FOR COMMUNITY ASSOCIATIONS



By John R. Math, LCAM

At some point-in-time, a community association will receive a request to inspect and/or produce records of the operations and management of the association. The Condominium Act (Chapter 718), Cooperative Act (Chapter 719) and the Homeowners Association Act (Chapter 720) all provide for and instruct the association how to allow owners to inspect official records of the association. In all three cases, the statutes define what constitutes the official records of the association. The statutes provide detailed lists of the records that should be retained by the association and made available for owners and their authorized repre-

sentatives to inspect and copy.

The Condominium and Cooperative Acts exempts certain legal records, legal opinions, rental and resale approval information and medical records of unit owners are exempt from inspection by unit owners. These official records are open for inspection at all reasonable times for any association member and or their authorized representative. The right to inspect also allows the member to make or obtain copies of the records at a reasonable expense as well. The association is allowed to make reasonable rules concerning the frequency, time, location, manner of inspection and copying.

These rules would help prevent a unit owner from unreasonably frequent requests to see and inspect records. An association would be wise to

consult with their association's attorney for guidance in these manners and to provide help in determining what rules would be reasonable.

In addition to the above, the association is also allowed to impose reasonable fees and costs for providing copies of the official records, including the costs of copying. The association is also required to maintain an adequate number of copies of the recorded governing documents, in order to ensure their availability to members of the association and any prospective members. The association may charge for the actual costs of reproducing these copies. In addition to providing the recorded documents, Condominiums and Cooperatives also should have the articles of incorporation, by-laws, rules, all amendments and question and answer sheets. **PLEASE NOTE:** Real estate brokers are now

required to provide the association's last year-end financial statement to their buyers. Therefore, it would also be wise to have copies of these available as well.

According to these statutes, the records must be made available within ten (10) days after receipt of written request by a unit owner and or their authorized representative. Failure to provide access to the records within ten (10) business days after receipt of the request will allow an owner to actual damages or minimum damages for their failure to comply with this section. Minimum damages are \$50.00 per calendar day, up to ten (10) days and can be calculated as of the 11th business day after receipt of the written request.

Associations are required to provide for access to the association's records, but they should enact reasonable rules to help control the process and flow of written information from the association to the unit owner who requests detailed records.

Enact these rules and regulations now concerning inspection and copying of records in order to avoid any problems

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Ask The Attorney

By David St. John, Esquire

Q. At our recent election, everyone was confused with the procedures set forth by Chapter 718 with the notices, ballot, inner and outer envelopes, etc. Is there any easy way of handling this or can the procedures be changed?

A. The Condominium Act provides condominiums the opportunity to "opt out" of the Condominium Act's confusing voting and election procedures. To do this, the association must obtain "the affirmative vote of a majority of the total voting interests" to amend its bylaws to provide for alternate voting and election procedures.

Q. Our Board wants to eliminate a playground that is hardly used. They feel that this is an unnecessary expense. Do they have the right and power to decide this issue alone?

A. A condominium association cannot make any changes to the condominium common elements or association-owned property (such as a playground), except in the manner provided in the Declaration. Most declarations require a majority or supermajority vote of the members. If there is no provision in the

declaration, then the Condominium Act requires that 75% of the total voting interests of the association approve the alteration. Homeowner association member approval of common area alterations is not governed by statute. Only the HOA documents control. Most, but not all, HOA documents allow the Board to make decisions on common area modifications without owner approval.

David St. John is the founder and President of the law firm of St. John, Core, Fiore & Lemme, P.A. in West Palm Beach, Florida. Mr. St. John is a frequent lecturer and author on community association law, including bulk rate cable TV contracting and the Telecommunications Act of 1996. David St. John can be reached at 561-655-8994 or you may email him at dsj@stjohn-core.com

REMINDERS!

1. Financial reporting requirements must be waived by Chapter 718 and 719 association members prior to January 2003.
2. Any waiver of reserves for Chapter 718 and 719 association members must be voted on and waived prior to the beginning of the new fiscal year.
3. If the documents so require, the amount of Directors for the coming year must be determined according to the by-laws prior to the first notice of meeting.
4. Any proposed amendments must be drafted, reviewed and proposed by the Board of Directors, prior to the members meeting or annual meeting.

WHAT YOU SHOULD KNOW ABOUT APPLICANT SCREENING BY WARREN PLANT

With the tragic events of September 11, 2001 hitting close to home in our county, it has become evident that Associations should conduct background screening on prospective residents in their communities. Today, if not conducted thoroughly enough, associations may be charged with "negligent approval" of prospective residents. The following are some of the more important questions being asked about applicant screening.

Q. *Over the past two years we have seen an unusual turnover of new owners and renters. We would like to know if we could conduct background checks on these strangers desiring to live next door to us.*

A. Any residential community association **must** have the authority to approve/disapprove new owners and renters in their documents. Absent this specific authority, you cannot.

Condominiums and cooperatives must also have the authority in their documents to charge a transfer/screening/application fee and by Florida Statute, they are limited to \$100 per person, other than a husband/wife or parent/dependent child(ren) which are considered one applicant. There is no Florida Statute for homeowners associations that addresses this requirement in charging a fee.

If you do **not** have the authority to approve or disapprove resales and rentals, you **must** amend your documents to provide this required authority before you can start screening your new owner and renters.

Q. *We have been receiving incomplete applications from prospective buyers and renters. Can we refuse to accept applications for approval or do we have to accept what is submitted to the Board of Directors?*

A. The first big mistake association's make in applicant screening is accepting incomplete applications. If you apply for insurance, credit, a loan, a license, etc. and you do not fill in all the answers, they return your application. Why then should your association have to accept incomplete applications?

Applicant screening is a form of security for all residents including the prospective purchasers and renters. This is your "home" this stranger wants to move in to. Consider the application a clue sheet - leads to start an investigation. If you have no or incomplete leads, you will end up with incomplete or no background on the applicants. You have a fiduciary responsibility to protect the well being and welfare of your residents. You do not have to accept an application if it is incomplete.

Q. *When the unit owner or real estate person submits the paperwork on a new owner or renter, they insist that the approval be given within a week or they*

will sue us. Do we have to comply with their demands? What are the association's rights?

A. Once you have received a completed application and any other documents and monies required, now you must take action to approve or disapprove within a stated number of days indicated in your association documents. If your documents are silent, do not exceed 30 calendar days, as this would be deemed unreasonable. If you do not act on an application and make your decision to approve or disapprove within the stated period to do so, in most instances the applicant is considered approved. Your action of inaction is deemed action of approval. They can threaten all they want, your documents are the law at your community and remember, the number of days, unless specified, are calendar days (including weekends and holidays).

The number of days is in your documents for two reasons. One, it protects the unit owner from the Board of Directors taking so long to make a decision that the unit owner loses the deal. Secondly, it protects the association by allowing them ample time to conduct a background check to fulfill their fiduciary responsibility to protect the well being and welfare of their residents.

Q. *We need help. There is no way that our screening committee is qualified or has the tools and resources of information needed to properly do background checks on new owners and renters. Can we hire a company to conduct background checks for us?*

A. Yes. In Florida, any company, including management companies, conducting background investigations for community associations **must** either have a private investigators license issued by the State or operate under the sanctions of the Federal Fair Credit Reporting Act (look for a company that operates under both).

There are Federal Laws and penalties to protect individuals from unauthorized invasion of their privacy and the confidentiality of the information contained in their file report under the Federal Fair Credit Reporting Act. Under this act, the name of the company conducting the background investigation and the type of investigation being conducted **must** be clearly stated on the application. The Act mandates a contract that you must sign complying with its requirements.

Q. *The Board of Directors said my applicant to rent my apartment was not qualified. I paid the \$100 screening fee and they will not give me any reasons or a copy of the background check report. I paid the fee and isn't there a right of unit owners to examine the books and records of the association?*

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APM NEWS

PAGE 4.

APM NEWS

Fall 2002

A. The condominium and cooperative acts specifically exempt applicant background check information from the open inspection of records by unit owners. The Federal Fair Credit Reporting Act also demands that the Board of Directors must keep this information confidential. If your renter was not qualified, they should have been notified how to contact the company that provided the information and how to obtain this information. If the applicant wants to give you a copy of the report or information, only they can waive their right to keep this information confidential.

Q. *Can a residential community association turn down a prospective owner or renter?*

A. Believe it or not, regular real estate law does not apply to residential community associations. One Florida court decision said that due to the closeness of living in community associations, you give up some of your rights to convey property as you see fit.

Look at your association documents for the authority to approve/disapprove resales and rentals. If you have this authority then you can conduct background checks on prospective new owners and renters. Contact the company who does your background checks for their expertise and your association attorney for specific areas of applicants not being qualified.

Your documents give you the authority to approve or disapprove. The condominium and cooperative acts state that if you have this authority in your documents you can charge a fee not to exceed \$100 to check out your new owners and renters. It is obvious from these two governing documents that you do have the right to protect your residents from undesirable residents and you do not have to be the dumping grounds for rejections from rental and other housing.

Warren Plant is a former Special Agent of the U.S. Treasury Department and has been providing applicant screening services for more than 700 associations since 1979. He is a current private investigator in the State of Florida. He has helped to write three amendments to the Florida Condominium Act. Renters Reference is the only applicant screening service that offers continuing education courses that are approved by the Bureau of Condominiums. Warren Plant can be reached at 800-432-0606.

Associated Property Management of the Palm Beaches, Inc. is a fourteen year old full service association management firm. APM serves more than 100 associations in Palm Beach County. If you have any questions or comments you may contact us at 1928 Lake Worth Road, Lake Worth, Florida 33461. Please call us at 561-588-7210 or you may email us at assocpropmgt@bellsouth.net at anytime.