



## Condo Documents Govern Fees Charged Renters

**Board members may communicate by e-mail, but not if the exchange becomes a de facto board meeting.**

Fort Myers The News-Press, February 21, 2008

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**Q:** Can a condominium association charge a transfer fee and a separate management fee for a renter? I paid \$100.00 to the condominium association, and then was asked to send another \$50.00 fee made payable to a different payee. I was told this was a “management fee.” **G.P. (via e-mail)**

**A:** The condominium statute states that no charge shall be made by the 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. Therefore, you must first determine whether the association is required to approve the lease and whether the fee for such approval is provided for in one of the enumerated documents.

The statute also provides that any such fee may be preset, but in no event may such fee exceed \$100.00 per applicant other than husband/wife or parent/dependent child, which are considered one applicant. The statute also provides that the association may, if the authority to do so appears in the declaration or bylaws, require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of one month’s rent, into an escrow account maintained by the

association. The purpose of the security deposit is to protect against damages to the common elements or association property. The security deposit must be handled in the same fashion as provided in the statute governing landlords and tenants. Therefore, if your declaration or bylaws permit the association to collect a security deposit, it may be that the additional \$50.00 is being treated as a security deposit. However, the security deposit is a fee collected from the tenant, not the owner. Further, the tenant would be entitled to a refund of the security deposit if there was no damage to the common elements.

Some associations have provisions in their declaration requiring the units to be rented through the association. In those cases, the condominium documents should include specific provisions regarding the rental program. You should review your condominium documents to see if they provide for a mandatory rental program and management fee. If there is such authority, then in my opinion, the management fee is valid. If no such authority exists, you should ask your association for additional information regarding the management fee and its authority for requiring you to pay it.

**Q:** I serve on the board of my condominium association. The majority of the other board members do not reside locally for most of the year. Although we are able to meet in person during the “season”, this is simply not possible during the summer months. As a result, most of our conversations during the off-season occur via e-mail, as this seems to be the most efficient way for the board members to reach decisions. During an “in-person” board meeting, a unit owner vocally opposed the board’s decision-making via e-mail and told us that we were in violation of the law. I am not sure that we, as a board, can accomplish the necessary tasks if we are unable to communicate via e-mail. Is it illegal for Board members to communicate via e-mail, and if so, what are our options? **J. C. (via e-mail)**

**A:** Board members may communicate by e-mail, however, there are limitations. These limitations come into play when the board’s communication by e-mail turns into a de facto “board meeting” or accomplishes tasks that should be decided during a board meeting that is open to the unit owners.

In the days of “snail mail”, it would be hard to classify written communications between directors as a “meeting.” However, e-mail is dramatically different in that a quorum of the board could be sitting in various locations around the world at the same time and communicate “in writing” almost instantaneously with one another. For this reason, instant messaging and/or “chat room” discussions could very well qualify as a “board meeting” if a quorum of the board was simultaneously present and discussing association business. However, this issue has not been addressed by the courts.

Remember that board meetings must be properly noticed and are open to owners, and when a board member is not physically present at the meeting he or she can attend by telephone conference where a telephone speaker is used so that the conversation of the board members attending by phone may be heard by those board members attending in person as well as by any unit owners present at the meeting. The Florida Condominium Act does not

presently contemplate the ability to attend board meetings utilizing newer technology such as instant messaging, chat rooms, etc.

Ultimately, there are situations where e-mail communication could be deemed to constitute a board meeting, and there are situations where communicating by e-mail will not. In either event, e-mail should never serve as the sole method of communication between the board members, and should not serve as a substitute for board meetings at which the association membership is invited to attend and issues at which are open discussion and voted on.

**Q:** I live in a condominium that was built eight years ago. Recently, several of the units have been experiencing problems with the roofs which are causing a variety of problems, including some leakage and some damage to ceiling drywall. The roofs may be buckling. Because the buildings in our complex are over eight years old, and the association was turned over to the members about eight years ago, is there any chance that the association could still go back against the developer to get these roof problems addressed? **C.K. (via e-mail)**

**A:** Your question raises two important legal issues. The first issue concerns warranties and the second concerns the statute of limitations.

You may know that the Florida Condominium Act provides a statutory warranty of fitness of purpose and merchantability from the developer in favor of the association on the roofs and structural, mechanical, electrical and plumbing elements. The statutory warranty commences upon the issuance of a certificate of occupancy for the particular building, and continues either for three years or one year after the date of turn over of control of the association to the non-developer members, whichever comes last. But in no event does the warranty extend more than five years from the date of issuance of the certificate of occupancy. Therefore, any construction defect or deficiency covered by the warranty that exists during the warranty period, gives rise to a warranty claim

against the developer for those defects or deficiencies.

The warranty period should not be confused with the statute of limitations. The statute of limitations for known defects in condominium common elements does not begin to run until transition of control of the association to the non-developer members, and generally expires four years from the date of transition. That basic statute of limitations concerns “known” or “patent” defects. Conversely, for “latent” defects, which are defects that are not known and could not have been reasonably discovered with the exercise of reasonable diligence during the initial four-year period, a lawsuit can be brought up to ten years after the issuance of the Certificate of Occupancy (C.O.) for each improvement, so long as any lawsuit is commenced within four years from the time the defects were actually discovered.

Therefore, if a defect or deficiency existed during the warranty period, but no claim was brought during the initial four-year statute of limitations period due to the fact that no person could have reasonably discovered the defect, then a breach of warranty claim may be brought within ten years of the date of issuance of the C.O. for the improvement. It would have to be shown that the defect existed prior to the expiration of the warranty period, but manifested itself outside the warranty period, and was thus a latent defect.

Given the dates that you provided in your question, it would appear that there is a possibility that the association may still have a valid claim against the developer. The first step to determining your best course of action would be to have an engineer or engineering consultant inspect the roofs and provide an opinion as to the cause of the common roofing problem.

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