



Several Florida Laws Cover Right to Approve Buyers, Lessees

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Q: Should the board of directors of a condominium association do background checks on purchasers or renters of condominiums? If so, should there be a fee? **V.H. (via e-mail)**

A: It depends. If the declaration of condominium provides that the association has the right to approve the sale, transfer or lease of a unit, the association may conduct a background check on the potential purchaser or tenant. As part of that process, it is advisable that the association have a standard application form that a potential purchaser or lessee completes. A standard application form would give the association the necessary information to perform a background check, and should clearly provide that the applicant is authorizing the association to conduct a background check. Furthermore, the governing documents of the association should set forth the reasons for denying approval of an applicant.

Additionally, a number of provisions of the Florida Condominium Act apply to the association's right to approve potential purchasers or lessees. Section 718.112(2)(i) of the statute specifically authorizes an association to charge a fee in connection with the approval of the sale or lease of a unit. However, in order for the association to have the authority to charge the fee, the association must have the authority to approve the transfer (sale or

lease) in the first instance, and the fee must be authorized by the documents. The statute goes on to state that the fee must be preset "but in no event may such fee exceed \$100 per applicant other than husband/wife or parent/dependent child, which are considered one applicant".

Furthermore, if an association does obtain information regarding a potential purchaser or lessee in connection with the association's approval rights, the association must recognize that such information may not be made available to the association membership for inspection.

Q: Several cars have been broken into in my community over the past few months. Most of my neighbors believe they "know" who is responsible because there is a group of kids that lives in our community who we know, for a fact, have been in trouble with the law before. These kids often have several friends visit the community, which is gated, but of course their friends are allowed to come over as guests. We have asked the board of the association to keep these visitors out and to take other action to stop these car break-ins. However, the board does not seem to be too interested in doing anything. Does the law provide any ability for the members to force the board to take some action here and protect our property? **D.P. (via e-mail)**

A: A common issue in community associations involves determining the association's obligation to keep the members and their property safe. As a general matter, whenever members witness a crime or suspect criminal activity, they should always make their first call to proper law enforcement authorities, and not to the association. Sometimes members misunderstand the association's purpose and function. The association is not the primary keeper of the peace, nor is it an emergency services provider. In fact, Florida courts have held that one way for an association to incur liability for criminal acts of others is to take on a "police" role and thereby create a reasonable expectation that the association is providing protection.

There have been reported court cases in Florida in which community associations have been held liable for the criminal activity that takes place in the community. There is a long line of case precedents that impose certain duties on landlords. These cases and the legal principles created by them have begun to be applied to community associations by the courts. Landlords have always been held responsible to warn and to take reasonable steps to protect tenants or their guests from foreseeable criminal activity and harm. For example, if a shopping center has had some late night robberies or criminal activity in the parking lot, it is incumbent upon the shopping center landlord and/or the store owners to warn patrons with appropriate signage or other warnings, and to keep the area reasonably safe, which may include adding additional lighting, cameras or even live security personnel. In a residential setting, a residential landlord would have similar obligations to warn and provide a reasonably safe environment. While the legal relationship between a landlord and tenant is substantially different than the legal relationship between an association and

its members, some of these general principles of landlord liability have been applied in the community association context. Therefore, your association may have a duty to warn its members about the break-ins and take some steps to make the community safer.

In the case that you describe, it is obviously not proven that the youth who reside in the community, or their friends, are in fact responsible for these break-ins. It is always difficult for an association to decide whether it should issue a written warning to its members, and what specific detail to include in such a warning, because the association must be careful not to defame anyone. In the case you describe, it may be appropriate to send out a flier or a newsletter cautioning people to lock their cars, keep their exterior lights on during the evening, and to be cautious given the recent break-ins. But in my opinion it would be a huge mistake to identify "suspects", either explicitly or by inference.

Similarly, while the association can possibly prohibit guests from entering the community when those guests have previously caused a disturbance or damaged property in violation of the governing documents (and even then, a court order may be necessary), the association must have some definitive proof of that prior conduct. Otherwise, the member whose guests are being excluded would have a valid claim against the association for a violation of that member's rights.

As a practical matter, a community neighborhood watch might be your best, most practical solution. You can consult with local police authorities to learn how a neighborhood watch program can be implemented.

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.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.

