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South Florida condo boards rip off consumers with high application fees

BY NICHOLAS NEHAMAS

Condo associations across South Florida are ripping off consumers with high application fees in violation of state law, a Miami Herald investigation has found.

Associations are allowed to charge people applying to buy or rent a unit a maximum of \$100 per person. The nonrefundable fees cover the costs of interviews, background and credit checks. But many buildings gouge tenants and buyers with fees anywhere between \$125 and \$625, according to lease and purchase applications reviewed by the Herald.

Some associations also tack on moving-in and other charges that run into the hundreds of dollars. At a few condos that allow pets, even residents' furry friends have to cough up fees of \$100 or more.

In Miami-Dade County, nearly half of condo listings show application fees exceeding \$100, from fancy high-rises in Miami Beach to run-of-the-mill units in Kendall, according to a Herald analysis of a database used by Realtors. The problem exists in Broward County too but is less widespread.

All in all, the high fees could lead to class-action lawsuits against associations, attorneys say.

"State law seems to pretty clearly prohibit fees in excess of \$100," said Jason Kellogg, a Miami attorney who specializes in condo association law. "This sounds like a major racket. ... The cost of owning or renting a condo in South Florida is expensive enough without associations fleecing residents with illegal fees."

The revelation follows a series of reports in El Nuevo Herald documenting corruption at South Florida condo associations, including rigged elections and contracts awarded without fair bidding.

Illegal fees are another reminder that South Florida's poor and middle class can't keep up in a real-estate market distorted by out-of-town cash, said Ali Bustamante, a professor at Florida International University.

“High application fees are potentially discriminatory by crowding out low-income and low-middle-income renters who can’t afford to put down \$300 fees,” he said. “It’s a huge foot on the scale.”

As developers build luxury high-rises at the expense of middle-market housing, rents across South Florida have skyrocketed. The region is now one of the nation’s least affordable places to buy or rent, although a new push for downtown rental buildings could help out.

Still, Bustamante said, “the property owners have all the leverage.”

Jason Wood, a sales manager at a furniture company, said he was charged \$125 to apply to the Mirador 1200 condo in Miami Beach in 2012. He paid with a cashier’s check.

A person at the Mirador’s front desk said the fee is now \$150.

“I am currently looking for a new place and see all over they advertise fees of \$200 to \$300,” Wood said. “Miami is already a rip-off when it comes to cost of housing and this is more salt in the wound with no real system of ... tenants’ rights.”

Jacking up the price

The Florida Condominium Act prohibits condo associations from charging so-called transfer fees of more than \$100 per applicant “in connection with the sale, mortgage, lease, sublease, or other transfer of a unit.” The law also states that married couples should be treated as one person and pay a total of \$100, and prevents associations from charging dependent children or people renewing their leases. Any transfer fees — including charges associated with background checks, screening and move-in fees — have to be clearly stated in a condo’s governing documents.

But the rules are widely flouted.

To apply for a lease at 2 Midtown in the popular neighborhood near Wynwood, a renter must pay a \$200 application fee, plus a \$350 “processing” fee. Only money orders are accepted.

At the Pavillion in mid-Beach, the association charges \$260 for new applicants.

An extra \$160 might seem like small change, but it adds up. The Pavillion has 408 units. About 200 of them are rented out at any given time, according to a tenant information package.

At larger buildings, the benefits for management and associations are even greater. Quantum on the Bay in Edgewater has nearly 700 units. The association

charges tenants a \$100 application fee plus \$125 for “registration and orientation,” \$175 for “administrative review” and \$225 to move in and out.

Property management companies usually handle the applications and profit from high fees. The associations also make extra cash.

“These buildings are processing applications all day every day,” said Stavros Mitchelides, a Miami Beach-based Realtor. “And you don’t get your money back if you’re not approved.”

Isola on Brickell Key charges \$200 per applicant. The Henderson and Helen Marr in Miami Beach each charge \$150. So does 401 Blu, although it gives spouses what seems like a discount: \$200 per couple. (By law, they should only have to pay \$100.)

“I have a lot of clients where \$100, \$150 is a lot of money,” said Mitchelides, who only recently learned the up-charges were illegal. “A lot of these people are renters. It’s not fair. I had a girl who couldn’t afford more than \$1,400 per month [in rent] and her application fee was \$250.”

Mitchelides was thumbing through a real-estate industry trade magazine last month when he happened upon a mention of the \$100 cap. He called the Florida Realtors’ legal hotline and was advised his clients could file civil lawsuits against the condo associations or complain to the state attorney general and the Tallahassee agency that regulates condos.

“Obviously, no one is going to sue over that amount,” Mitchelides said. “And Realtors don’t want to spend all day filing complaints.”

Instead, he called the Herald.

The newspaper analyzed home listings on a database for Realtors called the Multiple Listing Service. It found that in Miami-Dade, 46 percent of condos listed for rent or sale say they require a fee of more than \$100 per applicant.

The entries on the database are made by Realtors, not condo associations, and may not always be accurate.

“I think it’s higher,” Mitchelides said.

In Broward, only 22 percent of condos asked application fees higher than \$100.

The cities with the most condos on the market were all in Miami-Dade and had high rates of illegal fees: Miami (48 percent), Miami Beach (40 percent), Sunny Isles Beach (50 percent) and Aventura (44 percent). The biggest markets in Broward had much lower rates of illegal fees: Fort Lauderdale (12 percent), Hallandale Beach (29 percent), Hollywood (24 percent) and Pompano Beach (23 percent).

Almost none of the condo associations mentioned in this story returned requests for comment. Neither did several management companies at buildings that charge more than \$100 per applicant, including KW Property Management, First Service Residential, Quest Management and Aqua Management. One company that did respond complained that the \$100 fee doesn't cover the costs of background checks.

And Fredrick Rotstein, property manager for the Isola condo tower, wrote in an email that the association "will be immediately reviewing our 'transfer fees' and will make sure that they are in compliance with the applicable statute."

It's up to board members to audit their rules and have counsel make sure they're compliant with the law, said **Jonathan Goldstein**, a Miami attorney. "They shouldn't take for granted that management companies or previous boards had in place leasing policies that were compliant with the governing declaration, municipal ordinances or Fair Housing Act regulations," he said.

Unlike condo associations, homeowners' associations — which govern planned communities of single-family homes — can charge whatever they wish. Condo associations can also legally assess fees for estoppel letters and mortgage questionnaires.

Sticking it to foreigners

Some condo associations single out foreign buyers for higher fees, reflecting the added costs of a background check on someone who's lived overseas.

At Sunset Palms West in Kendall, international buyers must pay a fee of \$150. At 801 Meridian on the Beach, the fee soars even higher: \$350 for a foreign buyer.

Pets get squeezed, too.

900 Biscayne in downtown Miami charges tenants \$100 to apply, \$300 to move in and \$250 to register a pet, all nonrefundable.

Consumers generally don't know they're being overcharged.

Only 13 people filed complaints about the high fees in Miami-Dade and Broward counties over the last year, according to the Florida Division of Condominiums, Timeshares and Mobile Homes. In five cases, the division sent "letters providing education" to the associations.

Asked if application, move-in and pet fees of more than \$100 violated Florida law, a spokesman for the division declined an interview but emailed the relevant section of the Florida Condominium Act.

The state Legislature raised the limit from \$50 to \$100 in 1990.

Saul Gross, president of Miami Beach-based Streamline Properties, said \$100 was hardly enough to cover the costs of doing background checks.

He said state legislators set the limit “before Airbnb and the short term rental epidemic [and] before Associations realized if they weren’t careful about approving tenants, it would interfere with the quality of life of the long-term unit owner residents.”

Streamline charges \$150 application fees at at least two buildings it manages in Miami Beach.

Gross said he believes the statute caps transfer fees at \$100 but allows higher charges for credit checks.

(A post on the condo division’s website states “the maximum charge allowable is \$100 per applicant.”)

And Lynda Horvat, an attorney for Neighborhood Property Management, said if the fees are paid directly to the management company, and not to the association, the law doesn’t apply.

“Property management companies lawfully charge associations to perform services, which include but are not limited to processing tenant applications, conducting background checks and interviewing tenants,” Horvat wrote in an email. “The service charges paid to the property management pursuant to its contract with the association are not transfer fees.”

That reading seems to contradict a 2008 warning letter the division wrote to a Broward condo.

Transfer fees “include such items as clerical fees, fees paid as a part of an applicant’s credit or background check or screening process and move-in fees,” the letter states.

“The Division takes the position that a mandatory fee, which an association requires an owner, purchaser or leasee to pay in connection with the sale or lease of a condominium unit is a transfer fee,” it continues.

“Charging more than \$100 per person is a violation of Florida statute,” said Miami attorney Josh Rubens. “The money should be refunded.”

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