Condominiums and transfer fees

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Subject:
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CONDOMINIUMS--TRANSFER FEES

To: Harold J. Dyer, Representative, 93rd District, Hollywood

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QUESTIONS:

1. Is the fifty-dollar transfer fee referred to in ss. 711.08(2) and 711.44(1)(h), F. S. (1974 Supp.), the maximum limit for all transfer costs?

2. Do such transfer fees apply only to new applications or do they also apply to transfers within the same building?

SUMMARY:

A transfer fee of up to fifty dollars, to defray the reasonable expense of a credit report on a prospective unit owner, is the only general transfer fee that may be imposed by a condominium or cooperative apartment developer or owners' association under ss. 711.08(2) and 711.44(1)(h), F. S., and then only if such a prospective unit owner is required to receive the approval of some authoritative body within the condominium or cooperative apartment complex's organization. Such transfer fees do not appear to be applicable to an internal transfer occurring within the same condominium or cooperative apartment complex.

AS TO QUESTION 1:

As amended by section 4, Ch. 74-104, Laws of Florida, s. 711.08(2), F. S., now contains the following provisions applicable to condominiums:

"If the transfer or lease of units is subject to approval of any body, no fee shall be charged in connection with a transfer or approval in excess of the expenditures reasonably required for credit report expense, and this expense shall not exceed $50. No charge shall be made in connection with an extension or renewal of a lease."

An identical provision is set forth in new s. 711.44(1)(h), F. S., created by s. 15 of Ch. 74-104, supra, which is applicable to cooperative apartment ownership.

With respect to the application of other provisions of Ch. 711, F. S., relating to unit transfers

generally, new ss. 711.69(3) and (18)(a)9. and 711.70(4)(d) do not contain any reference to transfer fees.

Under amended ss. 711.08(2) and 711.44(1)(h), *supra*, if a "transfer fee" is to be imposed on the transfer of a condominium unit or cooperative apartment unit, such transfer, per se, must be subject to the approval of some type of an authoritative body within the developer's organization or the owner's association of the condominium or cooperative.

Apparently to prevent such internal ministerial approval functions from becoming a source of income to either the developer or an owners' association, the legislature has in effect declared that no transfer fee shall exceed the reasonable expenditure for a credit report, and, further, that no matter what the expense of such a report may be, in no case may it exceed fifty dollars.

The maximum limitation on the transfer fee, since it specifically refers only to the expense of a credit report, does not appear to include such other transfer fees which may be required on items "personal to unit owners" or items which are uniformly incurred by all unit owners in the condominium or cooperative complex, *i.e.*, private telephone costs, or a unit owner's directly billed utility service fees, etc. *Cf*. s. 711.69(15)(b), F. S. (1974 Supp.).

Therefore, I am of the opinion that a condominium or cooperative developer or owners' association may only impose a transfer fee on a prospective unit owner to cover the reasonable expense of a credit report up to, but not in excess of, fifty dollars, and then only if the transfer of unit ownership is required to be approved by some type of authoritative body within the condominium or a cooperative development's organization.

AS TO QUESTION 2:

As previously noted in my response to question 1, the transfer fee appears to relate only to the expense of a credit check on a prospective unit owner. I would assume if a unit owner has previously been approved by an authoritative body of a condominium or cooperative apartment complex, another credit report would not be necessary in regard to an internal move within a particular condominium or cooperative apartment complex. Since the tenor of the language employed in amended Ch. 711, supra, appears to be addressed primarily to the initial relationship of an individual entering into a condominium or cooperative apartment agreement and the legislature itself has not referred to purely "internal" transfer within such a complex, I am of the opinion that the transfer fee provisions of ss. 711.08(2) and 711.44(1)(h) do not apply to unit transfers within the same building complex.