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Can You Screen and Reject Potential Owners? Florida County Says Yes, But Say Why

Commissioners of Broward County, Fla., passed an ordinance in September requiring HOAs to provide written notice to rejected applicants detailing the reason for the rejection. Here we explain the ordinance and discuss whether other states allow associations to approve or reject potential HOA purchasers and renters, and the pros and cons.

Screening Applicants For What, Exactly?

The risk with the practice of screening applicants is you could face claims of discrimination. "We don't have any provisions regulating the practice of screening potential residents in Louisiana today," says Randy Opotowsky, a partner at The Steeg Law Firm in New Orleans, who represents 15-20 associations at any given time. "Having said that, everyone is subject to the federal Fair Housing Act, and associations can't discriminate against potential buyers who fall into certain protected classes."

Because of that, if yours is among the few associations that screen potential owners and renters, you have to be very careful in rejecting applicants. "At our firm, we tell our association clients there are generally only three reasons they can legally deny applicants," explains Alessandra Stivelman, an associate attorney who specializes in community association law at Eisinger Brown Lewis Frankel & Chaiet in Hollywood, Fla. "One is for a violation of an inherent regulation in thegoverning documents. There's a no-pet rule, and the owners want to bring in their pet.

"The second reason is prior rules violations," adds Stivelman. "If applicants have already lived in the association as a tenant and now want to purchase, yet they've demonstrated a propensity to violate rules and regulations, the board can reject them. They can state essentially, 'Listen, you clearly don't follow the rules, so we're denying you.'

"The third reason is if you perjure yourself or make a material misrepresentation on your application," says Stivelman. "Boards can't deny an applicant who's filed for bankruptcy, been convicted of crime, who doesn't have job, or who's a convicted felon. But if they're asked about those things on the form and lie, and the association finds out during the background check, the board can deny the application."

The Lowdown on Florida

Under the ordinance passed by the Broward County commissioners—which applies only to properties in that Florida county—condos, HOAs, and co-ops must tell people who apply to live in the community the reasons their request has been denied.

"Boards must not only state the reason for the objection, but within 10 days of receipt of an application, the board has to provide written acknowledgement of the application," explains Stivelman.

"If the application is incomplete or incorrect, the board must notify applicants of the sections that are incomplete or incorrect. That's good because boards may deny an application because it's incomplete."

"Within 45 days of receiving the application, the board must either reject or approve it and provide the applicant with written notice of that decision," says Stivelman. "The board must state with specificity each reason for rejection. So I'd recommend boards state all the reasons for denial. Maybe the applicant is a prior tenant who's had multiple parking violations. I'd state it's because of parking violations. If the applicant had already lived there as a tenant and wanted to purchase a unit but was a nuisance and very disruptive, I'd advise the board to list all the reasons as evidence of the applicant's demonstrated propensity to violate rules and regulations."

Stivelman is among those concerned about the new ordinance. "A remedy already exists if an applicant feels there's been discrimination; there are already other bodies that handle discrimination complaints," she explains. "So this is creating additional administrative burdens on associations. In addition, these requirements may conflict with associations' governing documents. And we normally advise associations not to provide a reason for rejection because it opens the door to litigation or to people getting upset. Finally, other counties, like Miami-Dade, may pick up on this as well."

Should You Start Screening Potential Residents?

The practice of screening potential residents—whether buyers or renters—is rarer today than in the past.

"Historically, this started in New York City co-ops and in places like Miami, Washington, D.C., and San Francisco," says Bob Diamond, a partner at the law firm Reed Smith in Falls Church, Va., who helped write the Washington, D.C., condo act in 1976 and worked on the Uniform Condo Act, which 24 states have adopted. "The co-op neighbors you were going to have buying the unit were going to be financially interdependent with you, and if they didn't pay, you'd have to make up the difference because co-op residents have an underlying mortgage for the building."

Other associations tried another tactic for regulating who moved into their projects. "The way around screening issues—and I see this less and less now—is that a lot of associations had rights of first refusal or purchase options," says Opotowsky. "Most present-day associations created since the 1990s don't have those because that practice can get dicey. It wasn't really a manageable vehicle to decide who you were going to accept or reject. If the association had the right to purchase the unit, it had to exercise it. It couldn't just say, 'We don't want that person living here.' Seldom have I seen it used by an association."

Practices have evolved today. "What we see primarily in New York and elsewhere is that screening is now used as device to decide, 'Who do we want living here?'" says Diamond. "President Richard Nixon was turned down by a co-op, and they said, 'We don't want that security stuff; we have a nice, quiet building and want it to stay that way.' But there's no question this practice was used historically for invalid reasons. Any kind of discriminatory intent is illegal.

"Condos can do same thing as co-ops," says Diamond. "They just don't have the same economic justification. So it's not common to see it in condos, and it's even rarer to see it in HOAs. And today, it's not really common outside of Florida and New York City. None of my clients do this, and I would advise against it. It increases the possibility of lawsuits, and there's really no good reason for it except in exceptional circumstances. If there's a four-unit association, maybe it's OK because owners are living in such close circumstances. But if the building's larger than that, who's living there doesn't matter as long as everybody's following the rules. There shouldn't be a reason for this practice."