



TENANT SCREENING TOOLKIT: A GUIDE FOR CONDO BOARDS

Condominium (“condo”) associations and their boards in Florida must ensure that: (1) they have the authority to conduct tenant screenings; and, (2) the tenant screening procedures comply with all federal, state, and local laws, rules, and regulations. This toolkit provides guidance to condo boards on how to legally screen prospective tenants and best practices to avoid liability.

☑ GOVERNING DOCUMENTS MUST GRANT CONDO BOARDS AUTHORITY TO SCREEN TENANTS

- **Review the condo association’s governing documents to make sure tenant screening procedures established**
 - Under [Fla. Stat. § 718.104\(5\)](#), condo associations may establish tenant screening procedures through their governing documents, or “declaration,” which serves as a condo association’s founding document and establishes the rights and responsibilities of unit owners.
- **Review the bylaws to make sure condo boards have the authority to approve or deny tenants**
 - Restrictions on the use and occupancy of the condo units themselves can be implemented through the bylaws. [Fla. Stat. § 718.112\(3\)\(b\)](#). Before doing so, the bylaws must explicitly grant the condo board the authority to approve or deny tenants. See [Cool Spaze, LLC v. Boca View Condo. Ass’n, 292 So. 3d 769, 772 \(4th DCA 2020\)](#).
- **Amend the governing documents and/or bylaws, if needed**
 - If the governing documents and/or bylaws do not both grant the condo board the authority to approve or deny tenants and establish tenant screening procedures, then the condo association will need to amend the governing documents and/or bylaws at a properly-noticed meeting with quorum and enough votes.

☑ DRAFT AND IMPLEMENT UNIFORM TENANT SCREENING PROCEDURES

- **Use MIAMI REALTORS®’ Tenant Screening Checklist**
 - [Tenant Screening Checklist](#) includes: list of policy requirements; list of what condo boards or owners may request and consider in tenant applications and screening procedures; best practices; what to remember about criminal records and credit scores; and, a reminder that local tenants’ bills of rights were preempted by HB 1417 (2023).
- **Be consistent, establish time frames, and put it all in writing!**
 - Evaluate all perspective tenants in the same and consistent manner.
 - Draft and use a standardized application form
 - Establish a timeframe within which applications must be reviewed and a decision is made.
- **Reasonable restrictions are allowed in tenant screening procedures**
 - Florida courts interpret the CFA to allow condos to implement “reasonable restrictions concerning the use, occupancy, and transfer of units.” See [Coquina Club, Inc. v. Mantz, 342 So. 2d 112, 113 \(2nd DCA 1977\)](#). “Reasonable restrictions” are those tenant screening procedures. However, they cannot be arbitrarily enforced, violate public policy, or violate fundamental constitutional rights. See generally [White Egret Condo. v. Franklin, 379 So.2d 346, 352 \(Fla. 1979\)](#).
 - In order to avoid fair housing liability to the condo association and board, tenant screening procedures must have a “legally sufficient justification.” This means that they are justified and necessary to achieve a substantial, legitimate, nondiscriminatory interest – and must be implemented uniformly.



- Tenant screening procedures have a [“legally sufficient justification”](#) because they may help identify reliable tenants who will likely pay rent (and by extension, association fees) on time, respect the property, and otherwise positively contribute to the community. *See generally* [Woodside Vill. Condo. Ass’n v. Jahren, 806 So.2d 452 \(Fla. 2002\)](#).
- Condo associations cannot inconsistently apply certain restrictions within their screening and application processes – if it does, then it exposes the condo association to fair housing liability. *See* [White Egret Condo](#).

- **Examples of restrictions a condo board may implement**

- **Residency limitations:** Minimum and maximum occupancy per unit; limitations on number of occupants based on unit size; restrictions on long-term guests; and, age-restricted communities ([like 55+ communities](#), which are permitted and are not discriminatory because they qualify for an exemption under the FHA and the [Housing for Older Persons Act of 1995](#) or “HOPA”).
- **Rental restrictions:** Minimum lease terms; maximum number of units that can be rented at any given time; requirements and procedures for tenant screening; and, prohibitions on short term rentals.
- **Pet restrictions:** Number of pets per unit; size and weight limits; and, breed restrictions. While SB 942 (2023), which went into effect on October 1, 2023, prohibited public housing authorities and local governments from adopting policies that ban dogs based on breed, size, or weight, it does not apply to private rentals in condo associations. Remember, this applies to pets – not [emotional support animals](#) under the FFHA ([Fla. Stat. § 760.27](#)) or service animals under the FFHA ([Fla. Stat. § 413.08](#)) [Americans with Disabilities Act \(ADA\)](#).

- **Comply with fair housing laws**

- The [Federal Fair Housing Act](#) (“FHA”) prohibits discrimination based on race, religion, sex, familial status, disability, national origin, and/or color. Similar to the FHA, the [Florida Fair Housing Act](#) (“FFHA”) prohibits discrimination in housing based on the same protected classes. [Miami-Dade County](#), [Broward County](#), and [Palm Beach County](#) each enacted their own fair housing ordinances that include numerous additional protected classes.
- Tenant screening procedures cannot include bans or restrictions based on protected classes. If those procedures have a disparate impact on protected classes, this is likely also discrimination and exposes the condo association and board to liability.
- Of note: condo associations cannot prohibit the use of Section 8 vouchers. In many municipalities this is discrimination based on source of income. And even without “source of income” ordinances, such a practice would have a disparate impact on protected classes.

- **Antitrust reminders**

- Condo boards must make all business decisions unilaterally and independently. Do not conspire with other condo associations or boards to engage in discussions that could be misconstrued as price fixing or boycotting certain business models.

IN GENERAL: LAWS THAT GOVERN CONDO BOARDS

- **FLORIDA CONDOMINIUM ACT.** The [Florida Condominium Act](#) (“FCA”) governs the creation, operation, and management of condo associations in Florida and outlines the rights, responsibilities, and regulations for unit owners, boards, and developers.
- **LOCAL ORDINANCES.** The legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the Florida legislature may act, except any subject expressly preempted to state or local county government by the constitution or by general law. *See* [Fla. Stat. §](#)



[166.021\(3\); *Miami Beach v. Rocio Corp*, 404 So. 2d 1066, 1071 \(3rd DCA 1981\), petition for review denied, 408 So. 2d 1092 \(Fla. 1981\).](#)

☑ STILL NEED HELP? CALL A LAWYER

There is tremendous liability to condo associations and board members if they do not have the authority to screen prospective tenants or if they are not adhering to fair housing laws. When in doubt, call a lawyer to review the governing documents, bylaws, and tenant screening procedures for compliance and to guide the condo board in making any necessary changes. Members of MIAMI REALTORS® have access to the [Florida REALTORS® Legal Hotline](#) (407.438.1409). Call the [Miami-Dade Bar Lawyer Referral Service](#) (305.371.2220) or the [Florida Bar Lawyer Referral Service](#) (800.342.8011) for referrals to attorneys who handle these matters.

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