

Take Time to Review Laws on Budget, Reserve Funds

State has Pared Down Manual on the Topic

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Southwest Floridians who are sweating out another sweltering summer are always looking for ways to beat the heat. Chilling out in the air-conditioned indoors, chipping away at the summer reading list is a favorite past-time for many.

For condo board members and managers, a new book recently released by the state agency which regulates condominiums should be added to the list of summer reading materials. Budgets and Reserve Schedules, A Self Study Manual for Beginners was originally published by the Division of Florida Land Sales, Condominiums and Mobile Homes in 1995. The original version was 202 pages and could be obtained from the Division at a cost of \$5.00.

The Division has issued a revised version of the manual, which has been pared down to about 75 pages. Better yet, the new edition is available to condominium associations free of charge (or at least, for no additional charge than the four dollar per unit per year fee paid to the state by each association).

Check the Division's web-site at www.state.fl.us/dbpr/lsc/condominiums/publications (where the manual can be downloaded) or contact the Division's Customer Service at 850-488-1122 for a hard copy.

Now on to reader mail.

QUESTION: We own a condo unit in Southwest Florida. The building is a "55 and over building." One of the Condo Association rules is that children under the age of 16 cannot be permitted as permanent residents. A local realtor with whom I am about to list the unit for rental purposes told me that she could not list it with this rule because the rule is discrimination

on the basis of age. The Condo board said that this is not true and that the realtor is wrong. Who is correct? C.M. (via e-mail)

ANSWER: The Fair Housing Amendments Act of 1988 (FHAA) makes it unlawful to engage in housing discrimination on the basis of familial status. Familial status discrimination includes any rules that would make children unwelcome in a neighborhood association. However, Congress left a narrow exception known as the "55 and over" exemption, which permitted communities "primarily operated as housing for older persons" to continue to exclude families with children, and younger residents.

The pertinent portion of the exemption defines "housing for older persons" as "housing intended and operated for occupancy by persons 55 years of age or older and (i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older."

Therefore, if your community meets this requirement, if it has properly declared itself to be a 55 and over community, and if it engages in required age verification procedures, then it may engage in conduct that might otherwise be considered to be "age discrimination."

QUESTION: As president of a 12 unit townhouse association, in March of 1996 the Association voted and had the board assign parking spaces to each unit. As unit owners change, no changes have been made. One owner who moved in after the association assigned the parking spots wants to change his since he has been an owner longer than some other owner. At the last meeting, it was agreed upon that it should be worked out between the owners. The owner requesting the change is demanding that the

board do something. Are there any legal guidelines that could assist us? S.G. (via e-mail)

ANSWER: Parking spaces are frequently a contentious issue. Whether the Board can reassign them (or assign them at all) is a matter that is governed by the association's governing documents and the applicable law. The important questions to ask are, 1) does the Board have the authority to assign spaces under the governing documents? 2) are the parking spaces "common elements," "limited common elements," or "appurtenances" to each unit. If they are ap-

purtenances, they might not be able to be reassigned without 100% unit owner approval.

In condominiums, there is a procedure (created by a 2000 amendment to the governing statute) which permits reassignment if authorized by the declaration of condominium, and with the consent of the affected assignee. If the parking spaces are not "appurtenances," and the board is granted general rule-making authority in the governing documents, the general law is that the board would have broad discretion over the assignment of parking space use rights. ⚖️

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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.