

## Filing Deadline Looms for “55 and Over” Housing

*Registration Paperwork due to State by Oct. 1<sup>st</sup>*

FORT MYERS NEWS-PRESS, SEPTEMBER 21, 2003



**By Joe Adams**

[jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com)

TEL (941) 433-7707

FAX (941) 433-5933

Deadlines, deadlines. They never seem to end.

For community associations, missed deadlines are one of the most frequent sources of legal problems.

A few weeks ago, this column mentioned the deadline for filing your association’s annual corporate report (see [\*Failing to file timely report can have big consequences\*](#), July 27, 2003). Several months ago, tax filing deadlines were discussed (see [\*Not-for-profit HOAs must still file tax returns\*](#), March 9, 2003).

For communities which are held out as “55 and over” housing, another deadline looms. By October 1, 2003, the association must file its bi-annual report with the Florida Commission on Human Relations certifying that the community is registered as “housing for older persons” (otherwise known as “55 and over” housing).

A community with “55 and over” status is permitted to exclude residents and potential residents on the basis of age or familial status. Without 55 and over status, a community which attempts to keep out children or younger people may find itself at the losing end of a very expensive discrimination suit. Filing the necessary paperwork with the Florida Commissioner on Human Relations does not confer a presumption of qualifying with all the legal intricacies of the law, but failure to file this paperwork in a timely manner can result in the levy of penalties.

The form which the community should fill out is available on the Florida Commission on Human Relations’ website located at: <http://fchr.state.fl.us/fchr/2003news18.htm>. On that site, there is a link entitled “Renewal Link.” This link will bring you directly to a simple one-page form, which must be submitted by October 1, 2003. Please note that as

of the date of writing this article, there was language on the FCHR website suggesting that communities would need to renew their registration on the anniversary of their original registration. The general counsel’s office for the FCHR has advised that this may not be accurate, and therefore all 55 and over communities should consider October 1, 2003 to be the appropriate deadline.

*Now on to reader mail:*

**Question:** I live in a rental community which is being converted into a condominium facility. Under my lease, I am not permitted to have a pet. However, under the new ownership plan, two pets per unit are allowed. My building has not yet been converted to condominiums, but I recently got a kitten and my landlord has demanded that I remove it from the premises. I offered to purchase my unit then and there, but he said it was not for sale yet. My building will be the last to be sold. What alternative do I have other than giving up my kitten or being evicted? L.R. (via e-mail)

**Answer:** It appears that at this time, your community is still a rental community, and not a condo community. As your community is being converted to condominiums in phases, and your building has not yet become a condominium, you are still required to abide by the terms of your rental lease. If your rental lease prohibits pets, then you are not permitted to have a pet in the building. Once your building converts to condominium, this will change. Until then, you do not have rights under the condominium documents for other buildings.

**Question:** We have a lanai attached to our grill room at our golf club. This lanai has a solid surface roof and is completely enclosed with screen. It

is primarily used for dining, but it serves alcohol as well. Does this sound like it would fall under the new Clean Air Act and thus should it be designated as no smoking? L.E. (via e-mail)

**Answer:** The Florida Clean Air Act prohibits smoking in any “enclosed indoor workplace.” The description of your lanai as having a solid surface roof and complete screen enclosure which serves food and alcohol, sounds like “an enclosed area.” Under the law, any physical barrier enclosing a workplace will subject it to applicability under the Clean Air Act. Even open windows and screens are considered to be “physical barriers.” If the area has a roof over it that covers more than fifty percent of the open area, then it will be considered to be an “enclosure.” Under the Clean Air Act, a “workplace” is any place where one or more persons engage in work. It sounds like this area is a place where persons serve food and alcohol, therefore it would be a “workplace.” Even if a part-time volunteer cleans the area, it is a “workplace.” It is my opinion that this lanai area is subject to the Clean Air Act, and if you permit smoking on the lanai, you will expose your association to fines which increase with each violation.

**Question:** My condominium community has a troublesome member who flaunts our community

rule prohibiting glass in the pool or pool area. The main offender drinks beer from a beer bottle while in the pool. He has been asked to cease and desist from this practice several times, both verbally and in writing. We have considered fining him, but as he is also in arrears on his quarterly assessments, we do not believe that this will deter him. Is there any action we can take to stop him from breaking our reasonable rules? J.H. (via e-mail)

**Answer:** It sounds like this is a problem resident, but you do have legal rights to rein in his behavior. As you are aware, you are able to fine him (provided there is fining authority in your governing documents). Although you state that this may not deter him, and you might have great difficulty in collecting the fines, it can be more troublesome for the resident than you think. If you fine him, you will be able to take him to Small Claims Court to collect the fine, and he will be forced to pay any attorney’s fees incurred in enforcing the fine against him. Additionally, you have the right under Florida Statute 718 to file a Petition For Arbitration against this unit owner, and again any attorney’s fees incurred in attempting to enforce the governing documents are recoverable by the association if the association wins. I recommend that you contact your association’s attorney to begin the appropriate enforcement procedures. ⚖️

---

*Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners’ associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm’s Naples and Ft. Myers offices.*

*Send questions to Joe Adams by e-mail to [jadams@becker-poliakoff.com](mailto: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](http://www.becker-poliakoff.com).*