

55 and Over Compliance Causes Confusion

Audit Should be Done, Brief Checklist Followed

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My recent column regarding registration of “55 and over” communities with the Florida Commission on Human Relations spawned a tremendous number of inquiries. Although federal law has made provision for “55 and over” communities for some fifteen years, there remains great confusion on how to comply with the law.

Due to the staggering cost of defending a discrimination claim, or even a HUD investigation, every “55 and over” community should have its legal counsel periodically audit its compliance with the laws. The following is a brief checklist of compliance requirements.

Bi-annual registration with the Florida Commission on Human Relations: This is basically a tax, and requires filling out a form with the state agency charged with preventing housing discrimination. (See Filing Deadline Looms for “55 and over” Housing - 9/21/03). Compliance with the law does not mean, however, that your community otherwise qualifies as a “55 and over” association.

Periodic age verification procedures: Even for communities which have long held themselves out as “55 and over” communities, HUD’s regulations require periodic censuses and age verification. In general, age verification requires the ability to prove a particular occupant’s age through reliable means. Typically, photographic identification with birth dates (such as drivers’ licenses) are the best source. By law, the census must be updated at least every two years, and needs to be adjusted in connection with every change in a unit’s occupancy.

Eighty percent occupancy thresholds must be met at all times: The laws establishing “55 and over” communities do not address who owns property,

rather who resides in the community. At least eighty percent of the occupied units must be occupied by at least one person age 55 or older. Vacant units are not counted in the mix. Temporarily vacant units (typical “snowbird” homes) are counted in the census, provided that the unit is reserved for occupancy by the age-qualifying resident (rather than being on the rental market).

Policies and procedures: Associations should make an effort to hold the community out as a “55 and over” community to the general public. Community entry signs, letterhead, rental application forms, and similar means by which the community is held out to the public are all relevant.

Establishment of age restrictions in governing documents: With limited exception, the only way a Florida community association can establish age restrictions is through provision in the governing documents, typically a declaration of condominium, a declaration of covenants, or deed restriction. Although there are limited exceptions, amendments to bylaws or board-made rules will rarely suffice.

Although there are many steps that must be taken (and unfortunately, repeated) to attain age-restricted status, failure to comply with the law can definitely spoil your day.

Now on to reader mail.

QUESTION: When I bought my condo, it was not a 55 and over community. Several years after my purchase, the community voted to become 55 and over housing. Since I was forty years old at the time, I was grandfathered in and was able to remain in the community. I am moving out of this

condo, and I have a potential tenant who is 52 years of age. The board has told me that this resident may not move into the unit because they are not over the age of 55 or over. Can the board do this? R.C. (via e-mail)

ANSWER: The board can deny you the right to rent your unit to someone who is under 55 years of age, if the community has been properly declared a 55 and over community. Although you are the owner, and you may be grandfathered in, the laws surrounding 55 and over communities are concerned with occupancy and not ownership. Accordingly, anyone may own a unit in a 55 and over community, but if eighty percent of the units are not occupied by residents who are 55 years of age or over, the community will lose its 55 and over status and will likely be subjected to discrimination suits if it attempts to enforce its rules beyond that. I would look for a different tenant.

QUESTION: We have a person operating a business from their home, it is against our homeowners association rules to do so. Who do we contact to get this person to stop?

The management company does nothing, as this person runs the board in our association. This manager and this board member are not working in the interests of the residents, we need some advice on what our options are.

We are a small association, mostly retired, and feel that litigation is not an option, as we are mostly all on fixed incomes. J.H. (via e-mail)

ANSWER: Often times, not only will a neighborhood declaration of covenants, conditions and restrictions prohibit the operation of a business out of a residence, but so will local ordinances and/or codes. If this is the case, a call to the code enforcement office of your local government might initiate an investigation at no cost to you.

Often all that is required is an address where the violation is occurring and a description of the violation. (You are not even required to give your name in some counties.) After you file a complaint, a case number will be assigned and interested parties may call code enforcement to check on the status of the investigation. ⚖️

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.

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