



Condominium Law Q&A

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Question – What does “A 55+ Community” mean? As I understand the Federal law, a 55+ community must provide 20% of the units for those under the age of 55. A neighborhood condo states that they have amended their documents to mandate that all owners must be 55 or older. They will not accept anyone under the age of 55. Is this legal? J.B., W.P.B.

Answer – In 1988, Congress extended the protective cloak of the Fair Housing Act (FHA) to cover two new categories, “familial status” and “handicap.” The Act already protected against discriminatory conduct based upon race, sex, national origin and religion. Please note that “age,” in and of itself, is not a “suspect category” under the Act. “Familial Status” is the residency of an individual below the age of 18 residing with a parent or guardian. Thus, upon enactment of the 1988 amendments to the FHA, “adult” housing became illegal. However, recognizing that seniors (defined by the Act as persons 55 years of age or older) may have special needs which justify special consideration, Congress simultaneously created an “Housing for Older Persons” exception. If a “senior housing community” can demonstrate that at least one person 55 years of age or older resides in 80% of the units, and if the governing documents so provide, the community can qualify as an exempt community and will not be subject to the familiar status protection. That said, what about the 20% which need not house someone 55 years of age or older? Can the board require all units to have someone 55 years of age or older and/or compel 100% of the residents be 55 years of age or older? The 20% factor was put into the Act as a safety net. It contemplated the fact that in a unit where one resident is 55 years of

age, but the other is not, in the event of the death of the 55 year old, it would be unjust to compel the surviving spouse to move out. Also, what if upon the death of the senior, their unit was bequeathed to their children who, while older than 18, were younger than 55? Still, it is perfectly legal and enforceable for a community whose covenants restrict all residents to being 55 years of age or older, to do so. Notwithstanding said factor, HUD encourages common interest ownership housing communities to be flexible in the use of the 20%, and to the extent possible, try to accommodate the housing needs of as many persons as possible.

Question – During a meeting of our homeowners association board, use of reserve funds was discussed. One member expressed the opinion that reserves could be used for the specific purpose for which it was established, or if a “general” reserve, for any budget item, or as the board otherwise deemed appropriate. Another board member expressed the opinion that reserves can only be used for capital projects. In response, the manager quoted the following from an answer which appeared in your column: “While the Condominium Act mandates that the annual budget contain reserves for capital expenditures and deferred maintenance, calculated upon the life expectancy of a particular building component, the Homeowners Association Act is silent on the subject, leaving reserves to the discretion of the board.” Please clarify. J.A., Melbourne

Answer – As stated, for the board of a condominium to use statutory reserves for other than the stated purpose for which the reserve was established, it requires the prior approval of a majority of the unit owners voting

at a meeting at which there is a quorum present. Since the Homeowners Association Act does not mandate that reserves be maintained, reserves, for the most part, can be used by the board as it deems necessary and appropriate, regardless of how the funds are classified. While it is prudent to establish and maintain adequate reserves to deal with contingencies, particularly for

casualty deductibles and uninsured hurricane damage, it is incumbent upon the board to discuss the potential tax consequences of the maintenance of reserves with the association's C.P.A. The IRS does not necessarily agree that reserves are not taxable as accumulated corporate surplus and, for certain, the interest earned on reserve accounts is subject to taxation. ■

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