



## Condominium Law Q&A

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**Question** – I have been reading your column for years and find it very interesting and informative. Thank you for the time and effort you put into it. My question is in regard to a friend of mine, a recent widower. His wife died late in 2008. Soon after, the manager of his condominium sent him a letter giving him one month to either vacate the unit that he and his wife owned, or to find a roommate over 55. Unfortunately, the roommate did not work out and now he is faced with the same problem once again. At the time of purchase in 2001, in order for the couple to receive the board's approval, they had to sign an instrument in which they agreed to the fifty-five and over residency requirement. The language of the instrument says: *"hereby agrees that at least one person is the age of fifty-five (55) years or over and shall be a permanent occupant of said unit. Should the over 55 occupant not be in residence, the under 55 occupant agrees not to reside in said unit except as a guest subject to all association rules (for not more than thirty (30) days in any 12 month period) and regulations pertaining to guests."* Is the surviving spouse compelled to move from their unit? P.M., Boynton Beach

**Answer** – The Fair Housing Amendments Act of 1988, made "familial status," the residency of a person below the age of 18 residing with a parent or guardian, a protected class. It also made an exception for communities for older persons, defined as housing in which at least 80% of the units are occupied by at least one person 55 years of age or older. The 20% was created as a safety net for the very purpose you are now describing. That is to not

uproot a surviving spouse or other family member over the age of 18, but below 55, upon the death of the 55 year old or older resident. While it is permitted to have covenants which require 100% of the unit owners to be over the age of 55, it is self-evident that this community does not. Otherwise, the spouse below age 55 wouldn't have been permitted to live there in the first place. The board, in my opinion, can grant a hardship exception, allowing the under 55 year old spouse to remain in residence. The members should ratify the action by amending the covenants to allow this for all unit owners. Failure to do so is irrational.

**Question** – I lease out a condominium in Stuart, FL. The condominium rules state: "No lease shall be less than three months or more than one year. No apartment may be leased more than one time in any twelve consecutive month period from the date of occupancy." Could you please help clarify what the term "from the date of occupancy" means? Is it from the original date of the first lease or the renewal date of a lease when it is renewed? I had a tenant who signed his first lease in July of 2007. The lease expired, and I forgot about it. The condominium board called me, and the tenant signed a renewal in October of 2008. The board had issues with my tenant and forced him to leave in May of 2009. I am now told that I cannot lease out the unit until October of 2009, which is the renewal anniversary. My contention is that I am able to lease it out immediately because the date of occupancy is from the original lease not the renewal. Please help

clarify this point, as it is costing me lost income which I cannot afford. T.P., Stuart

**Answer** – A renewal of a lease is deemed an extension of the expiring lease, which, in and of itself, would be technically a lease for a term greater than one year. If the tenant continued in residency, paying his rent from July 2008 to October 2008, at

which time a "new" lease was signed, I would take the position that the lease term ran from July 2008 until June 30 2009, not October 2009 as the board is contending. Accordingly, you should have been able to enter into a new lease July 1, 2008. I would construe "date of occupancy" as being synonymous with the date of commencement of the lease, whether the tenant was in residency or not.

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