



MARKUP #1 ->

MARKUP #1 · FAIR HOUSING ACT (FHA) LIABILITY RISK

BOARD & COUNSEL REVIEW

naming them and without further conveyance, in the same undivided shares as the undivided shares in the Common Elements appurtenant to the Units owned by them.

8.8 Land Not Incorporated. Any land acquired by the Association that is not incorporated into the Land by amendment of this Declaration, may be sold or mortgaged or otherwise disposed of by the Association after approval in writing by the record Unit Owners of not less than seventy-five percent (75%) of the Common Elements. This approval shall be evidenced by a certificate stating that the approval was duly given, which certificate shall be executed by the officers of the Association with the formalities of a deed and delivered to a purchaser or mortgagee of such land.

8.9 Personal Property. Any personal property acquired by the Association may be sold or mortgaged or otherwise disposed of by the Association.

8.10 Enforcement of Maintenance. The Association has the irrevocable right of access to each Unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any Common Elements or for making emergency repairs which are necessary to prevent damage to the Common Elements or to another Unit or Units.

ARTICLE 9. USE RESTRICTIONS

9.1 Use Restrictions. The use of the Condominium Property shall be in accordance with the provisions hereinafter set forth.

(a) Use. Each Unit shall be occupied only by an owner, members of his family, his servants and guests, as a residence and for no other purpose. In no event shall occupancy exceed two (2) persons per bedroom; however, the Board shall have the authority to expand the above capacity. This section shall not apply to Units used by the Developer for models, sales offices, management services or otherwise.

(b) Pets. A Unit Owner shall be permitted to maintain in the Unit one (1) dog not in excess of 25 pounds, or one (1) cat, and fish and birds, provided same do not become a nuisance. Authorized pets are only allowed on Common Areas when on a leash, accompanied by its owner, and then only so long as the pet does not disturb the Common Areas. Non-owner occupants of a Unit shall not be permitted to maintain any animals within a Unit.

(c) Children. No children under the age of sixteen (16) years shall be permitted to reside in any Unit which is not occupied by an Owner.

(d) Alterations. No Owner, tenant or other occupant shall paint or otherwise change the appearance of any exterior wall, door, window, patio, balcony or other exterior surface; place any sunscreen, blind or awning on any balcony or exterior opening; place any curtains at the windows of any Unit without a

Sec. (c) (p. 9): Occupancy or amenity restriction discriminates based on familial status / disability or imposes an overbroad age restriction under the Fair Housing Act and HOPA.

Statutory / Legal Reference: 42 U.S.C. §§ 3604(b), 3604(f), 3607(b)(2) & 24 C.F.R. §§ 100.304 - 100.307 (HOPA)

Statutory Comparison: The Fair Housing Act (42 U.S.C. § 3604(b)) prohibits familial-status discrimination against families with children - including adult-only rental age floors, mandatory hourly pool exclusions targeting all minors under 18, blanket Common Area parental-escort rules for children, and caps on grandchildren - unless the community actively qualifies as 55+ Housing for Older Persons under 42 U.S.C. § 3607(b)(2) and 24 C.F.R. §§ 100.304 - 100.307 (which regulates occupancy rather than fee-simple title ownership and does not authorize intrusive medical/disability disclosures for live-in caregivers under 42 U.S.C. § 3604(f)).

CURRENT WORDING IN DOCUMENT:

Children. No children under the age of sixteen (16) years shall be permitted to reside in occupied by an Owner.
(d) Alterations. tenant or other occupant otherwise change the appearance of any exterior door, window, balcony or other exterior surface; sunscreen, blind balcony or exterior opening; place any curtains at the windows of any Unit without a O.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Any age-based occupancy restriction shall be enforceable only while the Association actively qualifies as "Housing for Older Persons" pursuant to 42 U.S.C. § 3607(b)(2)(C) and 24 C.F.R. §§ 100.304 - 100.307, including maintaining at least 80% occupancy of units by at least one person 55 years of age or older and conducting mandatory biennial age-verification surveys. Absent active HOPA qualification, no restriction shall discriminate on the basis of familial status.

ISSUE #1

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