

OR BK 03535 PG 4542

4.8.5 The restrictions and conditions of any applicable zoning ordinance development order, or any other regulation, rule or statute. MARKUP #1 ->

4.9 Extension of Rights and Benefits. Every Owner shall automatically have the rights and easements of enjoyment vested in him under this Article extended to each of the applicable Benefited Parties, and to such other persons as may be permitted by the Community Association.

4.10 Lease and Operation. Declarant, and after Declarant no longer owns any portion of the Property, the Community Association, shall have the right to enter into agreements for the lease, or operation of the Common Property, whether or not for profit.

4.11 Maintenance Agreements. Declarant, and after Declarant no longer owns any portion of the Property, the Community Association, shall have the right to enter into agreements for lease, use, license, maintenance or easement with any governmental or quasi-governmental agency or private or public utility company in order to obligate the Community Association to maintain and/or upkeep certain real property not owned by Declarant or the Community Association and which may or may not constitute a portion of the Property, including, without limitation, any roads, right-of-ways, medians, swales and berms. The provision is intended to apply, inter alia, to the arrangements regarding the Community Entry Features and any of the Property owned by the CDD for which the Community Association enters in an agreement for the maintenance and/or operation thereof. All expenses to the Association, including expenses incurred by the Community Association to provide an additional level of maintenance quality or quantity above the level which may be funded by the CDD, shall be common expenses of the Community Association. Additionally, all maintenance activities undertaken by the Community Association pursuant to maintenance agreements with the CDD shall be common expenses of the Community Association and shall be allocated pursuant to the assessment structure provided hereinafter.

4.12 Mortgage and Sale of Common Property. Unless in connection with a specific provision of this Declaration, the Community Association shall not abandon, partition, subdivide, encumber, sell or transfer any Common Property owned by the Community Association without the approval of at least 67% of the total Class A votes and all of the Class B votes. If ingress or egress to any portion of the Property is through any Common Property, any conveyance or encumbrance of such Common Property shall be subject to an appurtenant easement for ingress and egress in favor of the Owner(s) of such portion of the Property, unless alternative ingress and egress is provided to the Owner(s).

ARTICLE 5: AGE RESTRICTIONS

ISSUE #1

5.1 Age Restrictions. The Residential Property of the Community is an age-restricted community. Each Home, if occupied, shall be occupied by at least one person 55 years of age or older (hereinafter referred to as the "Community Age Restriction"); provided, however, that upon written petition, the Board of Directors may grant a waiver of this restriction only to persons at least 50 years of age (based upon birthdate) but no greater than 55 years of age (based upon birthdate) if at least one person 50 years of age or older will occupy the Home that is the subject of the petition and the result of such waiver would result in at least 80% of all the Homes in the Community being occupied by persons 55 years of age or older. The Board of Directors may grant such waiver for a limited time period and upon such terms and conditions as deemed necessary by the Board of Directors to protect the age-restricted character of the Community. No children under the age of 18 years of age shall occupy any Home; provided, however, that such children may visit and temporarily occupy such Home for periods not to exceed 30 days in any calendar year. The Community Age Restriction shall be controlling over any provision contained in a Neighborhood Declaration pertaining to age (except in the case of a more restrictive provision which is permitted under applicable law, in which event the more restrictive provision shall control), but in any event the Community Association shall be the sole entity charged with overseeing compliance with all age restriction matters in the Community.

Notwithstanding anything herein to the contrary, the Community Association shall have the power and authority to implement whatever rules, policies and procedures are necessary to permit the housing facilities and Neighborhoods within the Property to comply with applicable provisions of the Fair Housing Act relating to an age-restricted community. These rules, policies and procedures include, but are not limited to, occupant age verification and periodic occupant surveys.

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 5.1 (p. 13): 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 (e.g., 24+), 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:

community. Each Home, if occupied, shall be occupied by at least one person 55 years of age or older (hereinafter referred to as the MCommunity Age Restriction"); provided, however, that upon written petition, the Board of Directors may grant a waiver of this restriction only to persons at least 50 years of

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.