

ISSUE #1

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

A. The owner of a unit shall occupy and use his apartment unit as a single family private dwelling, for himself and the adult members of his family and his social guests, and for no other purpose. No more than two (2) persons per bedroom shall be allowed to permanently reside in any one unit, or as may be in accordance with HUD guidelines. No children under fifteen (15) nineteen (19) years of age shall be permitted to reside in any of the units or rooms thereof in this Condominium, except that children may be permitted to visit and temporarily reside for reasonable periods, not in excess of thirty (30) consecutive and cumulative days, in any calendar year. Guests may not remain on the premises for more than fourteen (14) consecutive days and thirty (30) cumulative days in a year without the express approval of the Board, who shall have the right to screen said guests, and who shall further have the right to deny guests.

The use of a portion of a unit as an office by an owner or occupant shall be allowed if such use does not create regular customer, client, or employee traffic. Each owner or occupant, as applicable, shall notify the Association of any periods of time during which the unit becomes unoccupied. As used only in this Article, the term, "unoccupied" is defined to mean any intended absence of all permanent residents of the unit, for a period in excess of two (2) months. In the event a unit is left "unoccupied", said owner or resident shall follow proper check-out procedures as promulgated by the Board of Directors from time to time including having the unit inspected once every two-week period of vacancy by a person designated by the owner or Resident for such purposes. The name and contact information of the designated party should be given to the Association for purposes of an emergency. If a vehicle is left on the property during unoccupied terms, a spare vehicle key shall be left inside the unit in the event a vehicle needs to be moved in the event of an emergency.

B. Occupancy of Units Pursuant to the Fair Housing Act. To demonstrate an intent by the Association to provide housing for persons fifty-five (55) years of age or older and inasmuch as the Somerset B Condominium was designed as Housing for Older Persons fifty-five (55) years of age or over, it shall be required, as of the effective date, at least one person fifty-five (55) years of age or older must continue to occupy the unit. The owner's spouse or partner aged fifty (50) years of age or older may reside in a unit if the owner is fifty-five (55) years of age or older. Notwithstanding same, the Board, in its sole discretion, shall have the right to establish hardship exceptions to permit owners, their family and guests between the ages of nineteen (19) and fifty-five (55) to occupy units, providing that said exceptions shall not be permitted in situations where the granting of a hardship exception would result in less than eighty percent (80%) of the units in the Condominium having less than one occupant fifty-five (55) years or older. The Board, or its designee, shall have the sole and absolute authority to deny occupancy of a unit by any person(s) who would thereby create a violation of the afore-stated percentages of adult occupancy.

C. Children. As long as the Somerset B Condominium Association, Inc. falls within the Exemption, no children nineteen (19) years of age or younger shall be permitted to reside in any of the units, except for a period of time not to exceed thirty (30) days in any calendar year, unless an extension or a hardship exemption is approved at the discretion of the Board of Directors. Notwithstanding anything contained herein to the contrary, it is acknowledged and agreed that, although it is the intent of the Association that The Somerset B Condominium falls within the Exemption so that persons nineteen (19) years of age or younger will be prohibited from residing within the Somerset B Condominium, no representations or warranty is given that the Somerset B Condominium will comply with the Exemption, and in the event that for any reason it is determined that the Somerset B Condominium does not fall within the Exemption, and therefore it is unlawful to discriminate against families with children nineteen (19) years of age or younger, the Association shall have no liability in connection therewith.

Sec. 27 (p. 27): 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:

one unit, or as may be in accordance with HUD guidelines. No children under fifteen (15) nineteen (19) years of age shall be permitted to reside in any of the units or rooms thereof in this Condominium, except that children may be permitted to visit and temporarily reside for reasonable periods, not in excess of thirty (30) consecutive and cumulative days, in any calendar year.

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.