

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Incorporation, Bylaws or Rules and Regulations. Pursuant to the Act, it shall be the responsibility of the Association's Board of Directors to determine whether eighty (80%) percent of the Lots, subject to calculation as delineated in Title 24, United States Code of Federal Regulations, Part 100, are permanently occupied by at least one person who is age fifty-five (55) years or older.

(g) The Declarant or any Owner, seller, builder, prospective purchaser other interested party, in writing, may request that the Declarant (at its election during the Development and Sale Period) or the Association's Board of Directors make an exception to the requirements of this Section 3.2 with respect to his or her Lot. The Declarant (at its election during the Development and Sale Period) or the Association's Board of Directors shall have the sole and absolute authority to deny occupancy to any person(s) seeking occupancy of a Lot for any proper purpose, including but not limited to the purpose of effectuating the intent or requirements of the Act or where such occupancy would create a violation of the required percentage as set forth in Title 24, United States Code of Federal Regulations, Part 100. This authority is without limitation to any other authority that the Board of Directors may have to deny occupancy for other reasons. The Declarant (at its election during the Development and Sale Period) or the Board of Directors may, but shall not be obligated to, grant exceptions in their sole discretion, provided that the requirements for exemption from the Act would still be met.

ISSUE #1

3.3. Changes in Occupancy; Notification.

In the event of any change in occupancy of any Lot (e.g., as a result of a transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location of permanent residence, or otherwise,) which change results in no permanent occupant of the Lot any longer being age 55 or older, the Owner of the Lot shall immediately notify the Board in writing and provide to the Board the names and ages of all current occupants of the Lot and such other information as the Board may reasonably require to verify the age of each occupant. ~~In the event that an Owner fails to notify the Board and provide all required information~~ within 10 days after such change in occupancy occurs, the Association shall be authorized to levy monetary fines against the Owner and the Lot for each day after the change in occupancy occurs until the Association receives the required notice and information, in addition to all other remedies available to the Association under this Declaration and Florida law.

3.4. Monitoring Compliance: Appointment of Attorney-in-Fact.

(a) The Association shall maintain age records on all occupants of Lots. The Association shall comply with regulations issued by the United States Department of Housing and Urban Development and set forth in Title 24, United States Code of Federal Regulations, Part 100, as same may be amended from time to time, for verification of occupancy by reliable surveys and affidavits and for the maintenance of records demonstrating that at least one person who is age 55 years or older permanently occupies at least 80% of the Lots. Upon the request of the Association, all Lot Owners, Lessees and any other occupants of any particular Lot within the subdivision shall be required to cooperate with the Association in providing the reliable surveys or affidavits verifying the ages of each and every Lot's occupant or occupants as specified by Title 24, United States Code of Federal Regulations, Part 100, as same may be amended from time to time, or any other federal or state law or regulation.

(b) The Declarant (at its election during the Development and Sale Period) or the Board of Directors shall adopt and publish policies, procedures, and rules to monitor and maintain compliance with this Article III, including policies regarding visitors, updating of age records, the granting of exemptions pursuant to Section 3.2(e), and enforcement. The Association periodically shall distribute such policies, procedures, and rules to Owners and make copies available to Owners, their tenants, and Mortgagees upon reasonable request. Further, this Article III shall be published to all Lot Owners and tenants to demonstrate this

Sec. 3.3 (p. 14): 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:

Changes in Occupancy; Notification. In the event of any change in occupancy of any Lot (e.g., as a result of a transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location of permanent residence, or otherwise,) which change results in no permanent occupant of the Lot any longer being age 55 or older, the Owner of the Lot shall immediately notify the Board in writing and provide to the Board the names and ages of all current occupants of the Lot and such other information as the Board

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.