

What is the 80/20 Rule in 55 & Over Housing?

BY LISA MAGILL

55 & Older Housing – what does that mean? The Federal Fair Housing Act prohibits discrimination because of race, color, religion, sex, handicap, familial status or national origin. Many States have their own Fair Housing Act – in Florida Chapter 760 of the Florida Statutes is dedicated to discrimination issues that expand the protection to age and marital status. The term ‘familial status’ generally refers to occupancy by children (person under 18) with parent, guardian or designee of the parent. So why or how are there 55 & older communities? Well, every rule has exceptions, right? The Fair Housing Act is no different. The Housing for Older Persons Act (HOPA) is an exception that allows communities to operate as “55 or over” housing. To qualify for this exemption, the following criteria must be met:

1. At least 80% of the units must be occupied by at least one resident over the age of 55;
2. The community must publish and adhere to policies and procedures demonstrating an intent by the housing provider (the association) to provide housing for persons 55 years of age or older; and
3. The housing provider must engage in appropriate age verification procedures that includes a community census from time to time.

Ok – at least one person 55 or older must reside in at least 80% of the occupied units. What do you do with the other 20%? On April 1, 1999 the United States Department of House and Urban Development (“HUD”) published Federal Regulations implementing the Housing For Older Persons Act of 1995 (“HOPA”). Basically, HUD does not care how a community handles the 20% “cushion” as reflected below:

There continues to be confusion concerning what is often referred to as the 80/20 split. HOPA states that

the minimum standard to obtain housing for persons who are 55 years of age or older status is that “at least 80%” of the occupied units be occupied by persons 55 years or older. There is no requirement that the remaining 20% of the occupied units be occupied by persons under the age of 55, nor is there a requirement that those units be used only for persons where at least one member of the household is 55 years of age or older. Communities may decline to permit any persons under the age of 55, may require that 100% of the units have at least one occupant who is 55 years of age or older, may permit up to 20% of the occupied units to be occupied by persons who are younger than 55 years of age, or set whatever requirements they wish, as long as “at least 80%” of the occupied units are occupied by one person 55 years of age or older, and so long as such requirements are not inconsistent with the overall intent to be housing for older persons.

Does that mean a community that desires to sustain its Housing for Older Persons status should let everyone in up to the 20%? No, not really. The “cushion” is designed to allow the housing provider (association) to permit exceptions when appropriate. If a couple resides in a property and one is 55 and the other not, do you, as a community leader or manager, want to be put in a position that requires you to say “you’re in violation” if the resident over 55 passes away? What if the couple gets divorced? What if someone resides with their adult child? In our view, the ‘cushion’ is exactly that – something that protects you or softens the requirements to avoid unpleasant results. Does your community qualify as Housing for Older Persons? Community leaders that aren’t sure should consult with counsel, as penalties for discrimination (even unintentional discrimination) can be harsh.

— Submitted by UCO Treasurer,
Howard O’Brien

LEGAL

BY MARK D. FRIEDMAN, ESQ.

Protecting The Condominium from Investors

Recently there have been articles in some of the local newspapers about individual investors or companies purchasing numerous units in a single condominium in an attempt to create a rental community. In some instances, especially in smaller condominiums, the investors attempt to purchase enough units to either terminate the condominium or to control the Board. One of the major downsides to allowing ownership of multiple units in one condominium became apparent during the recent financial crisis. Some investors were unable to pay the mortgages and assessments and walked away from multiple units in a single condominium causing extreme financial hardship for those associations. If an Association is proactive, there are steps which may prevent this from occurring.

In order to prevent a “take over” many declarations of condominium limit the number of condominium units which may be owned by a single family or entity (with the term “family” clearly defined in the governing documents). The creative entrepreneur will often form an LLC or corporation for each condominium or group of condominiums he wishes to purchase to try an end-run around such prohibition. Therefore, the amendment must be carefully drafted to consider all of these potential scenarios. The association can limit the number of units that any one person may own either personally or through any entity with which he or she is affiliated. The amendment must consider all potential loopholes, for corporations, partnerships, trusts, “straw men”, etc. With the proper language the potential investor should not be able to be used to circumvent the amendment.

Another step to protect the

Association is to disallow ownership by entities such as corporations, limited liability companies and partnerships. This will further cut down on the ability to purchase multiple units at the condominium since only natural persons (people, not corporations) will be permitted to purchase units.

Investors generally purchase condominium units for one of two reasons; to flip the unit and make a profit, or to rent the unit to obtain a passive income stream. Even those investors who purchase to flip the unit may want to rent the unit, especially if they cannot sell it right away. One way to make a unit less attractive to investors is to place a moratorium on rentals for a given period of time after the purchase of the unit. This must also be accomplished through an amendment to the declaration. If a unit is rented at the time it is sold the amendment could also contain a contingency for the moratorium to begin after the termination of the current lease.

The time to take these steps is before investors begin placing offers on units at the condominium.

App

There is a new App for your smartphone which will help answer questions, give you dates for the annual meeting and even teach you the correct way to take minutes of Board meetings. It is currently available in the Apple store under “Condominium, HOA, Cooperative Law”. It will be available for iPad and Android phones in the coming weeks.

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