

Screening and Discrimination Issues

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What does “discrimination” in housing mean?

It is unlawful in Palm Beach County to discriminate in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, disability, sexual orientation, age, marital status and gender identity or expression.

In Housing for Older Persons communities, “familial status” discrimination is not applicable. Familial status means discrimination against families with children under the age of 18 years.

The best way to avoid discrimination is to seek advice from the Association’s own legal counsel, and not rely on third-party information when you want to deny an application, prior to making any statements to the seller or applicant. That way counsel can review your governing documents to ensure that there is a legitimate legal basis for the denial and that

the denial notification is handled properly.

With due respect to realtors (I have two in my family), Board members should not have extensive back and forth discussions with realtors. Board members should politely accept the application and related documents, and process those documents as per standard operating procedures, and limit discussion with all parties related to the transaction until the investigation is concluded. The sales contract says what it says. The declaration of condominium’s provisions, likewise, say what they say. There is no room for negotiation. Further, if you say the wrong thing to any third-party representative, as has happened, that representative will be called as a witness against you personally and against the association. The realtor negotiates between buyer and seller. There is nothing to negotiate with the association. If your documents are

not clear on these types of issues, then amend them at your upcoming annual meeting.

We were told that there is an “80/20 rule” and we must allow persons under 55 to occupy 20 percent of the units, even in the absence of someone who is 55 years of age or older.

The federal and state laws provide that at least 80 percent of the occupied units must be occupied by at least one person who is 55 years of age or older. The remaining 20 percent of the units may be occupied by persons under 55, and the condominium may still qualify for the exemption. However, HUD will not mandate that you make 20 percent of the units available for occupancy by persons under 55 years of age. In fact, in the question and answers page found at HUD.gov, the answer, in relevant part, was, “Further, the facility/community needs to plan with care any attempt to

sell or rent the entire 20 percent portion of the remaining units to incoming households under age 55, because it could risk losing the exemption if some occupants over 55 die, with surviving spouses or heirs who are under 55 years of age.” Most associations allow the 20 percent to be used only for the surviving spouse or the adult child who may be under 55 years of age when the older spouse, or parent dies.

Mark D. Friedman, B.C.S. is a shareholder in the law firm of Becker and is recognized by the Florida Bar as Board Certified in Condominium and Planned Development Law. This article is intended for educational purposes only and is not intended as legal advice. If you have a discrimination or screening issue, please consult your association’s legal counsel before taking any action. Mr. Friedman may be reached at MFriedman@BeckerLawyers.com.

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