

55-and-Better Communities

(Excerpt from Condo Media article with Ellen Shapiro, Esq.)

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We used to think the most important thing to know about over-55 communities was the Housing for Older Persons Act (HOPA), the law that allowed these communities to prohibit occupants under 55 (which obviously includes children) without risk of discrimination claims.

While the speakers at the 39th Annual Community Association Law Seminar covered HOPA, they also covered other laws that come into play when boards are confronted with problems as the over 55 occupants age in their units. Consider, for example, whether associations have any legal obligation to address conduct and behavior of occupants?

This is a question that often confronts us, but the importance of the question is emphasized when the behavior and conduct threaten the health and safety of others. Conduct of an aging occupant who forgets something is cooking on the stove or who cannot maintain his or her unit in a sanitary manner can present far graver consequences to the community than the type of conduct frequently complained of in non-age restricted communities.

The latter (such as music, loud parties, etc.) tend to be more annoying than dangerous. In one case in Tennessee, where an owner-occupant failed to correct unsanitary conditions including rotten food, bodily fluids, and mold, the association was left with no choice but to resort to litigation and finally received judicial authority to sell the unit (and was awarded its legal fees).

Also, in 55+ communities, the need for curb cuts, ramps, and handicap parking spaces, among other modifications, is on the rise, as is the need to allow occupants under 55 to reside with a disabled occupant in order to provide assistance, all of which are presented as requests to boards for reasonable accommodations or modifications. Continuing with this line of discussion, while acknowledging an association's obligation to comply with FHA and applicable state laws, does the association have the right or obligation to insist that the aging occupant who forgets that food is cooking engage a live-in aide? Does the association have the right or obligation to spend association funds to clean out a hoarder's unit and sanitize it to prevent a spread of rodents or insects to other units, or to prevent fires? Does an association increase its liability by failing to take these actions or by undertaking them? Does the association even belong in these areas of occupant conduct?

While there are few definitive answers to many of these questions, it is quite clear that over -55 communities present numerous challenges that are not addressed in, and probably were not contemplated by, the Housing for Older Persons Act. As these populations age and the occupants

become more fragile, it is clear that community association law, when applied to over-55 communities, requires increasing familiarity with laws other than those that simply permitted the creation of these communities.