“Services Not Required for ‘55 and Over’ Communities,” News-Press

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By: Joseph E. Adams

Q: Some in our homeowners’ association argue we need not offer any amenities like a swimming pool, tennis court, bocce ball, bingo, community dinners, etc., in order to maintain our “55 and over” status. Others say we must have all these and maybe more. Is there a list of amenities that must be followed to maintain our “55 and over” status? (M.V., via e-mail)

A: No specific amenities need to be provided to maintain a homeowners’ association’s “55 and over” status. The federal Fair Housing Act (“FHA”) prohibits discrimination because of race, color, religion, sex, disability, familial status, or national origin. Many states also have their own fair housing laws. In Florida, Chapter 760 of the Florida Statutes is dedicated to discrimination issues and expands protection to age and marital status. The term “familial status” generally refers to occupancy by children (persons under the age of 18) with a parent, guardian, or designee of a parent.

The Housing for Older Persons Act of 1995 (“HOPA”) is an exception to the FHA that allows communities to operate as “55 and over” housing. To qualify for this exemption, the following criteria, which do not include the offering of specific amenities, 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 (e.g., a homeowners’ 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 at least once every two years to ensure that the 80% requirement is met.

The Florida Fair Housing Act also requires that housing providers register and renew their “55 and over” status with the State.

The Fair Housing Amendments Act of 1988, which first introduced “familial status” as a “protected class” and recognized an exception for “55 and over”

housing, did require the housing provider (or association) to provide “significant facilities and services” specifically designed to meet the needs of older residents. However, HOPA repealed the “significant facilities and services” requirement.

Remaining in compliance with HOPA and protecting “55 and over” status does take planning and follow through. Qualifying communities must enact policies and procedures restricting the community to housing for persons who are 55 years of age or older and have a verification plan in place. Age restricted communities should consult with legal counsel on maintaining compliance, as penalties for discrimination (even if unintentional) can be harsh.

Q: I have requested the e-mail addresses for the unit owners in my condominium association. The association has stated that they are not permitted to disclose that information. However, my association uses electronic voting. I thought that if owners agree to electronic voting, their e-mail addresses are open records? (D.G., via e-mail)

A: E-mail addresses in possession of the association are not records that are open to the inspection and copying by unit owners with limited exceptions. There is an exception for e-mail addresses provided to the Association to fulfill the association’s notice requirements. Therefore, if an owner has consented in writing to receive official notice from the association by e-mail, then that e-mail address is an open record.

Electronic voting is not relevant to this issue. The relevant question is whether the unit owner has agreed to receive official notice by e-mail. If so, then that e-mail is a record that is open to inspection and copying by other owners.