

# WHO IS MOVING IN?

This Course is approved by the DBPR Council of Community Association Managers, for 4 hours of continuing education credit in the area of:

## Human Resources (HR) and Additional Instruction (ELE)

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# INTRODUCTION

## Course Description

Welcome to the 4-Hour CAM CE course Who is Moving In? Thank you for choosing Gold Coast Professional Schools. Our objective is to provide you with the best possible course and materials.

This course is divided into three parts. The following topics are covered:

### Part 1

- Introduction
- Association concerns about new residents and guests
- Legal and statutory requirements
- Changes in law or regulations
- Approve or not approve
- Squatters

### Part 2

- Specific screening issues
  - Assistance animals
  - Sober houses
  - Halfway houses
  - Group homes
  - RLUIPA
  - Local ordinances
  - Smoking section
  - Housing for Older Persons Act (HOPA)
  - Housing Choice Voucher Program (Section 8)
  - Guests and short-term renters

### Part 3

- The screening process
- Summary

## PART I

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### 1 INTRODUCTION

#### 2 Outline

3 In this section, we discuss the following topics:

- 4     ▪ Sources of different laws and regulations that affect who can move into or visit your community
- 5     ▪ Current screening rules and regulations, and how to change them
- 6     ▪ Various factors that influence enforcement.

7 We also review the roles of:

- 8     ▪ Unit owners
- 9     ▪ Board members
- 10    ▪ Courts
- 11    ▪ State of Florida

#### 12 Important Questions

13 Important questions for community associations



#### 14 Association Demographics

15 Many associations built in the '60s and '70s, were originally populated by retirees. However, in many of our  
16 communities, the demographics are changing dramatically.

17 Because the units in some of these older complexes are more affordable than single-family homes, younger  
18 individuals and families are buying them.

19 These young families have different needs than the original, older population.

#### 20 Association Rules and Regulations

21 A wise board will keep in mind that association rules and regulations, including those for conveyances (sales,  
22 rentals, and transfers), should:

- 23     ▪ Be reasonable
- 24     ▪ Preserve, protect, and enhance the association property value and assets
- 25     ▪ Promote harmonious living
- 26     ▪ Ensure that residents can use and enjoy the property

## 1 Association Documents

2 Therefore, the association documents may need to be amended from time-to-time to reflect the needs and  
3 desires of the current owners and residents – including, possibly,  
4 screening for residents and rules defining and regulating guests.

- 5     ▪ Some association documents provide criteria for  
6 screening new residents.
- 7     ▪ Some documents include a minimum percentage down on  
8 the sale of units.
- 9     ▪ Some allow a security deposit for rentals.
  - 10       ○ (State statutes permit a maximum of one month's rent  
11 as a security deposit, if allowed in the documents.)
- 12     ▪ Some associations have established financial criteria to  
13 ensure that new owners will be able to pay, not only their mortgage, but their assessments as well.



## 14 Screening Criteria

15 If an association does not have specific screening criteria in its documents, it may be legally challenged if it  
16 denies a transfer.

17 We recommend that associations establish screening criteria and standards that apply to all purchasers,  
18 lessees, and transfers by amending their documents.

19 Some attorneys suggest that, if an association fairly and equitably applies criteria that is not in the formal  
20 documents, including financial standards, it may be able to turn down prospective purchasers, lessees, and  
21 residents for valid reasons.

22 We suggest that an association use a licensed screening company to provide background, criminal, and credit  
23 checks on purchasers and new residents, if it is permitted to screen such applicants.

## 24 Laws Affecting Screening

25 However, in changing the association documents to reflect new resident screening procedures, we need to be  
26 aware of federal, state, and local laws and regulations that may affect our ability to screen and deny potential  
27 residents and guests.

28 These laws range from permitting group homes and sober houses, to potentially disallowing sexual predators  
29 and pedophiles.

30 Recent court cases have addressed

- 31     ▪ Smoking in buildings
- 32     ▪ Permitting a pet<sup>1</sup> in a no-pet building
- 33     ▪ Whether or not an individual can use his residence as a religious facility

## 34 Realtor Relationships

35 Boards and managers may want to schedule periodic orientations or open houses with local real estate firms.

36 The board can share information regarding the requirements it has for selling or leasing units, and can learn  
37 from local agents about any issues or concerns they have. By creating a relationship with local realtors, the  
38 board and manager may be able to create a mutually beneficial relationship.

39 Local agents are also a good source of information regarding market trends, as they may affect the association  
40 and its residents.

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<sup>1</sup> A pet is an animal kept primarily for a person's company or protection, as opposed to working animals, sport animals, livestock, and laboratory animals, which are kept primarily for performance, agricultural value, or research. The most popular pets are noted for their attractive appearances and their loyal or playful personalities.

## 1 ASSOCIATION CONCERNS ABOUT NEW RESIDENTS AND GUESTS

### 2 Outline

3 In this section, we cover the following association concerns:

- 4     ▪ Owner/resident association concerns
  - 5       ○ Undesirable residents
    - 6           ➤ Terrorists
    - 7           ➤ Disruptive residents
    - 8           ➤ Criminals
  - 9       ○ Owner/resident financial capability
- 10    ▪ Business owned units

11 Throughout this course, we will discuss the problems and issues associated with these concerns.

### 12 Owner/Resident Association Concerns

13 In the past, many associations, even with the power to screen and approve or reject new owners or tenants,  
14 did not exercise their rights.

#### 15 *Undesirable Residents*

16 This brought on concerns about undesirable residents, such as

- 17     ▪ Terrorists
- 18     ▪ Disruptive residents
- 19     ▪ Criminals

#### 20 **Terrorists**

21 After 9/11, the press reported that some of the terrorists had been living in an association on the west coast of  
22 Florida. They kept a low profile in the community, and appeared to be “good neighbors.”

23 Nonetheless, this disturbed many communities.

#### 24 **Disruptive Residents**

25 With changing communities, sometimes an undesirable resident would slip by.

26 These unruly residents might include:

27 Residents who throw loud parties until 1 or 2 am

28 Residents who adopt an animal that is considered to be dangerous to many residents, and allow it to roam free  
29 (without a leash) throughout the community

30 Residents who permit their children to race motor scooters (often illegal in communities) throughout the  
31 development

#### 32 **Criminals**

33 Many communities are concerned about sex offenders (pedophiles, in particular) and other types of criminals.

#### 34 *Owner/Resident Financial Capability*

35 Almost every association is concerned about a prospective owner’s ability to meet its requirements to pay  
36 assessments and maintain their property.

37 While stricter financial requirements for mortgages better determine whether a purchaser has the ability to pay  
38 the mortgage and likely association costs, some individuals, who have little room in their budget to meet all  
39 financial obligations, may slip through.

## 1 **Business-Owned Units**

2 Some communities are concerned about business-owned units or homes, where there is a frequent turnover of  
3 “tenants” or “guests.”

4 Examples of these include:

- 5     ▪ **Businesses:** These are companies that provide the use of the unit or home to out of town associates,  
6       or to individuals transferring to the area, or as a “vacation” destination.
- 7     ▪ **Sober houses:** These are halfway houses for recovering alcoholics and drug addicts. (This is discussed  
8       in detail later.)<sup>2</sup>
- 9     ▪ **Group homes:** These are private residences for children or young people who cannot live with their  
10      families, elderly people who cannot live on their own, or people with chronic disabilities. Typically there  
11      are no more than six residents, and there is a trained caregiver present twenty-four hours a day.
- 12    ▪ **Religious facilities:** These are synagogues, churches, mosques, etc. that are protected under the  
13      Religious Land Use and Institutionalized Persons Act (RLUIPA)<sup>3</sup>.

## 14 **COMMUNITY ASSOCIATION LEGAL AND STATUTORY REQUIREMENTS**

### 15 **Outline**

16 In this section, we will cover the following topics:

- 17     ▪ The Condominium Act (F.S. 718) and the Cooperative Act (F.S. 719)
  - 18       ○ Transfer fees (F.S. 718.112(2)(i))
- 19     ▪ Condominium rentals (F.S. 718.110(13))
- 20     ▪ Homeowners’ Associations (HOAs) (F.S. 720)
- 21     ▪ Guest and visitor governance

### 22 **Condominium and Cooperative Acts**

23 The Condominium (F.S. 718) and Cooperative (F.S. 719) Acts allow associations to screen and approve  
24 individuals who are looking to purchase, lease, or otherwise acquire units, **if permitted by the documents**<sup>4</sup>.

#### 25 *Transfer Fees*

26 Furthermore, the Condominium Act states:

27 “No charge shall be made by the association or anybody thereof in connection with the sale, mortgage, lease,  
28 sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for  
29 such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, but in no event  
30 may such fee exceed \$100 per applicant other than husband/wife or parent/dependent\* child, which are  
31 considered one applicant<sup>5</sup>. *F.S. 718.112(2)(i)*

### 32 **Condominium Rentals**

33 Effective October 1, 2004, the Condominium Act was amended regarding a condominium’s ability to change  
34 rules about rentals of units.

35 The Condominium Act states:

36 “An amendment prohibiting unit owners from renting their units or altering the duration of the rental term or  
37 specifying or limiting the number of times unit owners are entitled to rent their units during a specified period

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2 Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the “Chapter 2015-100,” new legislation for sober houses.

3 Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the “RLUIPA.”

4 Please visit [www.leg.state.fl.us](http://www.leg.state.fl.us) to read “The Florida Condominium Act” and “The Florida Cooperative Act.”

5 Dependent child refers to a child who is 18 years of age or under.

1 applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after  
2 the effective date of that amendment.” *F.S. 718.110(13)*

3 Associations that had regulations that prohibited or restricted rentals before October 1, 2004, may continue to  
4 apply those provisions to any unit owner.

5 However, any association that changed its rules that affect rentals after that date can only apply those rules to  
6 members of the association who vote “Yes,” and to those who thereafter agree in writing to the amendment,  
7 and to new members.

## 8 **HOAs**

9 The Homeowners’ Association Act (F.S. 720)<sup>6</sup> does not provide guidance for transfers, sales, or conveyances.

10 HOAs are governed by the criteria in their documents.

## 11 **Guest and Visitor Governance**

12 The Condominium, Cooperative, and HOA Acts do not address governance of guests and visitors to the  
13 association.

14 Unless the declaration, bylaws, or articles provide guidelines, the association needs to develop rules and,  
15 possibly, have them approved by a vote of the owners.

## 16 **CHANGES IN LAW OR REGULATIONS**

### 17 **Outline**

18 In this section, we will cover the following topics:

- 19     ▪ Changes in Florida Laws
  - 20         ○ Stay informed
- 21     ▪ Local government
- 22     ▪ Court and DBPR decisions
  - 23         ○ Consult an attorney

### 24 **Changes in Florida Laws**

25 The State Legislature makes frequent changes to laws that affect community associations.

26 This includes the Condominium, Cooperative, and Homeowners’ Association Acts, insurance statutes,  
27 corporate laws, swimming pool regulations, security guard regulations, etc.

28 For instance, there were several bills filed by legislators for the 2015 session that affect condominiums,  
29 cooperatives, HOAs, towing, regulation of sober houses, etc.

### 30 *Stay Informed*

31 To stay informed with rule and law changes, boards and managers should

- 32     ▪ Consult with the board’s attorney
- 33     ▪ Attend seminars and updates offered in their community
- 34     ▪ Read industry journals
- 35     ▪ Become an active member in local community organizations that monitor such regulations

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<sup>6</sup> Please visit [www.leg.state.fl.us](http://www.leg.state.fl.us) to read “The Florida Homeowner’s Association Act.”

1 **Local Government**

2 Counties and municipalities also have laws and rules that affect local associations, such as building permits,  
3 pet leash laws, noise ordinances, resident screening, etc.

4 *Stay Informed*

5 To stay informed with rule and law changes, boards and managers should ...

- 6     ▪ Monitor local commission or council meetings
- 7     ▪ Attend seminars and updates offered in their community

8 **Court and DBPR Decisions**

9 Court, arbitration decisions, and declaratory statements provide interpretations and clarifications to current  
10 laws.

11 Sometimes, a court decision can declare that a law or regulation is unconstitutional. The Department of  
12 Business and Professional Regulation (DBPR) is required by state statute to provide condominium and  
13 cooperative associations with its formal legal opinions on an annual basis. *F.S. 718.501(1)(i)*

14 Such decisions are available on the DBPR website at [www.myfloridalicense.com](http://www.myfloridalicense.com)

15 *Consult an Attorney*

16 Boards and managers should consult with the association attorney, especially when handling difficult or  
17 controversial cases.

18 **APPROVE OR NOT APPROVE**

19 **Outline**

20 In this section, we will cover the following topics:

- 21     ▪ Statutory guidance
- 22     ▪ Right of first refusal
- 23     ▪ Invalid as illegal restraint
  - 24         ○ Aquarian Foundation vs Sholom House
  - 25         ○ Tortious interference
- 26     ▪ Check your documents
  - 27         ○ Screening
  - 28         ○ Potential liability
  - 29         ○ Silent documents
- 30     ▪ Possible reasons to reject or approve

31 **Statutory Guidance**

32 As you can see, there is little definitive statutory guidance for a community association regarding the criteria  
33 that may be used when determining whether or not to approve or deny a prospective owner or lessee.

34 Most guidance for screening and approval or denial of new owners, lessees, and resident is derived from case  
35 law and arbitration decisions.

36 **Right of First Refusal**

37 An association should determine if its governing documents permit it to approve the transfer.

38 Many association boards believe that they have the right to approve sales, leases, and transfers – this is not  
39 correct. Many times the governing documents specifically provide only a “right of first refusal.”



1 If an association rejects a prospective owner or lessee, the “right of first refusal” requires the association to  
 2 purchase or lease the unit based on the same terms that the owner offered it to rejected prospective owner or  
 3 lessee.

4 It does not give the association the right to screen and/or reject an applicant for purchase or lease. That requires  
 5 different language in the documents.

## 6 **Invalid as Illegal Restraint**

7 Even if the governing documents allow the association to screen and approve or reject proposed purchasers  
 8 and lessees, the documents may still be invalid as an illegal restraint on the owner's ability to sell or alienate  
 9 their property, without clear criteria or standards.

10 **Illegal restraint:** Also known as detainer. The act (or the juridical fact) of withholding from a lawfully entitled  
 11 person the possession of land or goods, or the restraint of a person's personal liberty against his or her will;  
 12 detention<sup>7</sup>.

13 **Alienate property:** This is the transfer of title to real property, voluntarily and completely.

### 14 *Aquarian Foundation v. Sholom House Condos*<sup>8</sup>

15 A Florida court case in 1984 (Aquarian Foundation, Inc. v. Sholom House, Inc. (Citation 22 Ill.448 So. 2d 1166  
 16 (Fla. 3d DCA 1984)), found that the declaration of condominium permitted the association to reject any unit  
 17 owner's prospective purchaser for any or no reason.

18 This, it held, is clearly a restraint on alienation and can be protected from being invalid only if the association  
 19 has a corresponding obligation to purchase or find a purchaser for the unit owner's property at its fair market  
 20 value.

21 The court held that restrictions on a unit owner's right to transfer his property are a valid means of insuring an  
 22 association's ability to control the composition of the condominium as a whole.

23 If the documents allow the association to screen and approve or reject owners and tenants, the board must  
 24 have reasonable criteria to prove that it is rejecting an applicant for cause. This is necessary so that the board  
 25 can avoid finding a purchaser or purchasing the unit itself, should the board reject the transfer.

### 26 *Tortious Interference*

27 Failure to apply criteria fairly and equitably to every owner (that is, every lease, sale, or conveyance) may result  
 28 in legal action against the association for discrimination or “tortious interference.”<sup>9</sup>

29 To authenticate its decisions, the association must have strict and clear procedures and guidelines in place,  
 30 preferably in the original documents or adopted by the owners as an amendment to the documents and provided  
 31 to all owners.

## 32 **Check Your Documents**

33 Before a community association starts screening prospective owners or tenants, you, as the manager, should  
 34 check the documents – declaration, bylaws, and articles.

35 If the documents never mention screening, or state that the association has the power to restrict rentals or  
 36 ownership in any way, it is extremely doubtful that any type of screening is legal to do.

### 37 *Screening*

38 If the association has no authority in its documents to bar owners or tenants, why perform a background check?

39 There may be no point to screening if not permitted by the documents.

40 **Note:** All information collected for a screening is confidential, so the board could not, for instance, post on the  
 41 association's website that new owner, John Jones, has a criminal record.

<sup>7</sup> Source: Thefreedictionary.com

<sup>8</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read “Aquarian Foundation v. Sholom House Condos”

<sup>9</sup> Tortious interference: This is a civil tort, the act of intentionally causing harm to another by disruption, such as tortious interference with contract by a person who attempts to induce a party who has a contractual relationship with the plaintiff to breach that contract.

1 **Potential Liability**

2 The simple act of screening applicants may open the association to lawsuits for many reasons.  
3 Perhaps the association rejected someone unfairly – or so the prospective resident thinks.  
4 Perhaps it did not reject a resident – who later committed a violent crime in the association or larger community.  
5 Does your association want to open itself to a potential liability over screening – or not screening?

6 **Silent Documents**

7 Many associations have been screening prospective tenants and owners for years, even though their  
8 documents are silent on this issue.  
9 In many cases, the association has clearly established guidelines either provided by the developer, or adopted  
10 by the board early in an association’s existence.  
11 The screening guidelines have consistently appeared in the Owners’ Rules and Regulations. Sometimes these  
12 have even been filed with the Clerk of the Court, along with the original documents.  
13 Should the association be screening prospective owners and tenants?  
14 What risk does the association run?  
15 Some attorneys advise, “Keep doing it until you are challenged.”  
16 Others recommend having the owners amend the documents to formalize the screening process.  
17 Without amending the documents to formally adopt the screening requirements as part of the documents, the  
18 association runs a risk of being challenged by a prospective owner or lessee whom it rejects.

19 **Possible Reasons to Reject or Approve**

20 Even if the documents are silent regarding screening, there are many possible reasons for an association to  
21 reject a prospective tenant or owner.  
22 Some of those reasons are as follows:  
23     ▪ The prospective tenant or owner is ineligible for the community based on the documents.  
24     ▪ The prospective tenant or owner refuses to comply with rules and regulations.  
25     ▪ The acceptance of the prospective tenant or owner would violate local ordinances or other laws.

26 **Ineligible**

27 The association may reject a prospective tenant or owner if they clearly are not eligible to reside in the complex.  
28 For instance, the community is a 55 or older association that has already met the 20% exemption; therefore,  
29 allowing this conveyance would take the association below 80%.

30 (4)(b) As used in this subsection, the term “housing for older persons” means housing:

- 31     3. Intended and operated for occupancy by persons 55 years of age or older that meets the  
32     following requirements:  
33         a. At least 80 percent of the occupied units are occupied by at least one person 55 years of  
34         age or older. *F.S. 760.29(4)(b)3.a.*

35 In this case, the association would need to carefully document the reasons for the denial and ensure that its 55  
36 or older certification was still valid.

37 **Compliance Issues**

38 The association may reject a prospective tenant or owner if they indicate that they are unwilling to abide by the  
39 covenants and restriction in the association documents.  
40 For instance, the association reported to a prospective owner that it did not permit pets to roam outside without  
41 being under an owner’s control. That is, dogs – and cats – had to be leashed or in a pet carrier. The prospective  
42 owner advised the association that they had two outdoor cats, and intended to let them roam the community at  
43 will.

1 The association suggested that the owner screen his porch, so that the cats could be outside and the board  
2 could approve the sale. The owner refused. After checking with its attorney, the association rejected the  
3 prospective owner.

#### 4 *Acceptance Would be a Violation*

5 The association may reject a prospective tenant or owner if the acceptance of said prospect would violate local  
6 ordinances or other laws.

7 The association should not overlook local ordinances; they are often an additional resource for enforcement of  
8 covenants, and help promote successful communities.

9 If the association's screening requirements are less restrictive than the local governments, it is possible that  
10 the association may be able to use the local ordinance as a basis for its rejection of a prospective tenant or  
11 owner.

#### 12 **Example 1 - Sex Offenders**

13 An association has an immediate appurtenant easement to a public park that is geared toward children.

14 The local government passed an ordinance that prohibits convicted sex offenders from residing within 1,200  
15 feet of a public park or school.

16 Therefore, in this case, the association might have grounds to reject the prospect.

#### 17 **Example 2 - Limited Occupancy**

18 Some municipalities have limits on how many people can reside in households with a certain number of  
19 bedrooms.

20 In this example, the municipality allows only two persons per bedroom to reside permanently in a household.

21 The prospective owner has a family of seven. They have applied to purchase a unit with three bedrooms. Since  
22 this would be more than two people per room, accepting this prospect would be a violation of the municipality  
23 ordinance.

24 Therefore, in this case, the association would have grounds to reject the prospect.

#### 25 *Documentation*

26 In either case, before the association rejects a prospect, it should verify through its attorney that it has the  
27 authority to do so.

28 Again, it is important to document the reason for the denial. Part of this documentation should include a copy  
29 of the applicable ordinance on which the association based its denial.

#### 30 *Other Reasons*

31 There may be other examples of when an association (with no screening guidelines specified in its documents)  
32 could reject a prospective tenant or owner.

33 Take a moment to think of other reasons.

## 34 **SQUATTERS**

### 35 **Outline**

36 In this section, we will cover the following topics:

- 37     ▪ Squatters defined
- 38     ▪ Foreclosure
- 39     ▪ Association options
  - 40         ○ Gather information
  - 41         ○ Demand rent
  - 42         ○ Security protocol
  - 43         ○ Foreclose

1 **Squatters Defined**

2 Recently, the press has reported on squatters<sup>10</sup> taking up residence in vacant units or houses, which are often  
3 under foreclosure, in Florida.

4 Squatters sometimes cause damages to common elements and utilize an association's services and utilities,  
5 all without contributing to the common expenses.

6 **Foreclosure**

7 When the unit or house in which these individuals have taken up residence is in foreclosure, often, no one or  
8 no entity (e.g. the squatters, owners, or bank) accept the obligations of ownership, which involves keeping up  
9 repairs, paying maintenance, etc.

10 It may be impossible to serve the owner personally; the foreclosing bank does not have liability until it actually  
11 acquires title.

12 **Association Options**

13 What options, if any, does the association have in such cases?

14 There are various approaches that that association board can take to deal with this frustrating and potentially  
15 dangerous problem. There are many considerations to take into account when determining what to do with  
16 squatters. The association must work closely with its attorney on any action it takes, to ensure it has the authority  
17 to take the action.

18 Some of the options available to associations are discussed next.

19 *Gather Information*

20 Acquire as much information as possible about individuals that seem to be illegally occupying a unit.

21 A good source of information is the squatter's vehicle (if any).

22 If provided with the license plate number, the association attorney can search for registration information.

23 Also, the association may want to assign someone to watch for and document comings-and-goings associated  
24 with the unit. If this becomes a court case, that information will be invaluable testimony.

25 *Demand Rent*

26 In Florida, condominium, cooperative, and homeowners' associations have the authority to demand that rent  
27 must be paid by a tenant occupying a unit if the owner is delinquent in the payment of assessments or other  
28 monies are owed.

29 The association may also file an action to evict a tenant who does not comply with the demand.

30 While the squatters are unlikely to pay the association anything, an order that forces the eviction of the tenant  
31 may be sufficient to force the illegal residents out of the unit.

32 *Security Protocol*

33 If the association has security or traffic control measures in place, question how the squatters are entering the  
34 property, especially if they have a vehicle.

35 Perhaps by working with the association's security company, the association can limit access to the property.

36 Associations generally require vehicle registration before distributing a new access device. If the squatters  
37 cannot drive into the community, they will be less inclined to want to stay there.

38 *Foreclose on the Property*

39 If the association has a lien on the property, it can request its attorney to move its foreclosure case; usually this  
40 occurs faster than most banks will act.

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<sup>10</sup> A squatter is someone who lives on or occupies a property to which he possesses no legal title or claim. In Florida, squatters can obtain rights to such properties only in very limited circumstances as outlined in the Adverse Possession law found in F.S. 95.

- 1 If the bank has prolonged the foreclosure, with seemingly no activity, an association in a bank foreclosure  
 2 lawsuit now has the ability to force a hearing if the circumstances so warrant.
- 3 Judges in some areas have been open to a motion that requires foreclosing lenders to prosecute their cases.
- 4 If the association forecloses, it could acquire title to the property thereby gaining exclusive control over the use  
 5 and occupancy of that unit or house.

## PART II

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### 6 SPECIFIC SCREENING ISSUES

#### 7 Outline

##### 8 ■ Assistance animals

9 In this section, we cover the following topics as they pertain to assistance animals (both emotional  
 10 support and service).

- |                           |                                   |
|---------------------------|-----------------------------------|
| ○ Legislation             | ○ Pet deposits                    |
| ○ Definitions             | ○ Exemptions                      |
| ○ Training                | ○ Case-in-point                   |
| ○ Prescription for an ESA | ○ Reasonable accommodation policy |

##### 11 ■ Sober houses

12 In the specific screening issues section, we cover the following topics:

- |                    |  |
|--------------------|--|
| ○ Halfway houses   | ○ Smoking prohibited                         |
| ○ Group homes      | ○ Housing for Older Persons Act (HOPA)       |
| ○ RLUIPA           | ○ Housing Choice Voucher Program (Section 8) |
| ○ Local ordinances | ○ Guests and short-term renters              |

### 13 Assistance Animals

14 As a CAM, if your building has a no-pet policy, you may encounter situations in which owners or tenants request  
 15 a waiver of that policy to enable their assistance (either emotional support or service) animal to live with them.  
 16 If your association does not allow pets in the community, there are certain exceptions that must be permitted  
 17 due to specific protections under the law.

#### 18 *Legislation*

19 In the US, federal protection against housing discrimination is afforded to mentally disabled persons under  
 20 several federal and state statutes. In this presentation, we focus attention on the following:

- 21 ■ American's With Disabilities Act of 1970 (ADA)
- 22 ■ Federal Fair Housing Act of 1988 (as amended)
- 23 ■ Florida Fair Housing Act
- 24 ■ Florida State Legislation
- 25 ■ Air Carrier Access Act

26 These statutes, and the corresponding case law, create the general rule that a landlord or association cannot  
 27 discriminate against disabled persons in regards to housing - this includes whether they can or cannot have an  
 28 emotional support or service animal, which is the focus of this section.

1 **ADA**

2 **American’s with Disabilities Act (ADA)<sup>11</sup>**

3 Congress passed the Americans with Disabilities Act of 1990 to address discrimination against “disabled”  
4 persons in the workplace; public accommodations, such as restaurants, shops, and supermarkets; and housing.

5 For the purpose of this course, we focus only on the ADA section that applies to allowing service animals in the  
6 home and on association property.

7 **FHAct**

8 **Fair Housing Act (FHAct)<sup>12</sup>**

9 Both public and private housing authorities are subject to the provisions of the Fair Housing Act (FHAct).  
10 Enacted as part of the Civil Rights Act of 1968, the FHAct focuses on housing discrimination on the basis of  
11 race, color, national origin, and gender.

12 In 1988, however, the Federal Fair Housing Act Amendments (FHAA) expanded this scope to include  
13 handicapped persons.

14 The FHAct requires landlords (and associations) to make reasonable accommodations for all tenants and  
15 owners.

16 “... to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or  
17 renter because of a handicap of that buyer or renter; a person residing in or intending to reside in that dwelling  
18 after it is so sold, rented, or made available; or any person associated with that buyer or renter.” *42 U.S.C. §3604(f)(1)*

19 Furthermore, discrimination includes ...

20 “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such  
21 accommodations may be necessary to afford such person [handicapped person] equal opportunity to use and  
22 enjoy a dwelling ...” *42 U.S.C. §3604(f)(3)(B)*

23 “...a failure to design and construct those dwellings in such a manner that the public use and common use  
24 portions of such dwellings are readily accessible to and usable by handicapped persons ...” *42 U.S.C. §3604(f)(3)(C)(i)*

25 **Florida Fair Housing Act<sup>13</sup>**

26 The Florida Fair Housing Act was enacted by Florida legislature in 1983 and is found in Florida Statute 760.20  
27 - 760.37. This state Act parallels the federal FHAct.

28 The Act states ...

29 “It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or  
30 rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national  
31 origin, sex, handicap, familial status, or religion.” *F.S. 760.23(1)*

32 For the purposes of this presentation, we focus on what the Act says regarding emotional support and service  
33 animals.

34 **Florida State Legislation<sup>14</sup>**

35 In 2015, the Florida legislature passed HB 21 and codified it as Chapter 2015-131. This law relates to service  
36 animals, and became effective July 1, 2015.

37 The two specific areas we focus on in this presentation are Sections 4 and 9.

38 Section (4) states ...

39 “Any person, firm, or corporation, or the agent of any person, firm, or corporation, who denies or interferes with  
40 admittance to, or enjoyment of, public accommodation or, with regard to a public accommodation, otherwise  
41 interferes with the rights of an individual with a disability or the trainer of a service animal while engaged in the  
42 training of such an animal pursuant to subsection (8), commits a misdemeanor of the second degree,

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11 Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read “ADA of 1990.”

12 Please visit [www.leg.state.fl.us](http://www.leg.state.fl.us) to read the “Fair Housing Act.”

13 Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read “Florida Fair Housing Act.”

14 Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read “Chapter 2015-131.”

1 punishable as provided in F.S. 775.082 or 775.083 and must perform 30 hours of community service ..." Ch.  
2 2015-131(8)

3 Section (9) states ...

4 "A person who knowingly and willfully misrepresents herself or himself, through conduct or verbal or written  
5 notice, as using a service animal and being qualified to use a service animal or as a trainer of a service animal  
6 commits a misdemeanor of the second degree, punishable as provided in F.S. 775.082 or F.S. 775.083 and  
7 must perform 30 hours of community service ..." Ch. 2015-131(9)

### 8 **Air Carrier Access Act**

9 The Air Carrier Access Act<sup>15</sup> of 1986 has nothing to do with housing discrimination; however, it does have a  
10 definition of service animal to which someone may refer in their defense of discrimination.

11 This Act provides discrimination protection for the disabled against air transportation carriers.

### 12 *Definitions*

13 To help you better understand the meaning of the terms listed below that are used throughout these laws and  
14 our industry, their definitions and sources are provided in this section<sup>16</sup>.

- 15     ▪ Assistance animal
- 16     ▪ Emotional support animal
- 17     ▪ Handicap and disability
- 18     ▪ Major life activities
- 19     ▪ Reasonable accommodations
- 20     ▪ Service animal

### 21 **Assistance Animal**

22 An **assistance animal** is not a pet. It is an animal that "works, provides assistance, or performs tasks for the  
23 benefit of a person with a disability, or provides emotional support that alleviates one or more identified  
24 symptoms or effects of a person's disability." *FHEO Notice: FHEO-2013-01*

25 Neither the FHAct nor HUD requires that an assistance animal be individually trained or certified. That is, an  
26 assistance animal differs from a service animal in that an assistance animal is not recognized by the ADA, even  
27 if it's trained and certified as to the tasks it can perform.

28 An emotional support animal (ESA) is a subset of the assistance animal category.

29 Some state and local laws define assistance animal much more broadly than the FHAct, HUD, and ADA do. A  
30 state might include monkeys, or other animals that have been trained to provide specific assistance to an  
31 individual for particular disabilities.

32 For instance, Vermont permits capuchin monkeys to assist paraplegics. Other states allow monkeys to assist  
33 with quadriplegia and agoraphobia, goats for muscular dystrophy, parrots for psychosis, and various animals  
34 for anxiety, including cats, pigs, ferrets, and ducks.

35 Florida is no different in how broadly it can interpret the term "assistance animal."

36 Articles frequently appear in medical journals, by noted medical specialists, discussing how animals can be  
37 trained to assist in the control of illness – both physical and mental.

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<sup>15</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read "Air Carrier Act."

<sup>16</sup> For each of these definitions, we have cited the law or statute reference. To read them, please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads and select the applicable law or statute as cited for that definition.

1 **Emotional Support Animal**

2 An **emotional support animal** (ESA) is a special category of assistance animal.

3 It provides therapeutic benefit, by alleviating or mitigating some symptoms of a mental or psychiatric disability.  
4 ESAs are usually dogs and cats, but could be almost any animal.

5 The animal does not need special training to be considered as an ESA. Because of the lack of training, however,  
6 an ESA may cause problems that a trained service dog may not. For instance, an ESA may bark, smell, and  
7 jump up on other people, whereas service dogs are trained not to do so.

8 **Handicap/Disability**

9 **Handicap**<sup>17</sup> means, with respect to a person -

- 10 1) a physical or mental impairment which substantially limits one or more of such person's major life  
11 activities,
- 12 2) a record of having such an impairment, or
- 13 3) Being regarded as having such an impairment, but such term does not include current, illegal use of,  
14 or addiction to a controlled substance (as defined in section 802 of title 21).

15 Disability

16 As used in this chapter:

- 17 1) **Disability.** The term "disability" means, with respect to an individual -
  - 18 A. a physical or mental impairment that substantially limits one or more major life activities of such  
19 individual
  - 20 B. A record of such an impairment; or
  - 21 C. Being regarded as having such an impairment ADA of 1990 (42 USC §12102)

22 As used in this chapter:

- 23 3) Regarded as having such an impairment. For the purposes of paragraph (1)(C):
  - 24 A. An individual meets the requirement of "being regarded as having such an impairment" if the  
25 individual establishes that he or she has been subjected to an action prohibited under this  
26 chapter because of an actual or perceived physical or mental impairment whether or not the  
27 impairment limits or is perceived to limit a major life activity.
  - 28 B. Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory  
29 impairment is in impairment with an actual or expected duration of 6 months or less.

30 **Disability** means, with respect to an individual, a physical or mental impairment that substantially limits one or  
31 more of the major life activities of such individual; a record of such an impairment; or being regarded as having  
32 such an impairment.<sup>28 CFR Sec. 36.104</sup>

- 33 1) The phrase physical or mental impairments means -
  - 34 i. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting  
35 one or more of the following body systems: neurological; musculoskeletal; special sense  
36 organs; respiratory, including speech organs; cardiovascular; reproductive; digestive;  
37 genitourinary; hemic and lymphatic; skin; and endocrine;
  - 38 ii. Any mental or psychological disorder such as mental retardation, organic brain syndrome,  
39 emotional or mental illness, and specific learning disabilities;
  - 40 iii. The phrase physical or mental impairment includes, but is not limited to, such contagious and  
41 noncontagious diseases and conditions as orthopedic, visual, speech, and hearing  
42 impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart  
43 disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV  
44 disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism;

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<sup>17</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read The Fair Housing Act (42 U.S.C. § 3602(h)) "Fair Housing Act Definitions" Disability



- 1 iv. The phrase **physical or mental impairment** does not include homosexuality or bisexuality.
- 2 5) The term disability does not include –
- 3 i. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders
- 4 not resulting from physical impairments, or other sexual behavior disorders;
- 5 ii. Compulsive gambling, kleptomania, or pyromania; or
- 6 iii. Psychoactive substance use disorders resulting from current illegal use of drugs. *28 CFR Sec.*
- 7 *36.104 (con't.d)*

#### 8 Individual with a Disability

9 **Individual with a disability** means a person who is deaf, hard of hearing, blind, visually impaired, or otherwise

10 physically disabled. As used in this paragraph, the term:

- 11 1. **Hard of hearing** means an individual who has suffered a permanent hearing impairment that is severe
- 12 enough to necessitate the use of amplification devices to discriminate speech sounds in verbal
- 13 communication.
- 14 2. **Physically disabled** means any person who has a physical impairment that substantially limits one or
- 15 more major life activities. *F.S. 413(1)(b)*
- 16 6. **An individual with a disability** is entitled to rent, lease, or purchase, as other members of the general
- 17 public, any housing accommodations offered for rent, lease, or other compensation in this state, subject
- 18 to the conditions and limitations established by law and applicable alike to all persons.
- 19 a. This section does not require any person renting, leasing, or otherwise providing real property
- 20 for compensation to modify her or his property in any way or provide a higher degree of care
- 21 for an individual with a disability than for a person who is not disabled.
- 22 b. **An individual with a disability who has a service animal or who obtains a service animal**
- 23 **is entitled to full and equal access to all housing accommodations provided for in this**
- 24 **section, and such a person may not be required to pay extra compensation for the**
- 25 **service animal.** However, such a person is liable for any damage done to the premises or to
- 26 another person on the premises by such an animal. A housing accommodation may request
- 27 proof of compliance with vaccination requirements. *F.S. 413(6)(a)-(b)*

#### 28 **Major Life Activities**

- 29 1) Major life activities
- 30 A. In general. For purposes of paragraph (1), major life activities include, but are not limited to,
- 31 caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking,
- 32 standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking,
- 33 communicating, and working.
- 34 B. Major bodily functions. For purposes of paragraph (1), a major life activity also includes the
- 35 operation of a major bodily function, including but not limited to, functions of the immune
- 36 system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory,
- 37 circulatory, endocrine, and reproductive functions.

38 *ADA of 1990 (42 USC §12102)*

- 39 1) The phrase major life activities means functions such as caring for one's self, performing manual tasks,
- 40 walking, seeing, hearing, speaking, breathing, learning, and working. *28 CFR Sec. 36.104*

1 **Reasonable Accommodations**

2 If a reasonable accommodation will enable a disabled person to enjoy and use a unit/home, the landlord or  
3 association must provide the accommodation (the key word here is reasonable). See the following definition  
4 and examples.

5 100.204 Reasonable accommodations.

- 6 (a) It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies,  
7 practices, or services, when such accommodations may be necessary to afford a handicapped person  
8 equal opportunity to use and enjoy a dwelling unit, including public and common use areas.
- 9 (b) The application of this section may be illustrated by the following examples:

10 **Example (1):**

11 A blind applicant for rental housing wants to live in a dwelling unit with a seeing eye dog. The  
12 building has a no pets policy. It is a violation of §100.204 for the owner or manager of the  
13 apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye  
14 dog because, without the seeing eye dog, the blind person will not have an equal opportunity  
15 to use and enjoy a dwelling.

16 **Example (2):**

17 Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available  
18 to tenants and guests of Progress Gardens on a first-come, first-served basis. John applies for  
19 housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short  
20 distance and therefore requests that a parking space near his unit be reserved for him so he  
21 will not have to walk very far to get to his apartment.

22 It is a violation of §100.204 for the owner or manager of Progress Gardens to refuse to make  
23 this accommodation. Without a reserved space, John might be unable to live in Progress  
24 Gardens at all or, when he has to park in a space far from his unit, might have great difficulty  
25 getting from his car to his apartment unit. The accommodation therefore is necessary to afford  
26 John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable  
27 because it is feasible and practical under the circumstances. *24 CFR 100.204*

28 **Service Animal**

29 The ADA defines a service animal as one that has been individually trained to do work or perform task for the  
30 benefit of an individual with a disability.

31 **Service animal** means any guide dog, signal dog, or other animal individually trained to do work or perform  
32 tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with  
33 impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection  
34 or rescue work, pulling a wheelchair, or fetching dropped items. *ADA of 1990 Act; 28 CFR Sec. 36.104*

35 At this time, the ADA only defines two types of animals as able to be service animals: dogs and miniature  
36 horses.

37 To be recognized as a service animal by the ADA, it must be professionally trained by an ADA certified entity  
38 and receive a certificate stating the service(s) it provides.

39 Service animals are working animals, not pets. The work or task a dog (or miniature horse) has been trained to  
40 provide must be directly related to the person's disability. Animals whose sole function is to provide comfort or  
41 emotional support do not qualify as service animals under the ADA.

42 The ADA requires that a service animal be harnessed, leashed, or tethered, unless such a device obstructs the  
43 animal's work, or the individual's disability interferes with use of such a device. In that case, the individual must  
44 maintain control of the animal through voice or signal controls.

45 The Florida Statutes defines service animal as shown below.

46 **Service animal** means an animal that is trained to do work or perform tasks for an individual with a disability,  
47 including a physical, sensory, psychiatric, intellectual, or other mental disability. The work done or tasks  
48 performed must be directly related to the individual's disability and may include, but are not limited to, guiding  
49 an individual who is visually impaired or blind, alerting an individual who is deaf or hard of hearing, pulling a  
50 wheelchair, assisting with mobility or balance, alerting and protecting an individual who is having a seizure,  
51 retrieving objects, alerting an individual to the presence of allergens, providing physical support and assistance

1 with balance and stability to an individual with a mobility disability, helping an individual with a psychiatric or  
 2 neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual  
 3 with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder  
 4 during an anxiety attack, or doing other specific work or performing other special tasks. **A service animal is  
 5 not a pet. For purposes of subsections (2), (3), and (4), the term “service animal” is limited to a dog or  
 6 miniature horse. The crime-deterrent effect of an animal’s presence and the provision of emotional  
 7 support, well-being, comfort, or companionship do not constitute work or tasks for purposes of this  
 8 definition.** *F.S. 413.08(1)(d)*

9 (3) An individual with a disability has the right to be accompanied by a service animal in all areas of a public  
 10 accommodation that the public or customers are normally permitted to occupy.

11 (a) The service animal must be under the control of its handler and must have a harness, leash,  
 12 or other tether, unless either the handler is unable because of a disability to use a harness,  
 13 leash, or other tether, or the use of a harness, leash, or other tether would interfere with the  
 14 service animal’s safe, effective performance of work or tasks, in which case the service animal  
 15 must be otherwise under the handler’s control by means of voice control, signals, or other  
 16 effective means.

17 (b) Documentation that the service animal is trained is not a precondition for providing service to  
 18 an individual accompanied by a service animal. A public accommodation may not ask about  
 19 the nature or extent of an individual’s disability. To determine the difference between a service  
 20 animal and a pet, a public accommodation may ask if an animal is a service animal required  
 21 because of a disability and what work or tasks the animal has been trained to perform.

22 (c) A public accommodation may not impose a deposit or surcharge on an individual with a  
 23 disability as a precondition to permitting a service animal to accompany the individual with a  
 24 disability, even if a deposit is routinely required for pets.

25 (d) An individual with a disability is liable for damage caused by a service animal if it is the regular  
 26 policy and practice of the public accommodation to charge nondisabled persons for damages  
 27 caused by their pets.

28 (e) The care or supervision of a service animal is the responsibility of the individual owner. A public  
 29 accommodation is not required to provide care or food or a special location for the service  
 30 animal or assistance with removing animal excrement.

31 (f) A public accommodation may exclude or remove any animal from the premises, including a  
 32 service animal, if the animal is out of control and the animal’s handler does not take effective  
 33 action to control it, the animal is not housebroken, or the animal’s behavior poses a direct threat  
 34 to the health and safety of others. Allergies and fear of animals are not valid reasons for denying  
 35 access or refusing service to an individual with a service animal. If a service animal is excluded  
 36 or removed for being a direct threat to others, the public accommodation must provide the  
 37 individual with a disability the option of continuing access to the public accommodation without  
 38 having the service animal on the premises. *F.S. 413.08(3)(a)-(f)*

### 39 *Training*

#### 40 **Assistance Animal**

41 As defined earlier, an assistance animal is not a pet. It is an animal that works, provides assistance, or performs  
 42 tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more  
 43 identified symptoms or effects of a person’s disability. [FHEO-2013-01]

44 Neither the FHAct nor HUD requires that an assistance animal be trained or certified.

#### 45 **Emotional Support Animal (ESA)**

46 Again, keep in mind that an ESA does not need any training.

47 Because of a lack of training, an ESA may cause problems that a trained assistance dog may not. For instance,  
 48 an ESA may bark, sniff, and jump up on other people, whereas a service dog is trained not to do so.

1 **Training Controversy**

2 The lack of training of assistance animals and ESAs is a controversial issue.

3 There have been questions as to why the ADA definition of service animal, which requires a trained, certified  
4 animal, does not also apply to an assistance animal, which does not require training.

5 This often is a concern when an individual without an apparent disability claims the need for an ESA.

6 *Prescription for an ESA*

7 Breed, size, and weight limitations may not be applied to an assistance animal, and, while dogs are the most  
8 common type of assistance animal, other types of animals (such as cats, monkeys, ferrets, and rabbits) could  
9 also be assistance animals.

10 Recent medical studies have shown, for instance, that the purring of a cat is helpful in reducing blood pressure  
11 and epileptic episodes. Many psychiatrists and psychologists have documented that owning a pet helps older  
12 persons with life adjustment issues and depression.

13 To obtain a prescription for an ESA, and to be afforded protection under federal and state law, a person must  
14 meet the federal definition of, and have, a verifiable disability. (See Definitions.)

15 A physician or other medical or psychological professional must furnish proof that states that the person has a  
16 disability and the ESA alleviates the individual's disability.

17 There are concerns about people abusing the system by acquiring an ESA even though they don't have a  
18 corresponding disability.

19 *Pet Deposits*

20 Associations cannot require a deposit for an assistance animal.

21 HUD and the Department of Justice (DOJ) have held that "providers may not require persons with disabilities  
22 to pay extra fees or deposits as a condition of receiving a reasonable accommodation."

23 While an association may be able to recoup reasonable fees for damage done by owners/tenants and their  
24 assistance animal, an initial security deposit may go against the purpose of the law.

25 Our state statute agrees, as you recall in the definitions for service animal, FS 413.08(3)(c) states in part as  
26 follows ...

27 (3) -

28 (c) A public accommodation may not impose a deposit or surcharge on an individual with a disability  
29 as a precondition to permitting a service animal to accompany the individual with a disability, even  
30 if a deposit is routinely required for pets.

31 (d) An individual with a disability is liable for damage caused by a service animal if it is the regular  
32 policy and practice of the public accommodation to charge nondisabled persons for damages cause  
33 by their pets. *F.S. 413.08(3)(c)-(d)*

34 *Exemptions*

35 Although the Fair Housing Act covers both multi- and single-family dwellings (including community  
36 associations), the sale and rental of certain types of housing may be exempt from this statute. *42 U.S.C. 3604*

37 Four types of property that may be exempt from the Fair Housing Act include

- 38 ▪ Senior housing
- 39 ▪ Owner-occupied housing
- 40 ▪ Single-family homes
- 41 ▪ Housing owned by religious groups and private clubs

**1 Senior Housing**

2 Senior Housing: Housing qualifies for this exemption if

- 3     ▪ HUD decides that the property is housing for older persons (under federal, state, and local law).
- 4     ▪ All residents are 62 or older.
- 5     ▪ At least one person who is 55 years old or older resides in 80% of the occupied units.
- 6     ▪ The public is made aware that the housing unit intends to provide senior housing to people 55 and
- 7       older.

**8 Owner-Occupied Housing**

9 In order for this type of property to be exempt from the FHAct, the owner of the property must own and live in a  
10 building that has four or fewer units.

**11 Single-Family Homes**

12 A single-family home may be exempt from the FHAct, if a private person owns it, rents it without the assistance  
13 of a real estate broker, and does not use discriminatory advertising.

**14 Housing Owned by Religious Groups**

15 Housing owned by religious groups and private clubs

16 This type of house or private club may be exempt from the FHAct since the occupants are limited to the  
17 members of the religious organization/group or private club that owns the property.

**18 Case-in-Point**

19 In the following slides, we'll examine some particular legal cases in which discrimination was alleged.

20 Our case-in-point section includes the following cases:

- 21     ▪ The Angora Arrhythmia
- 22     ▪ The Lou and Alma Case
- 23     ▪ California Mobile Home Case
- 24     ▪ Pet Deposit Apartment Complex Case

**25 DISCLAIMER**

26 The stories and examples contained in this section are fictional. Names, characters, businesses, organizations,  
27 places, events and incidents that are similar to actual persons, living or dead, events, or locales is entirely  
28 coincidental.

**29 The Angora Arrhythmia**

30 In a high-rise association in Aventura, Ann, an owner of a unit in the building, had a beautiful black Angora cat  
31 that she often carried with her. The president, being aware of the association's no-pet policy, ordered the  
32 manager to send Ann a letter that demanded the removal of her cat.

33 The manager did so. After receiving the letter, Ann refused to remove her cat. She stated that her cat is an  
34 assistance animal, and provided the manager with a letter from her cardiologist that stipulated to her disability  
35 and therefore, the need for the benefits provided by an assistance animal, in this case, the cat.

36 The president, who did not see the evidence of the owner's disability, asked the association's attorney to take  
37 action to remove Ann's cat.

38 Upon receiving the notice from the association attorney, Ann filed a complaint with the Florida Fair Housing  
39 Commission.

40 As supporting evidence of her case, Ann included a New England Journal of Medicine article, written by her  
41 cardiologist, regarding the medically calming effect that cats have on certain heart arrhythmias (including the  
42 type from which she suffers).

43 The association lost the case and incurred a large fine for its discriminatory actions.

44 Ann should have supplied a note from her doctor requesting the assistance animal and documenting the need  
45 for it.

1 **The Lou and Alma Case**

2 An elderly man, Lou, recently lost his wife. He began visiting with a social worker, Betty, and regularly attending  
3 grief sessions at a clinical center.

4 One day, Betty observed Lou cuddling with one of the emotional support bunnies that the clinic regularly  
5 provided during the grief sessions. She suggested to Lou that he might benefit from having a little “friend” at  
6 home.

7 Intrigued by the idea, Lou went to the local animal shelter with the intention of rescuing a little “friend,” as Betty  
8 had suggested. He soon noticed a skittish, little dog that seemed fearful of loud noises and sudden movements.  
9 When he picked up the dog, she made little loving noises. So needy of affection, the little dog captured Lou’s  
10 heart right away. He named her Alma, in memory of his late wife, and took her home that day.

11 He called Betty to let her know about Alma. Betty immediately obtained a prescription from the center’s  
12 psychiatrist that stated that Lou had a condition that requires an emotional support animal and gave it to Lou.

13 **California Mobile Home Case**

14 The following case of U.S. v. California Mobile Home Management company, in 1994, considered whether the  
15 association of the California Mobile Home which charged a guest and guest-parking fees acted in a  
16 discriminatory manner towards a disabled person who requires regular home visits by health-care aids.

17 The Ninth Circuit Court rejected the claim that “... any fee which is generally applicable to all residents of a  
18 housing community cannot be discriminatory.”

19 Specifically, the Court said, “... fees that merit closer scrutiny are those with unequal impact, imposed in return  
20 for permission to engage in conduct that ... a landlord is required to permit.”

21 Although this case did not deal directly with a pet deposit for a service animal, it could be used in defense of  
22 not permitting associations to allow pet deposits.

23 **Pet Deposit Apartment Complex Case**

24 In 1990, a HUD administrative judge enjoined owners of an apartment complex from charging a disabled person  
25 a pet deposit fee.

26 The judge held that an auxiliary aid, like a service, guide, or signal dog, might be necessary to afford the  
27 individual an equal opportunity to use and enjoy the dwelling unit, including public and common areas.

28 **Legal Summary**

29 There have been some federal administrative judges who have ruled that support animals, assistance animals,  
30 and ESAs should be viewed equally.

31 Additionally, several courts have ruled that untrained assistance animals are reasonable accommodations  
32 under the FHAct. However, a few of these cases have held that the assistance animal must be trained.

33 As the CAM, you should check with your association’s attorney any time your association is considering the  
34 purchase or lease application for someone who has an assistance animal (service or ESA).

35 *Reasonable Accommodation Policy*

36 In this section, we discuss how to establish a reasonable accommodation policy by which the association can  
37 determine if it must waive its no-pet policy or not. This will become helpful to avoid possible discrimination  
38 claims in the future.

39 This section includes discussion on the following topics:

- 40     ▪ Relevance
- 41     ▪ Limitations
- 42     ▪ Establish a Reasonable Accommodation Policy
- 43     ▪ The Policy Packet
- 44     ▪ Approval or Denial Criteria
- 45     ▪ Multiple Emotional Support Animals

1 **Relevance**

2 Board members frequently encounter issues regarding whether an individual has the right to have an assistance  
3 animal reside in the community that would otherwise violate a pet restriction in the governing documents.

4 Boards and managers need to be cognizant that failing to respond properly to an assistance animal request  
5 could potentially expose the association to a discrimination claim under federal, state, and local fair housing  
6 laws.

7 The Fair Housing laws protect against housing discrimination. The approval of an assistance animal by an  
8 association complies with the “reasonable accommodation” laws regardless of the community’s pet restrictions.

9 When the disability is not readily known (such as emotional impairments), or the need for the animal is not  
10 readily apparent, the association may have difficulty evaluating the request.

11 The association should request reliable medical documentation concerning the nature of the disability and the  
12 disability-related need for the animal.

13 We recommend that you request your attorney to provide you with a standardized questionnaire for residents  
14 and their medical professionals to complete, in order to document the need for the assistance animals. This will  
15 help keep decisions consistent among requests, and will minimize the potential for complaints for discrimination.

16 Let’s talk about the possible limitations involved with formulating a formal procedure.

17 **Limitations**

18 In your office one day, an applicant to buy one of your units stops by. He mentions that he has a service animal.

19 At this point, you are allowed to ask only two questions:

20 Is the dog a service animal required due to a disability?

21 What work and/or tasks has the dog been trained to perform?

22 You are prohibited from doing the following:

- 23     ▪ Asking about the disability
- 24     ▪ Requiring any medical documentation
- 25     ▪ Requiring special identification or a training certification for the animal
- 26     ▪ Asking the individual to have the animal demonstrate its abilities<sup>18</sup>

27 Let’s talk about what your reasonable accommodation policy might contain.

28 **Establish a Reasonable Accommodation Policy**

29 To be prepared for an assistance animal request, you might want to develop and establish a reasonable  
30 accommodation policy, and assemble the components to include in your policy packet.

31 First of all, you might want to employ the assistance of your association’s attorney. Odds are that he or she has  
32 encountered such an occasion and may have the elements you’re looking for.

33 In fact, we highly recommend that you have your attorney look over any documents you might put together for  
34 this policy.

35 **The Policy Packet**

36 While you’re developing your reasonable accommodation policy, it might be helpful to start with a list of the  
37 contents of your policy packet that you can hand directly to an applicant.

38 Here are some suggestions to get you started:

- 39     ▪ A reasonable accommodation application
- 40     ▪ Assistance animal registration forms
- 41     ▪ Deadlines for application submission to the association
- 42     ▪ Deadlines for the association’s response
- 43     ▪ Rules governing the conduct of the assistance animal

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<sup>18</sup> ADA Requirements Service Animals, U.S. Department of Justice, Civil Rights Division, Disability Rights Section, July 2011

1 Reasonable Accommodation Application

2 None of the government entities responsible for the reasonable accommodation regulation have provided  
3 official forms and/or applications should we need them. So, here are a few things to remember when developing  
4 your application.

- 5     ▪ Under the Fair Housing laws, associations may determine only whether the person seeking the  
6     assistance animal has a disability (which is a physical or mental impairment that substantially limits a  
7     major life activity, such as sleeping, breathing, walking), and whether the person seeking the assistance  
8     animal has a disability-related need for the animal.
- 9     ▪ The association may request that this information come from a qualified medical professional, such as  
10    a physician, psychiatrist, or other mental health professional who is familiar with the disability of the  
11    owner or tenant. Your applicant may already have a prescription from his or her doctor to include.

12 Assistance Animal Registration Form

13 Again, there is no formal application given to us by the governing entities by which to register an animal.

14 However, you may want to start with the following:

- 15     ▪ The owner's name and unit number
- 16     ▪ The animal's ...
  - 17       ○ Description
  - 18       ○ Name and gender
  - 19       ○ Species (e.g. dog, cat, bunny)
  - 20       ○ Weight
  - 21       ○ Vaccination status
  - 22       ○ Registration status (if the animal is required to be registered)
- 23     ▪ The vet's name and phone # (for emergencies)

24 If your association allows pets, we recommend that you have an animal registration form for new residents,  
25 which could also be used for any changes in the status of support and assistance animals.

26 Timelines for Submission and Response

27 In order for the association to review the documents and provide the applicant with a response, the applicant  
28 should return the completed packet quickly. A good deadline might be within a few days to a week of receiving  
29 the packet.

30 The board must then also respond in a timely manner. If the association delays its response, it could be  
31 considered comparable to an acceptance.

32 Rules of Conduct for an Assistance Animal

33 Some of the laws we've reviewed in this presentation contain rules of conduct for an assistance animal.

34 When compiling the rules applicable to your association and building, you might want to include those particular  
35 laws.

36 Giving your applicant as much information as possible at the beginning of this procedure will reduce  
37 misunderstandings in the future.

38 **Approval or Denial Criteria**

39 When reviewing the information gathered in the association's reasonable accommodation procedure, here are  
40 a few questions it must consider when deciding whether to approve or reject the application.

41 Does the person have a disability (i.e. a physical or mental impairment substantially limiting one or more major  
42 life activity)?

43 Does the animal provide emotional support thereby alleviating one or more of the persons disability issues?

44 Does the animal provide assistance, perform tasks or services for the person who has the disability?



1 If the information from the medical professional appears to establish the disability, and documents that the  
2 animal will provide disability-related assistance or emotional support, the association must approve the  
3 reasonable accommodation request.

4 **Note:** Keep in mind that any documentation that contains the applicant's medical information is regarded as  
5 confidential! Therefore, it is neither to be shown nor given to the owners or their representatives.

6 The FHAct and HUD have some conditions under which assistance animals may be denied, such as the animal  
7 posing a direct threat to the health or safety of others that cannot be reduced or eliminated by another  
8 reasonable accommodation.

9 The conditions for denial do not include breed, size, or weight limitations.

### 10 **Multiple Emotional Support Animals**

11 While there do not seem to be any cases dealing with the issue of multiple assistance animals, the basic  
12 requirements for this reasonable accommodation would still be the same.

13 In other words, if a person were claiming the need for multiple assistance animals, then he or she would need  
14 to provide the association with documentation that supports this claim from his or her physician or medical  
15 professional. The practitioner(s) would need to provide documentation that each support animal alleviated some  
16 symptom of the disability.

17 Likewise, in a community that permits pets, an owner or tenant could reasonably have the allowed number of  
18 pets, and request a separate assistance animal.

19 For instance, perhaps a resident already has two cats, the maximum number of pets permitted by the  
20 documents. She could demonstrate that she suffers from diabetes, and the doctor has recommended a dog  
21 that will alert her to low blood sugar. With the proper documentation, the association would have to approve the  
22 request.

### 23 *Summary*

24 Let's briefly summarize our discussion of animals in the associations.

25 As we've seen, there are three distinct classes of animals: pets, service animals, and assistance animals.

### 26 **Pets**

27 The association does not need to allow a pet, if it has a no-pet policy.

### 28 **Service animals**

29 The association cannot deny a prospective resident with who has a service animal. The ADA defines a service  
30 animal as any guide dog, signal dog, or other animal (miniature horse) individually trained to provide assistance  
31 to an individual with a disability.

32 If the animal meets this definition, it is considered a service animal under the ADA regardless of whether it has  
33 been licensed or certified by a state or local government.

34 Service animals perform some of the functions and tasks that the individual with a disability cannot perform for  
35 him or herself. A service animal must be individually trained to perform tasks or work for the benefit of a disabled  
36 individual. It must also be trained to behave properly in places of public accommodation.

37 Inappropriate behavior that disrupts the normal course of business or threatens the health or safety of others is  
38 automatic grounds for excluding the team from the premises. Once trained, the service animal receives a  
39 certificate, which identifies the services that it's been trained to perform.

### 40 **Assistance Animals**

41 The association usually cannot deny an assistance animal. An assistance animal may be an animal that  
42 provides a service to a disabled individual or it may be an emotional support animal (ESA).

43 While an ESA is rarely trained to provide a specific service, other assistance animals, such as capuchin  
44 monkeys, are trained, certified, and provide specific services – similar to service animals. While not recognized  
45 by the ADA, the Federal Fair Housing and Florida Fair Housing agencies do recognize these animals as  
46 necessary to the well-being of an individual. However, the individual will need to provide documentation from a  
47 qualified medical or psychological professional, attesting to his/her disability, and explaining how the assistance  
48 animal helps alleviate that disability.

1 Even if deposits are routinely required for pets, neither a deposit nor a surcharge may be imposed on an  
2 individual who has a disability as a condition for allowing a service animal to accompany them. However, both  
3 service animals and assistance animals must be maintained under the resident's control, and the resident must  
4 adhere to association rules, such as picking up after the pet. Failure to do so is grounds for removal of the  
5 animal.

6 Note that the Florida Fair Housing Commission tends to favor residents, unless the association can demonstrate  
7 that an assistance animal is a danger to the association and/or its residents.

8 The association should work with its attorney to develop a package to screen individuals who request the  
9 association to waive its no-pet policy to allow their assistance animals, especially ESAs. Whenever the  
10 association considers a denial, it should first consult with its attorney, to ensure that it has firm legal basis to do  
11 so.

## 12 **Sober Houses**

13 As a community association manager, you may encounter situations that involves a sober house operating in  
14 your community.

15 In this section, we cover the following topics relating to sober houses:

- 16     ▪ Background
- 17     ▪ Characteristics
- 18     ▪ Benefits
- 19     ▪ Federal law vs local zoning requirements
- 20     ▪ Issues
- 21     ▪ Regulation

### 22 *Background*

23 The sober-living environment (SLE) movement began on the West Coast in the United States and has spread  
24 around the country.

25 Reputable SLEs provide much more than other transitional living environments. Many of them are structured  
26 around 12-step programs and sound recovery methodologies.

27 Many are also certified or governed by Sober Living Coalitions or Networks.

28 Residents are often required to participate in 12-step meetings, take drug tests, and show demonstrably that  
29 they are taking important steps to long lasting recovery.

### 30 *Characteristics*

31 A sober-living home should provide structure for the recovering alcoholic or drug addict. Often, good sober  
32 houses have these conditions:

- 33     ▪ Require residents to be involved in school, work, or outpatient treatment
- 34     ▪ Do not allow overnight guests
- 35     ▪ Have zero tolerance for violence, drugs, and alcohol
- 36     ▪ Have a punishment policy for breaking rules that ranges from a financial penalty to expulsion from the  
37 sober house, depending on the offense

38 A **sober house**, which is a type of halfway house, is the interim step on the path to sobriety, where people who  
39 are recovering from addiction can live in a supervised and sober environment with structure and rules (e.g.,  
40 mandatory curfews, chores, and therapeutic meetings). A sober house should have an active rehabilitation  
41 treatment program run throughout the day, where the residents receive intensive individual and group  
42 counseling for their substance abuse while they establish a sober support network, secure new employment,  
43 and find new housing. Residents stay for one to six months.

44 This structure can be essential for long-term sobriety.

45 In many cases, residents essentially learn how to start their lives over, from the ground up.

1 Often, successfully maintaining sobriety requires patients to alter everything about their previous lives when  
2 they were actively using to alcohol and other drugs. This could include changing jobs, eliminating friends, and  
3 even abandoning loved ones who are deemed toxic to their sobriety.

4 Most sober houses are not co-ed, though plenty of co-ed facilities are available.

5 Some sober-living environments (SLE) are sober colleges.

6 **Sober college** means a sober-living environment that is centered solely around helping young people recover.  
7 It operates much like a sober dormitory.

8 Many sober houses are also intensive outpatient treatment centers.

9 **Outpatient treatment center**, in this instance, means a sober house that provides a degree of medical care  
10 on-site. Sometimes these homes are staffed in shifts by psychiatric nurses and licensed clinical social workers  
11 so that the residents can have 24-hour supervision and centralized recovery care without the stress of cleaning  
12 or cooking.

### 13 *Benefits*

14 The benefits of living in a good sober house in early recovery can be invaluable.

15 Sober houses provide a safe, drug-free environment for the persons in recovery. Living in a sober house with  
16 other people in recovery allows the resident to make friends with individuals who have the same goals and  
17 issues. Their housemates can provide support and understanding, which is crucial to success in recovery.

### 18 *Federal Law v. Local Zoning Requirements*

19 The federal Fair Housing Act makes it unlawful “to discriminate against any person in the terms, conditions, or  
20 privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such  
21 dwelling because of a handicap.” 42 U.S.C. 3604 - Sec. 804(f)(2)

22 In some cases, the government and the courts have found that the ADA would include certain recovering  
23 alcoholics/drug addicts as people with disabilities<sup>19</sup>. 24 CFR 36.209

24 Therefore, zoning laws which are used to discriminate against sober houses – or halfway houses – may be in  
25 violation of these laws.

### 26 *Issues*

27 Sober houses have been around for decades and provide needed transitional housing opportunities for people  
28 who are progressing through treatment for substance abuse problems.

29 Several cities and many community associations throughout the state are having increasing problems with  
30 sober houses. These facilities are marketed as places where recovering addicts can come to sober up and be  
31 slowly phased back into society while getting treatment for their addiction.

32 Recently, however, cities and community associations have seen a growth in self-proclaimed sober houses;  
33 many are run by unscrupulous individuals who are exploiting patients in order to make a profit.

34 Without licensing requirements, state regulations, or local oversight to set minimum operating standards, many  
35 sober houses operate outside of the law and are often unreliable facilities.

36 In some homes, residents are housed two-to-three per room. If each person pays \$500 per month, a three-  
37 bedroom house with two residents per bedroom can bring in \$3,000 per month; a nice profit especially if the  
38 operator does not provide the necessary treatment and oversight.

39 With little or no regulation from government agencies, setting up a sober house is as easy as renting a house  
40 to a few residents who pledge to live in sobriety and attend support groups.

41 The operators of some self-proclaimed sober houses often advertise on the Internet as offering treatment on-  
42 site or providing transportation to off-site treatment facilities. Once residents arrive, they find that no treatment  
43 is offered and that there is very little oversight by the owners of the sober house.

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<sup>19</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read “24 CFR 36.209.”

- 1 Residents are often free to do whatever they choose, which may mean looking for drugs or alcohol (and many  
2 times, they don't have to go too far).
- 3 Law enforcement officials have seen increases in crime in community associations, as well as homelessness  
4 in neighborhoods where sober houses are located.
- 5 Residents have reported an increase in burglaries, panhandling, and even some instances where the sober  
6 house operators are openly using or selling drugs out of the sober house.

### 7 *Regulation*

8 To open a sober house, an entity should establish a clear set of rules for residents and comply with local  
9 regulations and zoning.

10 In Florida, few community associations have clear regulations about sober houses. Because there is lack of  
11 uniform state standards or regulations for sober houses, some houses are just a group of individuals living  
12 together and abiding by self-imposed rules of sobriety; other houses are operating just shy of administering  
13 treatment on-site and flying under the radar of the Department of Children and Families (DCF) because they  
14 are not formally affiliated with a licensed service provider. (Those houses that are affiliated with a licensed  
15 service provider are currently required to be licensed by DCF while homes not affiliated with a licensed service  
16 provider are not required to be licensed by DCF).

17 Although the Legislature took a first step in 2015 to strengthen the laws that oversee sober houses, there is a  
18 need to more clearly regulate these facilities.

19 Sober houses will continue to be a problem for community associations, cities, and law enforcement in Florida  
20 until the Legislature places more stringent operating standards for these places into statute.

### 21 **Chapter 2015-100<sup>20</sup>**

22 In 2015, the Legislature passed a bill (HB 21 – often referred to as “Florida Sober Home Bill”), that provides  
23 limited oversight for some sober houses funded or regulated in part by the Department of Children and Families  
24 Services (DCFS).

25 On June 10, 2015, Governor Rick Scott signed HB 21 into law making it Chapter 2015-100.

26 On July 1, 2015, the law became effective.

27 The legislation is intended to protect individuals residing in “recovery residences,” to which DCFS referrals are  
28 made.

29 It defines a recovery residence as “a residential dwelling unit, or other form of group housing, that is offered or  
30 advertised through any means ...as a residence that provides a peer-supported, alcohol-free, drug-free living  
31 environment.”

32 Chapter 2015-100 establishes a credentialing procedure and requirements for recovery residences and  
33 administrators. These include being a “good neighbor.”

34 By April 1, 2016, the credentialing entities will provide DCFS with a list of all recovery residences and  
35 administrators holding valid certificates of compliance.

36 Effective July 1, 2016, a service provider licensed under F.S. 397.401 may not refer a current or discharged  
37 patient to a recovery residence unless it holds a valid certificate of compliance and is actively managed by a  
38 certified recovery residence administrator.

39 While this will not eliminate problems with all sober houses, it will require that those who desire patients and/or  
40 funds from DCFS comply with more stringent requirements.

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<sup>20</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read “Chapter 2015-100.”

## 1 **Halfway Houses**

2 As a community association manager, you may encounter situations in which a halfway house is operating in  
3 your community.

4 In this section, we cover the following topics relating to halfway houses:

- 5     ▪ Definitions
- 6     ▪ Characteristics and benefits
- 7     ▪ Release from a (Residential Re-entry Center (RRC))
- 8     ▪ State requirements

### 9 *Definitions*

10 To help you better understand the meaning of certain terms used throughout the laws and our industry, we  
11 provide you with the following definitions:

- 12     ▪ Halfway house (aka: residential reentry center (RRC))
- 13     ▪ Work-release housing

### 14 **Halfway Houses (or RRCs)**

15 A halfway house, which may also be called a residential reentry center (RRC), refers to a residence in which  
16 convicted criminals begin the process of reintegration with society, while still being monitored and supported.  
17 This is believed to reduce the risk of recidivism (or relapse) when compared to a release-directly-into-society  
18 modality. Halfway houses are meant for reintegration of persons who have been recently released from jail or  
19 a mental institution. There is often opposition from neighborhoods where halfway houses attempt to locate.

### 20 **Work-Release Housing**

21 Work-release housing is housing for convicted criminals who are released from prison on the condition they  
22 find work immediately upon release. These residents are frequently required to pay rent on a “sliding scale,”  
23 which is often dependent on if they can find a job while in residence.

### 24 *Characteristics and Benefits*

25 Halfway houses (aka: residential reentry centers (RRCs)) help inmates to gradually rebuild their ties to the  
26 community, and facilitate the supervision of ex-offenders' activities during this readjustment phase.

27 Some of the benefits include

- 28     ▪ A safe, structured, and supervised environment
- 29     ▪ Employment counseling
- 30     ▪ Job placement
- 31     ▪ Financial management assistance
- 32     ▪ Other programs and services

### 33 **Authorized Leave Activities**

34 In-house headcounts are conducted throughout the day at scheduled and random intervals. An inmate is only  
35 authorized to leave the RRC through a sign-out procedure for approved activities.

36 Authorized leave activities include

- 37     ▪ Seeking employment
- 38     ▪ Working
- 39     ▪ Counseling
- 40     ▪ Visiting
- 41     ▪ Recreation purposes

42 During the approved activity, the inmate's location and movements are constantly monitored, and the RRC staff  
43 may visit or call them at any time.

44 In addition, when the inmate returns, they may be given a random drug and alcohol test.

1 Employment

2 The RRC staff assists inmates in obtaining employment through a network of local employers, and employment  
3 job fairs. They also provide training classes in resume writing and interview techniques.

4 Within 15-calendar days after their arrival at the RRC, offenders are expected to be employed for 40 hours per  
5 week.

6 **Substance Abuse Programs**

7 RRCs offer drug testing and substance abuse programs.

8 Based upon the inmate's needs and substance abuse history, they may be referred for substance abuse  
9 treatment by contracted treatment providers.

10 Offenders who have completed the Residential Drug Abuse Program (RDAP) while confined in a Bureau of  
11 Prisons (BOP) institution are expected to continue their drug treatment with these certified community treatment  
12 providers under contract with the BOP.

13 **Medical Treatment**

14 RRC contractors provide offenders with an opportunity to access medical and mental health care treatment.  
15 The intent is to assist the offender in maintaining continuity in their treatment.

16 The contracts are doctors and other medical professionals with whom the RRC works.

17 Inmates ordinarily transfer from an institution to an RRC with an initial supply of required medications.

18 **Subsistence Fee**

19 During their stay in an RRC, offenders are required to pay a subsistence fee to help defray the cost of their  
20 confinement.

21 This charge is 25% of their gross income, not to exceed the per diem rate for the contract they sign with the  
22 RRC.

23 *Release from an RRC*

24 The contractor, that manages the RRC, assists inmates in locating suitable housing (if necessary), to which  
25 they can be released from the RRC.

26 In cases where an inmate will be released with supervision, the contractor verifies the proposed address and  
27 forwards its comments to the U.S. Probation Office.

28 *State Requirements*

29 State statutes permit local governments (mainly counties) to establish halfway houses (mainly for juveniles).

30 The Department of Juvenile Justice is required to conduct quarterly inspections and evaluations of each county  
31 or municipal government juvenile delinquency program to determine whether the program complies with  
32 department rules for continued operation of the program.

33 **Zoning**

34 Local government often has strict zoning requirements for this type of halfway house.

35 How does this affect your association?

36 Your association should check local statutes to ascertain if your community is zoned for a halfway house (either  
37 juvenile or adult).

38 Most community associations are zoned to NOT permit halfway houses.

## 1 **Group Homes**

2 As a community association manager, you may encounter situations in which a group home is operating in your  
3 community.

4 In this section, we cover the following topics relating to group homes:

- 5     ▪ Characteristics
- 6     ▪ Family homes
- 7     ▪ Specialized therapeutic group homes
- 8     ▪ Residential care homes for seniors
- 9     ▪ Zoning

### 10 *Characteristics*

11 A group home is a private residence for

- 12     ▪ Children or young people who cannot live with their families
- 13     ▪ Elderly who need assistance with activities of daily living, and/or
- 14     ▪ People with chronic disabilities.

15 A group home differs from a halfway house in that it is not restricted to recovering addicts or convicted criminals.

16 The residents are usually encouraged or required to take an active role in the maintenance of the household,  
17 such as performing chores or helping to manage a budget. (A group home for the elderly may be an exception.)

18 The opening of group homes in neighborhoods is occasionally opposed by residents, who fear that it will lead  
19 to a rise in crime and/or a drop in property values.

### 20 **Residents**

21 Some residents of group homes usually have a chronic mental disorder and/or physical disability. They  
22 sometimes need continual assistance in order to complete daily tasks, such as taking medication or bathing.

23 Some residents may have behavioral problems that require supervision because they may be dangerous to  
24 themselves or others.

25 Prior to the 1970s, this function was served by institutions, asylums, poorhouses, nursing homes, and  
26 orphanages.

27 People who live in such a group home may be

- 28     ▪ Developmentally disabled
- 29     ▪ Recovering from alcohol or drug addiction
- 30     ▪ Abused or neglected youths
- 31     ▪ Youths with behavioral or emotional problems
- 32     ▪ Youths with criminal records

33 Typically, there are no more than six residents in the home and there is a trained caregiver there 24 hours a  
34 day. Residents may have their own room or share rooms, and share facilities such as laundry, bathroom,  
35 kitchen, and common living areas.

### 36 *Family Homes*

37 Another type of group home is the family home.

38 A family home is one in which children/youth who are in the foster care system are placed until foster families  
39 are found for them.

40 Family homes for children provide an alternative to traditional foster care. Unrelated children live in a home-like  
41 setting with either a set of house parents or a rotating staff of trained caregivers.

42 Specialized therapeutic or treatment group homes are available to meet the needs of children who have  
43 emotional and behavioral difficulties.

### 1 *Specialized Therapeutic Group Homes*

2 **Specialized therapeutic or treatment group homes** are available to meet the needs of children who have  
3 emotional and behavioral difficulties.

### 4 *Residential Care Homes for Seniors*

5 Perhaps the largest set of group homes falls under the heading of **residential care homes for seniors**.

6 Group homes for seniors are designed for seniors who cannot live on their own due to physical, mental, or  
7 emotional disabilities.

8 Group homes for seniors might also be called

- 9     ▪ Residential Care Home
- 10    ▪ Residential Care Facility for the Elderly
- 11    ▪ Assisted Living Facility (ALF)

### 12 **Assisted Living Facilities**

13 More expensive residential care homes, called **Assisted Living Facilities (ALFs)**, now exist to offer a family  
14 style, high quality, care option as the next class of senior care.

15 ALFs are based on the increasing need for assistance and decreasing independence. There are various levels  
16 of residential care homes for seniors:

- 17     ▪ Independent living
- 18     ▪ Assisted living with no assistance (The most common use of assisted living involves little or no  
19 assistance, such as living at home with the minimal amount of home care.)
- 20     ▪ Assisted living with assistance
- 21     ▪ Assisted living - memory care (Memory care is for those who are dealing with memory loss, dementia,  
22 or Alzheimer's disease.)

### 23 *Zoning*

24 Florida statutes govern the operation of most group homes. They are also subject to local zoning.

25 However, especially with ALFs, there are many that are operated without state approval. Most of these are  
26 small, with only a few residents.

27 These facilities have been found in community associations, despite prohibitive local zoning codes.

### 28 **RLUIPA**

29 As a community association manager, you may encounter situations in which a religious organization is  
30 involved. The Religious Land Use and Institutionalized Persons Act (RLUIPA), may affect how your association  
31 reacts to this situation.

32 In this section, we cover the following topics relating to RLUIPA:

- 33     ▪ Background
- 34     ▪ Definitions
- 35     ▪ Provisions
- 36     ▪ Disputes and challenges
- 37     ▪ Effects on community associations

### 38 *Background*

39 In 2000, the Religious Land Use and Institutionalized Persons Act<sup>21</sup> (RLUIPA) was enacted by Congress. The  
40 intent of the Act was to correct the problems that stemmed from the enactment of the Religious Freedom  
41 Restoration Act (RFRA) of 1993.

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<sup>21</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read "RLUIPA."



1 In relation to our purpose as community associations, this federal law gives churches and other religious  
2 institutions a way to avoid troublesome zoning law restrictions on their property use.

### 3 *Definitions*

4 Definitions of terms used in the RLUIPA include:

- 5     ▪ Land use regulation
- 6     ▪ Religious exercise
- 7     ▪ Rule

### 8 **Land Use Regulation**

9 The term “land use regulation” means a zoning or landmarking law, or the application of such a law, that limits  
10 or restricts a claimant’s use or development of land (including a structure affixed to land), if the claimant has an  
11 ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or  
12 option to acquire such an interest. *42 U.S.C. § 2000cc-5(5)*

### 13 **Religious Exercise**

14 Religious exercise. In general, the term religious exercise includes any exercise of religion, whether or not  
15 compelled by, or central to, a system of religious belief. *42 U.S.C. § 2000cc-5(7)(A)*

### 16 **Rule**

17 The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be  
18 religious exercise of the person or entity that uses or intends to use the property for that purpose. *42 U.S.C. § 2000cc-*  
19 *5(8)*

### 20 *Provisions*

21 The RLUIPA makes the following provisions:

#### 22 **(a) Substantial burdens**

23 (1) General Rule. - No government shall impose or implement a land use regulation in a manner  
24 that imposes a substantial burden on the religious exercise of a person, including a religious  
25 assembly or institution, unless the government can demonstrate that imposition of the burden  
26 on that person, assembly or institution

27 (A) Is in furtherance of a compelling governmental interest; and

28 (B) Is the least restrictive means of furthering that compelling governmental interest.

29 (2) Scope of application. - This subsection applies in any case in which:

30 (A) the substantial burden is imposed in a program or activity that receives Federal  
31 financial assistance, even if the burden results from a rule of general applicability; or

32 (B) the substantial burden affects, or removal of that substantial burden would affect,  
33 commerce with foreign nations, among the several States, or with Indian tribes, even  
34 if the burden results from a rule of general applicability; or

35 (C) the substantial burden is imposed in the implementation of a land use regulation or  
36 system of land use regulations, under which a government makes, or has in place  
37 formal or informal procedures or practices that permit the government to make,  
38 individualized assessments of the proposed uses for the property involved.

### 39 *Disputes and Challenges*

40 During disputes involving RLUIPA, the correct definition of the term “land use regulation” is usually an issue.  
41 (See Definitions.)

42 However, the court that reviews a dispute or challenge usually applies strict scrutiny to the city’s regulations.

43 Through this Act, Congress expanded religious accommodations, which placed restrictions on municipalities’  
44 zoning and regulating power. It has been argued that RLUIPA affords religious landowners a special right to  
45 challenge land use that their secular counterparts do not have. However, those who defend the Act maintain  
46 that these particular rights are included in the First Amendment’s religion clauses, so the Act is simply  
47 administering the Constitution.

## Effects on Community Associations

How does RLUIPA affect your association?

Let's look at a couple of examples.

### Hollywood, FL

In Hollywood, Florida, an individual purchased a home in a homeowners' association (HOA).

At some point, perhaps even before he purchased it, he determined that he would put a synagogue into the house.

The neighbors complained, and appealed to the city of Hollywood. The city disallowed the synagogue, stating that the community was not zoned for religious facilities.

The synagogue appealed to federal court. Under RLUIPA, the federal court ruled in favor of the synagogue.

### Williams Island

In Williams Island (Aventura, Florida), a developer permitted a religious entity to purchase a unit.

The thought was that this facility would serve that religious group who was purchasing property in Williams Island.

### Consult Attorney

If a religious institution chooses to purchase or lease within your community, you might want to consult with the association's attorney to determine the available options.

## Local Ordinances

As a community association manager, you may encounter situations that involve local ordinances.

In this section, we cover the following topics relating to local ordinances:

- Hierarchy of law and documents
- Ordinance change awareness
- County ordinances regarding screening
- Conflicts between federal and local laws

### Hierarchy of Law and Documents

Changes in local ordinances could impact an association's enforcement of the same or similar restrictions contained in the association's governing documents.

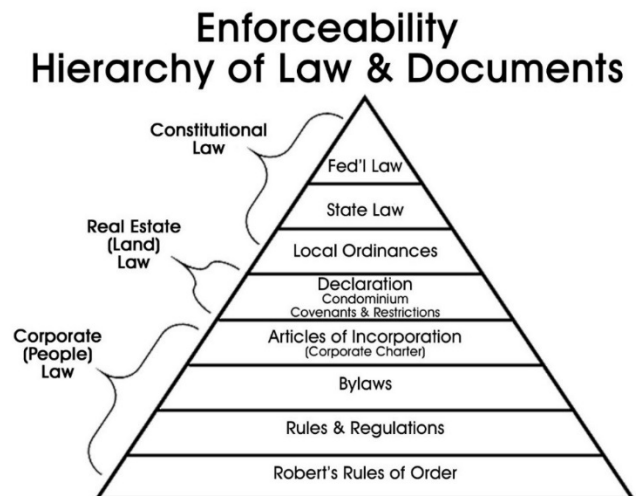
In determining the impact, if any, the association needs to understand the hierarchy of enforcement authority among legal resources and where the ordinance falls in this hierarchy. That is, the order in which laws and documents are enforced.

In most cases, the hierarchy appears as in this illustration.

### Hierarchy Illustration

This illustration demonstrates the following:

- Federal laws and regulations are enforceable on all properties.
- State laws and regulations may be more stringent than federal law and regulations, but may not contradict them. In certain cases, state (and local) law and regulations may not be stricter than federal law, without approval by the federal governing agency.
- Local ordinances may be stricter than state law, but may not contradict state law.



## 1 Hierarchy Order

2 Therefore, an association is guided by law in this order ...

- 3     ▪ Federal law
- 4     ▪ State statutes
- 5     ▪ Local ordinance
- 6     ▪ Association documents

## 7 Association Covenants

8 A covenant contained in the declaration may be more restrictive than a local ordinance.

9 For instance, the city ordinance might allow fences up to eight feet, but a covenant may prohibit fences in  
10 excess of four feet.

11 Could an association's documents be less restrictive than local government?

12 Yes! The documents can say anything, but the association must adhere to the local ordinances. However, the  
13 association has no authority to enforce a local ordinance. In that case, it should defer enforcement to the local  
14 government.

## 15 Hands-Off Approach

16 In some cases, local governments have a "hands-off" approach to community associations. That is, even if the  
17 association does not entirely adhere to local ordinances, local government is not inclined to take action.

18 As an example, many local counties and municipalities strictly prohibit the conversion of garages into living  
19 space. Yet, in some associations within those municipalities, it is likely that some owners have converted the  
20 garages into a study area, bedroom, or game room.

21 The problem for the community, especially if it does not attempt to work with the local government to gain  
22 enforcement from the local government, is that these conversions affect parking.

23 As we all know, most community associations are short on extra parking spaces.

## 24 Ordinance Change Awareness

25 An association should be aware of an ordinance change so it can notify homeowners of the impact, if any, on  
26 their property and on enforcement of its own restrictions.

27 A change in local ordinances may encourage an association to amend its governing documents to reflect the  
28 ordinance or impose a greater restriction.

29 Lack of knowledge or improper understanding of a local ordinance change could trigger unnecessary conflict  
30 between the association, the local government, and owners specifically impacted by the ordinance.

## 31 County Ordinances Regarding Screening

32 Both Broward<sup>22</sup> and Miami-Dade<sup>23</sup> counties have adopted ordinances that impact an association's screening  
33 process, if it has one.

34 Broward and Miami-Dade are by no means the only governments to enact such ordinances. Other local  
35 governments have drafted ordinances to further control community association actions and treatment of existing  
36 and prospective residents. As a CAM, you should check with your association's attorney to see if this has  
37 happened in your area.

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<sup>22</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the "Broward County Required Notices" ordinance

<sup>23</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the "Miami-Dade County Required Notices" ordinance.

1 Both the Broward and Miami-Dade ordinances read, in part, as follows:

2 Required notices in connection with application to purchase or rent a dwelling.

- 3 a. Within fifteen (15) days after receipt of any incomplete or incorrectly completed application (or amended  
4 application) to purchase or rent a dwelling, the condominium association, homeowners' association, or  
5 cooperative association shall provide the applicant with written notice specifically identifying any and  
6 all items in the application that need to be completed or corrected.

### 7 **Legal Interpretation**

8 Some attorneys have interpreted paragraph (a) as an affirmative requirement for the association to contact the  
9 prospective owner or lessee within 15 days, to advise that it has received the application, even if it is correct  
10 and complete.

### 11 **Association Response**

12 Since most community documents that permit screening require the association to respond within 30 days, the  
13 timing of a denial letter shouldn't be a problem.

14 While the required acknowledgement of receipt of an incomplete application is a shorter timeframe (15 days),  
15 the association needs only to draft a simple form letter, with check boxes to indicate the incorrect or incomplete  
16 areas, and mail it to the applicant.

### 17 *Conflict between Federal and Local Laws*

18 Most associations rarely deny an application for purchase or rent; however, when they do, it's often based on  
19 the application itself or on personal, sensitive information obtained from an investigative report.

20 The association then sends a letter to the applicant to notify them that their application has been denied due to  
21 a negative credit report, or for some other reason. This letter becomes an official record in the association, and  
22 is, therefore, not subject to inspection by the association owners, pursuant to F.S. 178, 719, and 720.

23 Federal law prohibits an association from disclosing information obtained by a credit report or certain other  
24 types of investigative reports.

25 The county ordinances, we just read, direct associations to notify an applicant within 45 days of the approval or  
26 denial of their application. In the letter, the association "must state with specificity each reason for the rejection."  
27 *Sec. 16 ½ - 35.6*

28 The association may also be required to release the denial letter to the county. Therefore, pursuant to the  
29 Broward and Miami-Dade county ordinances, the letter could become a public record that's accessible to  
30 anyone, and the association may be in violation of the federal law that prohibits the disclosure of such  
31 information. In which case the association should work with its attorney to ensure compliance with the applicable  
32 laws and ordinances.

### 33 **Smoking Section**

34 As a community association manager, you may encounter situations that involve smoking.

35 In this section, we cover these topics related to smoking:

- 36 ■ The Florida Clean Indoor Air Act  
37 ○ Definitions  
38 ■ Tobacco Free Florida  
39 ■ Association smoking bans  
40 ○ Woodside Village Case  
41 ○ Reasons for a ban  
42 ➤ ETS  
43 ➤ Palm Aire Condo Case  
44 ■ No-smoking building

## 1 *The Florida Clean Indoor Air Act*

2 The Florida Clean Indoor Air Act<sup>24</sup> (FCIAA) (F.S. 386.201 - 2125) was enacted in 1985 by the Florida Legislature  
3 to protect people from the health hazards of second hand smoke, including common areas of community  
4 associations.

5 It prohibits smoking in common areas (e.g. hallways, elevators, etc.).

6 It, however, does not prohibit smoking in an owner's unit or in the outside common elements (e.g. pool, picnic  
7 areas, etc.).

## 8 **Definitions**

9 In this section, we cover the following definitions of terms used in the FCIAA:

- 10     ▪ Common area
- 11     ▪ Enclosed indoor workplace
- 12     ▪ Secondhand smoke
- 13     ▪ Smoking

### 14 Common Area

15 Common area means a hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, entryway, or  
16 conference room in a customs area of an airport terminal under the authority and control of the Bureau of  
17 Customs and Border Protection of the United States Department of Homeland Security. *F.S. 386.203(2)*

### 18 Enclosed Indoor Workplace

19 Enclosed indoor workplace means any place where one or more persons engages in work, and which place is  
20 predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such  
21 barriers consist of or include, without limitation, uncovered openings; screened or otherwise partially covered  
22 openings; or open or closed windows, jalousies, doors, or the like. *F.S. 386.203(5)*

### 23 Secondhand Smoke

24 Secondhand smoke, also known as environmental tobacco smoke (ETS), means smoke emitted from lighted,  
25 smoldering, or burning tobacco when the smoker is not inhaling; smoke emitted at the mouthpiece during puff  
26 drawing; and smoke exhaled by the smoker. *F.S. 386.203(9)*

### 27 Smoking

28 Smoking means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including  
29 cigarettes, cigars, pipe tobacco, and any other lighted tobacco product. *F.S. 386.203(10)*

## 30 *Tobacco Free Florida*

31 Tobacco Free Florida (TFF) is currently examining issues that surround the use of ecigarettes.

32 In an April 2015 news release, the TFF stated,

33 "Until e-cigarettes are deemed safe and of an acceptable quality by a competent national regulatory body, the  
34 Bureau of Tobacco Free Florida advises consumers not to use these products."

## 35 *Association Smoking Bans*

36 Can an association adopt a no-smoking policy?

37 Yes, and many have, thereby making interior common elements and some limited common elements smoke-  
38 free zones. Some associations are going further by amending governing documents to prohibit smoking and  
39 become a smoke-free community.

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<sup>24</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the "Florida Clean Indoor Air Act."

1 **Woodside Village Case<sup>25</sup>**

2 In 2002, the Florida Supreme Court issued an opinion in The Woodside Village Condominium Association case  
3 that profoundly changed the face of condominium law. [Woodside Village Condominium Association v. Jahren,  
4 806 So.2d 452 (Fla.01/03/2002)]

5 Without going into all of the details of the case, simply put, the opinion holds that a condominium's governing  
6 documents can be amended to ban or restrict a unit owner's right to lease their unit, even if the owner bought  
7 the unit with the understanding that there was no such restriction.

8 This opinion will not be limited to leasing restrictions. In fact, the court's decision may affect how an association  
9 properly amends its governing documents to impose new restrictions, such as a smoking ban, on current and  
10 future owners.

11 **Reasons for a Ban**

12 Why would an association wish to pass a smoking ban?

13 For detached homes (such as those in an HOA), the answer is probably "No." If an owner smokes in their own  
14 home, which is a distance from other homes, it's doubtful that the HOA could defend a ban on smoking inside  
15 the residence.

16 Does it matter if an owner or renter smokes in their own unit or home?

17 In many condominium and cooperative associations, and some townhome communities, the smoke from one  
18 apartment is able to permeate into another.

19 **Environmental Tobacco Smoke (ETS)**

20 Although smokers may be prohibited from lighting up in the common elements, they still cherish their unfettered  
21 freedom to smoke in the privacy of their own homes.

22 However, impassioned disputes, similar to those that led to the prohibition of smoking in the workplace,  
23 restaurants, airplanes, and other public places are beginning to arise between smokers and nonsmokers who  
24 live in multi-unit housing such as condominiums, apartments, and townhomes.

25 Because of the close proximity between units, second-hand smoke (also known as environmental tobacco  
26 smoke (ETS)) is traveling from one unit to another by wind or ventilation systems and resulting in a clash of  
27 "rights."

28 Smokers believe that they have a right to smoke in their own homes, while nonsmokers believe that they have  
29 a right not to be exposed to harmful ETS in their own homes.

30 Most smokers have a fairly consistent smoking routine. Because of the ambient nature of tobacco smoke,  
31 nonsmokers may perceive the intrusiveness of a neighbor's tobacco smoke as a constant and unremitting,  
32 irritant.

33 Smoke, which some individuals perceive as having a foul odor, can travel from one unit to the next through  
34 shared ventilation ducts, openings for electrical outlets, improperly sealed construction components, or even  
35 open windows or doors.

36 A nonsmoker's continuous exposure to ETS has resulted in a wide array of acute reactions, including:

- 37     ▪ Sore throats and hoarseness
- 38     ▪ Persistent coughs and sinus problems
- 39     ▪ Burning, itching, and tearing eyes
- 40     ▪ Headaches
- 41     ▪ Nasal irritation

42 However, the major concern is the possibility of extremely serious, and possibly deadly, long-term health risks  
43 such as lung cancer or heart disease.

44 Both the health concerns and the fact that tobacco smoke can linger in carpets, draperies, and clothing for  
45 extensive periods of time have initiated some very emotional and combative disputes between smokers and

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<sup>25</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the "Woodside Village Case of 2002."

1 nonsmokers residing in neighboring units of multi-unit residential housing, with some disputes eventually  
2 leading to litigation.

3 An example of such a dispute is the Palm Aire Condominium neighbor versus neighbor case in 2005. Let's look  
4 at what happened in that case.

#### 5 Palm Aire Condo Case<sup>26</sup>

6 A Florida trial judge issued a comprehensive decision in June 2005, after analyzing the applicable laws  
7 regarding a neighbor-versus-neighbor smoking dispute in a condominium.

8 In *Merrill v. Bosser* [No. 05-4239 (Fla. Cir. Ct., filed June 29, 2005)], the Merrill family (plaintiff) purchased a  
9 condominium unit at the Palm Aire Condominium in Pompano Beach, Florida.

10 The defendant (Bosser), who smoked about one pack of cigarettes per day, lived in a condominium unit one  
11 floor up and one unit over from the plaintiff.

12 The smoke from that unit was not a problem for the plaintiff and her family until the defendant acquired a tenant  
13 who was also a smoker.

14 According to court documents, after that tenant moved in, the health of the plaintiff and her family deteriorated.  
15 On one occasion, the plaintiff's smoke detector went off. On several other occasions, they had to move out of  
16 the unit for a while.

17 After receiving numerous complaints, the association finally advised the defendant that the tenant had to move  
18 out. (According to court documents, the association based this action on the fact that the owner did not obtain  
19 approval for the tenant; not because of the smoke complaints.)

20 After the tenant left, the smoke problem stopped. The plaintiff sued seeking damages under the theories of

- 21     ▪ Trespass
- 22     ▪ Common law nuisance
- 23     ▪ Breach of covenant

24 The court found the defendant liable, ruling that the "unique facts" of this case indicated that the amount of  
25 smoke gave rise to a "disturbance of possession."

26 On the trespass theory, the trial court acknowledged, "... in Florida, common secondhand smoke, which is  
27 customarily part of everyday life, would not be actionable in trespass."

28 The court also stated, however, "... [a] trespass need not be inflicted directly on another's realty, but may be  
29 committed by discharging a foreign polluting matter at a point beyond the boundary of such realty."

30 The court concluded that the evidence in this case demonstrated something more than customary secondhand  
31 smoke, thereby giving rise to a disturbance of possession or trespass.

32 The decision was for the plaintiff (Merrill). The judge awarded the plaintiff damages in the amount of \$1,000  
33 and court costs in the amount of \$275.

#### 34 **No-Smoking Building**

35 Can a Declaration of Condominium create a no-smoking building?

36 Some newer condominiums are including in the Declaration a prohibition against smoking anywhere in the  
37 building. While not common as of yet, it is possible that more condominium and cooperative associations will  
38 amend documents to become smoke-free communities.

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<sup>26</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the "Palm Aire Case of 2005."

## 1 **Housing for Older Persons Act (HOPA)**

2 As a community association manager, you may encounter situations that involve the Housing for Older Persons  
3 Act (HOPA).

4 In this section, we cover the following topics relating to HOPA:

- 5     ▪ Background
- 6     ▪ Definitions
- 7     ▪ Provisions
- 8     ▪ Registration and renewal

### 9 *Background*

10 Since the 1988 Amendments, the Fair Housing Act has exempted, from its familial status provisions, properties  
11 that satisfy the Act's 55-and-older housing conditions.

12 The Housing for Older Persons Act of 1995<sup>27</sup> (HOPA) made several changes to the 55-and-older exemption.  
13 [Title VIII of the Civil Rights Act of 1968, as amended. (42 U.S.C. 3607)]

### 14 *Definitions*

15 In this section, we cover the definitions of these applicable terms:

- 16     ▪ Familial Status
- 17     ▪ Housing for Older Persons

18 For each of these definitions, we have cited the law or statute reference. To read them, visit our website at  
19 [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM  
20 Continuing Education found under CAM Downloads and select the applicable law or statute as cited for that  
21 definition.

### 22 **Familial Status**

23 (k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being  
24 domiciled with -

- 25     1) a parent or another person having legal custody of such individual or individuals; or
- 26     2) the designee of such parent or other person having such custody, with the written permission  
27     of such parent or other person.

28 The protections afforded against discrimination on the basis of familial status shall apply to any person who is  
29 pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18  
30 years. *The Fair Housing Act (42 USC 3602(k))*

### 31 **Housing for Older Persons**

32 The term **housing for older persons**, especially when discussing community associations, refers primarily to  
33 the term **55-or-older housing**.

34 F.S. 760.29(4)(b) defines housing for older persons, in part, as follows ...

35 (4) -

36 (b) As used in this subsection, the term "housing for older persons" means housing:

- 37     1. Provided under any state or federal program that the commission determines is specifically  
38     designed and operated to assist elderly persons, as defined in the state or federal program;
- 39     2. Intended for, and solely occupied by, persons 62 years of age or older; or
- 40     3. Intended and operated for occupancy by persons 55 years of age or older that meets the  
41     following requirements:

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<sup>27</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the "HOPA"



- 1 a At least 80 percent of the occupied units are occupied by a least one person 55 years of  
2 age or older
- 3 b The housing facility or community publishes and adheres to policies and procedures that  
4 demonstrate the intent required under this subparagraph.
- 5 c The housing facility or community complies with rules made by the Secretary of the United  
6 States Department of Housing and Urban Development pursuant to 24 C.F.R. part 100 for  
7 verification of occupancy, which rules provide for verification by reliable surveys and  
8 affidavits and include examples of the types of policies and procedures relevant to a  
9 determination of compliance with the requirements of sub-subparagraph b. Such surveys  
10 and affidavits are admissible in administrative and judicial proceedings for the purposes of  
11 such verification. *Florida FHAct (F.S. 760)*

## 12 *Provisions*

13 HOPA provisions include:

- 14 ■ HOPA eliminates the requirement that 55-and-older housing communities have significant facilities and  
15 services designed for the elderly.
- 16 ■ It establishes good faith reliance immunity from damages for persons, who in good faith, believe that  
17 the 55-and-older exemption applies to a particular property, if they do not actually know that the property  
18 is not eligible for the exemption and if the property has formally stated in writing that it qualifies for the  
19 exemption even if it does not meet the requirements of eligibility.
- 20 ■ It requires that senior housing publish and follow policies and procedures that demonstrate the intent  
21 to be housing for persons 55 and older.
- 22 ■ HOPA retains the requirement that senior housing must have one person who is 55 years of age or  
23 older living in at least 80 percent of its occupied units.
- 24 ■ An exempt property will not violate the Fair Housing Act if it includes families with children, but it does  
25 not have to do so. Therefore, housing that satisfies the legal definition of senior housing or 55-and-  
26 older housing (as defined earlier) can legally exclude families with children.

27 A Department of Housing and Urban Development (HUD) rule published on April 2, 1999, in the Federal  
28 Register implements the HOPA of 1995, and explains in detail those provisions of the Fair Housing Act that  
29 pertain to senior housing<sup>28</sup>.

## 30 *Registration*

31 Housing that meets the requirements for HOPA must be registered with the Florida Commission on Human  
32 Relations (FCHR).

33 To register, the community must submit a letter to the commission that is on the letterhead of the community  
34 and signed by the president of the association or board.

35 The letter must contain information that attests to the fact that the community complies with HOPA and meets  
36 the housing-for-older-persons requirements as outlined in the Florida statutes.

37 The registration must be renewed in the same manner every two years. *F.S. 760(4)(e)*

38 If you are the CAM of a 55-or-older community, check to be sure that your community appears on the Florida  
39 Commission on Human Relations registry of 55-or-older associations.

40 For more information, please visit the Florida Commission on Human Relations Web site.

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28 Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the "HUD Federal Register Implementation of HOPA."

## 1 **Housing Choice Voucher Program**

2 As a community association manager, you may encounter situations that involve the Housing Choice Voucher  
3 Program (HCV) (formerly known as Section 8).

4 In this section, we cover the following topics relating to the HCV program:

- 5     ▪ Program basics
- 6     ▪ The voucher
- 7     ▪ Association rental restrictions
- 8     ▪ HCV tenants

### 9 *Program Basics*

10 The Section 8 program was established in 1974, but was later changed to the **Housing Choice Voucher (HCV)**  
11 **Program**<sup>29</sup> in 1998 when Congress merged the certificate and voucher components of the Section 8 program.  
12 (In this presentation, we refer to it as the HCV program.)

13 HCV assists families who have very low income by paying a portion or all of the rent which allows them to afford  
14 decent and safe rental housing.

15 This program is funded by the Department of Housing and Urban Development (HUD), and administered by  
16 Public Housing Authorities (PHAs) who are authorized under federal or state law to operate housing programs  
17 within an area or jurisdiction.

### 18 *The Voucher*

19 When a family is selected to participate in the HCV program, they are free to locate a rental property in the  
20 private market.

21 Once the family selects a rental property (e.g. apartment, house, condominium), the local PHA inspects the  
22 property to ensure that it meets HUD housing quality standards.

23 If the property passes inspection, the PHA enters into a Housing Assistance Payment contract with the owner,  
24 who then leases the property to the family.

25 HUD then issues a voucher for a portion of the monthly rent to the family.

26 The family then pays the rent to the property owner.

27 If the voucher is less than the monthly rent, the family must pay the difference. HUD adjusts the amount the  
28 family or individual receives, based on their income, rent, and utilities. The voucher will be adjusted to pay for  
29 60% of the total rent and utilities, based on HUD policy.

30 Under this program, families are generally required to pay approximately 30% of their adjusted monthly income  
31 toward rent and utilities.

32 Families can choose to pay up to 40% of their income if needed to allow greater choices in location and type of  
33 rental property<sup>30</sup>.

### 34 *Association Rental Restrictions*

35 A community association can provide for rental restrictions in their covenants. These restrictions would apply  
36 to all leases including those under the HCV program. However, an association could not pass a covenant  
37 provision stating that leasing is allowed except to elderly, disabled, or families who are participants of the HCV  
38 program.

39 Keep in mind, in a condominium, any amendment to the documents passing rental restrictions apply only to  
40 those who vote in favor of the amendment, and those to whom the property is conveyed after the amendment  
41 is passed and recorded. It will not apply to those who vote no, or who did not vote.

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<sup>29</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the "Low Income Housing Assistance" law

<sup>30</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the "HCV Fact Sheet from HUD."

- 1 Any home in any subdivision is already a potential rental under the HCV program.  
 2 If your association already has leasing restrictions, they also apply to potential participants of the HCV program.  
 3 It might be important to remember that tenants who are participating in the HCV program are not a protected  
 4 class, such as race, gender, or religion.  
 5 However, if the association attempts to ban HCV program participants, it might be subjected to discrimination  
 6 lawsuits for other reasons.

### 7 *HCV Tenants*

8 Do HCV participants make good tenants?

9 Just because a family is an HCV program participant does not make them bad tenants.

10 Bad tenants are often a result of an owner who does not perform their due diligence before leasing, or does not  
 11 educate their tenants regarding the association's rules and regulations.

12 Remember, if an HCV participant gives the association trouble, the board can complain directly to HUD.

### 13 **Guests and Short-Term Renters**

14 As a community association manager, you may encounter situations that involve guests and/or short-term  
 15 renters.

16 In this section, we cover the following topics relating to that subject:

- 17     ▪ Definitions
- 18     ▪ Guest restrictions
- 19     ▪ Comprehensive restrictions
- 20     ▪ Guest registration
- 21     ▪ Business-owned units
- 22     ▪ Legislative changes
- 23     ▪ Association guidelines

### 24 *Definitions*

25 In this section, we cover the definitions of these applicable terms:

- 26     ▪ Business-owned unit
- 27     ▪ Guest
- 28     ▪ Short-term renter

### 29 **Business-Owned Unit**

30 Business-owned unit is a unit in the community that is owned by a business rather than a private individual.

### 31 **Guest**

32 Some association documents (but not many) give clear definitions of "guest."

33 Your association's documents might use this definition ...

34 Guest is a person who stays overnight, for a period of no less than 48 hours, at another's residence without  
 35 charge.

### 36 **Short-Term Renter**

37 Short-Term Renter is generally someone who stays in an owner's residence for a period shorter than that  
 38 allowed by the governing documents. Typically, short-term renters are not allowed.

39 **Side note:** Community association documents typically include requirements that a lease be for a minimum  
 40 period of time, such as six months or a year. Any period under that would be considered a short-term renter,  
 41 which the association would prohibit. In some cases, an owner may try to deceive the association by renting to  
 42 a series of individuals for a short period (a week or month, for example), but informs the association that these  
 43 individuals are "guests."

1 A second problem occurs when a resident has a “guest” that stays beyond the length defined in the association  
2 rules. For instance, the association allows a guest for 30 days, and the resident has his/her guest stay for 90  
3 days.

4 The association may have screening requirements to which that guest must comply, as he or she now meets  
5 the definition of “resident.”

### 6 *Guest Restrictions*

7 A word that’s synonymous with “guest” is “visitor.”

8 In any definition, the term implies a person who is visiting in the association temporarily. Therefore, your  
9 association most likely imposes restrictions, such as the following:

- 10     ▪ Any guest who resides with the resident for more than one week but less than 90 days must notify the  
11     association in writing.
- 12     ▪ Any guest who stays or visits more than 90 days while the resident is present, or stays or visits for any  
13     period during which the resident is absent, must be approved in advance by the association. The  
14     association reserves the right to require that such guests go through the association’s screening  
15     process.

16 The existence of guest restrictions is frequently a controversial issue within an association.

17 While no association would state that a resident does not have the right to have a reasonable number of guests  
18 when the resident is present, often the board – and the residents – may disagree on guests in the absence of  
19 the resident.

20 Guest restrictions in any association must be a balance between the interests of owners and residents who live  
21 on the property and want a certain type of residential environment, and those who use their property as a  
22 “holiday home” for themselves, their extended family, friends, and maybe even acquaintances. The balance for  
23 each association may be different, and will change over time as the demographics of the association change.

### 24 *Comprehensive Restrictions*

25 Comprehensive restrictions on guest occupancy in the absence of the owner or resident are often important to  
26 the community. These restrictions often clarify the ambiguity of the word “guest.”

27 In some associations, an owner may attempt to sidestep leasing restrictions by feigning that short-term tenants  
28 are “guests.” Even most owners who wish to allow their extended family and friends to regularly occupy the  
29 property make a distinction between that use, and frequent, short-term rentals to strangers. While many  
30 communities have rental restrictions limiting both the frequency and duration of rentals, it is difficult to determine  
31 when or if “guests” vacate the premises and new ones move in – especially in larger communities.

32 One solution is to allow a limited number of guest occupancies in the absence of owners, over a 12-month  
33 period. This would most likely require an amendment to the formal documents.

### 34 *Guest Registration*

35 If the association has a security guard at the main entrance, it may require guests to register at the security  
36 desk before allowing them to have access to the community.

37 The owner or resident may pre-authorize or register the guest by providing specific information to the security  
38 guard, with a copy provided to the association office.

39 Such information might include the following:

- 40     ▪ Unit number
- 41     ▪ Owner’s name
- 42     ▪ Guest’s name and names of all visiting
- 43     ▪ Guest’s phone number
- 44     ▪ Duration of stay (from when to when.)
- 45     ▪ Vehicle make, model, and tag number (if applicable)

1 When the guest arrives, the security guard may ask for their identification and supply them with a pass to place  
 2 on their vehicle for the duration of their stay.

3 Today, some community associations use a “fob” key system and provide a temporary fob to guests for a  
 4 minimum deposit, which is refundable upon its return at the end of their visit. This allows access to common  
 5 areas, such as the pool or billiard room, when the resident is not available.

6 **Business-Owned Units**

7 In this type of ownership, you or security personnel might notice that the traffic of guests in and out appears to  
 8 be evidence of a violation of the association guest restrictions as well as the leasing terms.

9 Let’s look at an example scenario at the Ocean Shores Condominium.

10 **Mario’s Import/Export**

11 Mario’s Import Export, Inc. owns unit #1112 at Ocean Shores Condominium in South Florida. His business is  
 12 booming, so he has clients and employees who frequently travel in and out of Florida.

13 Being such a great guy, Mario allows his associates to stay in his business-owned condominium. Which, after  
 14 all, was the purpose of buying it in the first place, since it’s much less expensive than constantly renting hotel  
 15 rooms.

16 **The Condo Docs**

Before Mario purchased the unit, Lisa, the CAM, provided him with a copy of the condo docs and reviewed them with him.



**Lisa**

These are three important rules, Mario

Thanks, Lisa. I understand.



**Mario**

Among the rules and regulations, she pointed out three specific rules:  
 1) The association allows units to be leased for a minimum of 6 months per year;  
 2) Any guest who stays longer than 30 days must comply with the association’s screening process; and  
 3) All guests must register with the security desk in the lobby.

17 **The “Guest”**

Even though Mario was aware of the condominium’s rules, he allowed Brad, one of his new employees, to reside in the unit while he transitioned his family from one state to another. When Brad had secured housing for his family two months later, he moved out.



**Mario**

Hey, Brad, welcome to the company! You can stay in this condo until you find housing for you and your family!

Thanks, Mario. That’s so generous! It shouldn’t take more than a couple of months.



**Brad**

18 **The Concerned Resident**

Lisa became aware of this situation through a concerned resident. Since Mario had not received prior approval from the association board for his employee to reside in his unit past the allowed 30 days, this is a violation of the condo docs.



**Resident**

Lisa, are you aware that someone is living in #1112, that business owned unit?

Oh! Really? Thanks for letting me know!



**Lisa**

19 **The CAM**

How should Lisa handle this?  
 Should Mario be penalized for this infraction of the condominium documents?  
 Do the condominium documents provide a remedy for a situation like this?  
 What process could Lisa implement to avoid the same situation from happening again?



**Lisa**



1 The Solution

2 How an association determines to address this type of situation depends on its documents, and any arbitration  
3 or court decisions found by its attorney. Ocean Shores has specific requirements in its document that Mario  
4 must follow.

5 In this case, Ocean Shores could have Lisa remind Mario of the requirement of the formal documents through  
6 an informal conversation. A second violation should result in issuing Mario a written warning. If the association  
7 has a fines committee, the board could refer Mario to it for action. Lastly, the association could refer the problem  
8 directly to the association attorney to write a letter to Mario.

9 If an association does not prohibit such activity in its documents, the board might suggest an amendment to the  
10 documents that will limit guests for business-owned units to a certain number of times per year.

11 But keep in mind, that it's likely for the current business owner to successfully challenge retroactive application  
12 of the change. It might be applicable, if at all, to new business owners only.

13 *Legislative Changes*

14 One issue that may affect condominium rentals is a change in the Florida Statutes.

15 This may help encourage associations with significant numbers of investors to seek longer rental terms.

16 "With respect to wind-only coverage for commercial lines residential community condominiums, effective July  
17 1, 2014, a condominium shall be deemed ineligible for coverage if 50 percent or more of the units are rented  
18 for more than eight times in a calendar year for a rental agreement period of less than 30 days." *F.S. 627.351(6)(a)*

19 *Association Guidelines*

20 If the condominium documents are silent or provide little guidance regarding guest restrictions, the board may  
21 want to propose guidelines to its owners. Depending on what it proposes, these changes may necessitate  
22 amendments to the documents.

23 These are some frequent requirements for guests:

- 24     ▪ All guests must sign in through the security desk.
- 25     ▪ Guests, who visit for more than 30 consecutive days within a 12- month period, must be screened and  
26     subjected to board approval.
- 27     ▪ The association must provide overnight guests with a "card" that contains a summary of the basic  
28     association rules.
- 29     ▪ Owners must register guests who stay overnight when the owner is absent.

30 Each association needs to determine the guidelines that are appropriate for its community, and the  
31 requirements of the owners.

32 If the owners do not want a change in the guest requirements, they are unlikely to comply with them. It may  
33 also create hostility among some community members.

34 Once adopted as an amendment to the documents or to the rules, the board needs to seek buy-in from owners  
35 before it implements any new requirements. We recommend that the board inform owners and residents  
36 through newsletter articles, emails, meetings, etc. where problems regarding guests are discussed and owners'  
37 comments and suggestions are solicited.

## PART III

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### 1 Outline

2 In this section, we discuss the following topics:

- 3     ▪ The screening process
  - 4         ○ Questions for the board
  - 5         ○ Basic screening criteria
  - 6         ○ Screening procedure guidelines
- 7     ▪ Course summary

### 8 THE SCREENING PROCESS

#### 9 Outline

10 In the screening process section, we cover the following topics:

- 11     ▪ Questions for the board
- 12     ▪ Basic screening criteria
- 13     ▪ Screening procedure guidelines
- 14     ▪ Cautionary note

#### 16 Questions for the Board

Does your association currently screen prospective residents?



If not, should your association amend its documents to do so?

To determine the purpose of screening prospective residents or owners, the board needs to ask and answer these important questions.

What do associations want to achieve?





Usually, associations want to create stability and avoid residents who may cause problems for other residents or disrupt association operations.



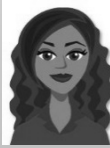

Whom does it want to keep out?





I think my association would like to prevent those who have a criminal past from becoming a resident. But, can it do so legally?

We have one gentleman who was convicted for drug possession 15 years ago, but today, he's a respected accountant in the community.

<p>I think my association would also like to prevent those who have committed or have been convicted of violent crimes from becoming a resident.</p>		<p>We have one prospective owner who got into a fight when he was 19. After being convicted of battery and assault, he was put on probation. He's 61 now, so that was 42 years ago! He wants to purchase this condominium for his retirement. He has had no further trouble with the law, of which we know.</p>
<p>My association may also want to prevent those who have been convicted of committing financial crimes, such as embezzlement.</p>		<p>Recently, we had an applicant who was convicted of embezzlement and sent to prison 25 years ago. (She contends that she was not guilty.) She was released 15 years ago and has worked as a registered nurse ever since.</p>
<p>We've had trouble in the past with applicant's who had filed for bankruptcy, so my association may want to prevent someone who has a bankruptcy and/or bad credit from becoming a resident.</p>		<p>I know a very nice man who wants to purchase a unit here. However, he lost his construction business and went through a bankruptcy during the economic downturn in 2008. Since then he's been trying to rebuild his credit, has a well-paying job, and little debt.</p>
<p>Do the current owners agree with these exclusions?</p>		<p>It is important that the association reflect the desires, or "will," of the community. The manner in which a board enforces its covenants and rules, including those which govern the screening of new residents, may be affected by the politics within the association. For instance, a board may see that enforcing screening requirements regarding pets is creating hostility within the association. In that case, the board may seek to amend the documents to create standards better suited to the community as a whole.</p>

1 **Basic Screening Criteria**

2 When developing a new resident screening policy, the board should consider many different types of criteria.  
 3 In this section, we cover the following basic screening criteria:

- 4       ▪ Governing documents
- 5       ▪ Financial criteria
- 6       ▪ Criminal criteria
- 7       ▪ Behavioral criteria
- 8       ▪ Other criteria

9 It is extremely difficult to draft criteria for a screening policy. While the association is outlining the criteria it  
 10 wants, it should hold meetings to solicit owner input. Before it submits the proposals for owner vote, it should  
 11 consult with its attorney to ensure that the proposed criteria and policy are legally sufficient.

12 *Governing Documents*

13 One of the first questions to consider when screening an applicant is ...

14 "Is there anything about this applicant that automatically violates the association's governing documents?"

15 Clearly, this does not require any amendments. The stipulations within the governing documents are  
 16 enforceable now. Therefore, the association would be permitted to deny the applicant's application to lease or  
 17 purchase based on that fact alone.

18 See the table on the next page for examples.



1 **Examples**

Applicant Specifics	Governing Documents Stipulations	Application Status	
		Denied	Approved
Mr. Spencer, who wishes to purchase a condo as his permanent residence, indicates that he has four dogs and two cats.	Only two pets are permitted in any one unit.	✓	
Mr. Jones, who appears to be older than 55, states that he wants to purchase the condo as a permanent resident for his 21-year-old daughter who is a post-grad student at the local university. He plans to visit occasionally.	55-or-Older Housing Community	✓	
Mr. and Mrs. Smith have three small children. They wish to purchase a two-bedroom condo as their permanent residence.	Only four permanent residents may occupy a two-bedroom condo.	✓	
Mrs. Glass runs her daycare center from her home. She wishes to purchase a condo for this purpose.	This residential property may not be used as a business.	✓	
Mr. and Mrs. Ordinary, who are older than 55 years old, have custody of their two grandchildren, and have two small pets, wish to purchase a two-bedroom condo as their permanent residence. Mr. Ordinary works for a very prominent company and does not conduct business from his home.	There are no apparent violations of the governing condo docs.		✓

2 **Financial Criteria**

3 The association should create strict financial criteria that are consistent with the demographics of its association  
4 and the surrounding community. The association might need to amend its documents to include such criteria.

5 Any exceptions should be plainly spelled out as demonstrated here.

- 6 ▪ “To be approved, the applicant must have a minimum FICO score<sup>31</sup> of 700.
- 7 ▪ “To be approved, the applicant must not have had a bankruptcy within the past seven years.”

8 Some associations may adopt strict financial criteria that apply to prospective purchasers, but not to renters.

9 We do not recommend this approach.

10 It’s in the association’s best interest to have the same financial criteria applied to both prospective owners and  
11 prospective renters. That way the association protects itself from loss by ensuring that the renter is capable of  
12 meeting the statutorily permitted obligation to pay rent (assessment) to the association should the owner  
13 become delinquent.

14 See the table below for examples.

15 **Examples**

Applicant Specifics	Financial Criteria Stipulations	Application Status	
		Denied	Approved
Mr. Black has had a tough time over the last few years, which resulted in a FICO score of 650.	The applicant must have a minimum FICO score of 700. This is required for both lease and purchase application approvals.	✓	
Ms. White has been evicted from two former residences.	The lease applicant must have a good rental history with no evictions for the last ten years for application approval.	✓	
Mr. and Mrs. West filed for bankruptcy five years ago. It has not been released as of the application date.	The applicant must not have had a bankruptcy within the last seven years for purchase application approval.	✓	
Mrs. North was unable to keep up the payments for the mortgage on her home after losing her husband; therefore, her financial history indicates a foreclosure four years ago.	The applicant must not have had a foreclosure within the past five years for purchase application approval.	✓	
Ms. East has been fortunate financially. Her current FICO score is 790. She has no foreclosures or evictions in her financial history. She has a well-paying job, which indicates that she is capable of meeting her financial obligations to the association.	This applicant seems to meet all of the financial criteria.		✓

<sup>31</sup> A FICO score is a credit score derived from the credit model developed by Fair Isaac Corporation. The FICO score is the best-known credit score in the United States, and a version of the FICO score calculated by all three of the major credit bureaus from reported information. Source: Investorglossary.com

1 **Capital Contribution**

2 Many community associations – both new construction and existing properties – impose a “capital contribution”  
3 on new owners.

4 This is a one-time, nonrefundable fee paid by the buyer at closing.

5 Once collected, the capital contribution is deposited in the association’s operating or reserve budget (as defined  
6 by the documents), and serves to augment funds for the property.

7 If the prospective purchase does not agree to pay the capital contribution, they can be rejected by the  
8 association.

9 The capital contribution rate is set in the association documents, and is often equal to two months’ assessment.

10 *Criminal Criteria*

11 The association should also create strict criminal history criteria that are consistent with the demographics of  
12 its association and the surrounding community. The association might need to amend its documents to include  
13 such criteria.

14 Just stating in the documents that the board will reject an application from anyone who was convicted of a  
15 felony, is not sufficient. The association should define the criteria clearly and exactly.

16 **Examples**

17 Here are a few examples of criminal history criteria used in existing condominium documents.

18 An application to purchase or lease may be rejected based on the following criteria:

- 19     ▪ Any individual who was convicted of a felony within the last five years and/or has not been released  
20     from incarceration or probation within the last five years
- 21     ▪ Any individual who was convicted of a sexual felony within the last ten years
- 22     ▪ Any individual who was convicted as a pedophile
- 23     ▪ Any individual who is currently on the federal “watch list.”

24 *Behavioral Criteria*

25 The association should also create behavioral history criteria that define which type of behavior is unacceptable  
26 to the degree that an application would be denied because of it.

27 The following list contains examples from existing association documents.

- 28     ▪ Eviction for disruptive or destructive behavior in the last five years
- 29     ▪ Conviction of a misdemeanor for criminal mischief in the last five years
- 30     ▪ Reported as having disruptive or destructive behavior

31 *Other Criteria*

32 The association may want to address the following criteria in amending the documents:

- 33     ▪ Smoking in common areas and/or individual units
- 34     ▪ Group homes
- 35     ▪ Sober houses

36 The association drafts, and the owners approve the amended language to the documents, to define the  
37 prohibition of certain types of activities; however, it may be challenged by a prospective purchaser or renter.

38 **Screening Procedure Guidelines**

39 The association’s board should draft rules and/or a procedure for screening applications. Once the procedure  
40 is drafted, the board should adopt the procedures at a board meeting for which 14 days’ notice was given with  
41 an advanced copy to all of the owners.

1 In this section, we discuss the following screening procedures you may already have in place or want to  
2 recommend to your board.

- 3     ▪ Application package
- 4     ▪ Define deadlines
- 5     ▪ The interview
- 6     ▪ Confidentiality
- 7     ▪ Screening committee
- 8     ▪ Review process

9 But first, let's discuss the procedure approval process.

### 10 *Procedure Approval*

11 The written procedures should be discussed and approved at a board meeting, so owners have the opportunity  
12 to share their feedback and suggestions.

13 Once approved, the screening procedure and application package should be distributed to all owners.

14 The board should ensure that all directors, screening committee members, and pertinent employees (e.g. CAM,  
15 receptionist, administrative assistant, security guards, etc.) receive training on how to implement the screening  
16 procedures correctly.

### 17 *The Application Package*

18 Develop an application package by which the association can gather all of the information necessary to either  
19 approve or reject all applications. The items must be signed or initialed by the applicants and returned to the  
20 association office for processing.

21 In this section, we look at the following topics:

- 22     ▪ Package contents
- 23     ▪ Confidentiality

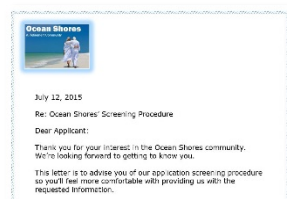
24 **Note:** Keep in mind that the association's attorney must approve the documents you're going to include in the  
25 package.

### 26 **Package Contents**

27 The application package might contain the following items:

- 28     ▪ Screening procedure statement
- 29     ▪ Screening criteria list
- 30     ▪ Rules and regulations
- 31     ▪ Purchase or lease application
- 32     ▪ Authorization for background check
- 33     ▪ Contact information form
- 34     ▪ References request
- 35     ▪ Screening procedure checklist (for internal use only)

36 Let's take a look at each of these items in detail.



1 **Screening Procedure Statement**

2 A screening procedure statement can be a letter from the association that outlines  
3 the screening procedure and the expected time frames.

4 This could also provide the applicant with contact information for you, the CAM,  
5 and/or a screening committee member.

6 **Time Frames**

7 In your screening procedure statement, it might be helpful to your applicant if you define and include relevant  
8 time frames and/or deadlines for completing items or providing a response (e.g. two weeks, 30 days, etc.).

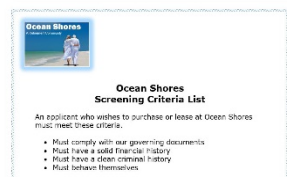
9 These time frames might already be defined in your governing documents. If so, please incorporate them into  
10 your procedure. However, if your documents don't define them, you might want to consider using the ones we  
11 define here.

12 Upon receipt of an application package, the association must provide information and/or a response in several  
13 circumstances. A few are outlined in the table below.

Screening Procedure Time Frames	
Circumstance	Time Frame
Application is incomplete or deficient.	Contact the applicant within five business days to correct the issue.
Application contains "red flags." Such as, the applicant has a pet and owns a large motorcycle; your association permits neither.	Contact the applicant within five business days. This could even take place when you, the CAM, first receive the application.
Schedule screening interview.	Contact the applicant within ten business days to schedule the interview.
Application has been either approved or rejected.	Contact the applicant within 30 days of the receipt of the application. (This time frame can be extended if the association requested additional paperwork or information to complete the screening procedure.)
Application is properly completed.	Contact the applicant within 30 days. (The clock does not start until the application is properly completed.)

14 **Screening Criteria List**

15 The association's screening criteria list, consists of the criteria that we discussed  
16 in an earlier section. By providing this list to the applicant, you're letting them know  
17 about the association's requirements, which will help them to determine if they  
18 qualify to live in this community.



19 **Rules and Regulations**

20 It's a good idea to provide the applicant with a summary of the association's Rules  
21 and Regulations.

22 Which might include:

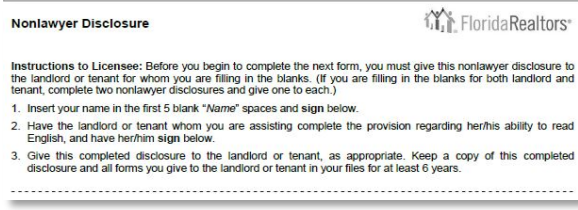
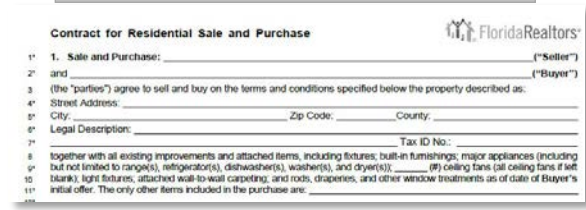
- 23 ■ The number and location of parking spaces available for each unit
- 24 ■ The association's pet policy and rules
- 25 ■ Common area usages and restrictions

26 **Purchase or Lease Application<sup>32</sup>**

27 Include the current purchase or lease applications in your package.

**Purchase application:** Contract for Residential Sale and Purchase (CRSP-13 Rev. 3/13)

**Lease application:** Residential Lease for Apartment or Unit in Multi-Family Rental Housing (FLAUCC-1x Rev. 8/15).



<sup>32</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the Purchase and Lease Applications

**Background Check Authorization<sup>33</sup>**

A background check contains your applicant’s ownership and/or rental history, credit report, employment history, and criminal history, and is usually performed by an outside investigative agency or screening company. Most investigative companies offer different report packages from which to choose. For example, a full package might include a credit report, a criminal history, employment history, and rental history; where a limited package might only include a credit report.



- Once your association has determined which investigative company it wishes to use, that company might require you use their pre-designed authorization form.
- In order for the association to perform a background check on an applicant, the applicant must sign an authorization form.

**Selecting a Screening Company**

Selecting which screening company the association uses is important. During the selection process, the association may want to interview the company’s staff to find out if their investigative process is acceptable to the association. The association may want to ask the following (or similar) questions:

<p>Do they check the applicant's addresses online (e.g. using google earth or some other program) to determine if the address is a residence or a business? Do they search property records for the county and neighboring counties to determine if the applicant owns other properties?</p>		<p>This information may help to verify the applicant's stated purpose for the purchase. Let's say that the applicant, unbeknownst by the association, intends to rent the property immediately after purchase. This is a direct violation of the association documents that clearly state that leases are only allowed after two years from the purchase date.</p>
--	--	--

**Cautionary Tale**

Please ask your screening company to be attentive to fake or false references when reviewing your applicant’s background check.

We have found that there are companies that provide fake or false references.

Both CareerExcuse.com and fakeyourjob.com claim that they can generate completely new work and residential histories by acting as an individual’s past employer.

They create virtual companies and hire people to give positive references to callers who wish to verify information on a screening application or background check. They create these counterfeit employment and residential references with local addresses and local phone numbers, so when the screening company calls to verify a reference, they will only hear positive reports.



**Contact Information Form**

You might want to include a contact information form in your package, on which the applicant could provide important information, such as:

- Name
- Phone numbers
- Email addresses
- The make, model, and year of their vehicle
- Names and ages of all occupants

<sup>33</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the “Background Check Authorization Form.”

- 1       ▪ Emergency contact numbers
- 2       ▪ References (We recommend that you obtain several personal and business references for the
- 3             applicant, as well as physical addresses and landline phone numbers of their previous residences.)

4 This is just a sample of the information you might want to gather. The form could be more specific according to  
5 your association's needs.

### 6 **Screening Procedure Checklist**

7 A screening procedure checklist could be for internal use only. You could use this list to keep track of the  
8 application's progress through the stages of your screening procedure. For example, you could use this form  
9 to answer the following questions:

- 10       ▪ Have you received all of the required documents? When? Are they signed?
- 11       ▪ Have you received the screening fee? For all applicable applicants?
- 12       ▪ Has the background check request been submitted? When? Has it been received?
- 13       ▪ Has the screening committee scheduled the interview yet? If so, what is the date and location of the
- 14             interview?

### 15 Can you Think of More?

16 We have just provided you with examples of items that could be included in your association's application  
17 package.

18 Can you think of other items that could be included? Do you already have a package put together for your  
19 association? Or, has this idea been new and helpful to you?

### 20 **Confidentiality**

21 During the screening process, all who are involved (e.g. the CAM, the board, the screening committee, and any  
22 office personnel), must understand that all of the information gathered on an applicant must, by law, be kept  
23 confidential!

24 This means ...

- 25       ▪ Credit reports
- 26       ▪ Criminal history reports
- 27       ▪ Financial information
- 28       ▪ Sales contract and price ...

29 Absolutely all of the contents of the applicant's application package must remain confidential!

30 Once the screening process is complete, regardless if the application was approved or rejected, the file must  
31 be secured in a folder marked "CONFIDENTIAL."

32 If the application was approved, this file could become a part of the association's specific file for that unit/house.

33 State law requires this information be retained for seven years minimum. It remains confidential.

### 34 *The Screening Committee*

35 The screening committee is comprised of association members who have volunteered and been appointed.

36 While the statutes are silent, the number of committee members might be specified in the association's  
37 governing documents.

38 We recommend a minimum of three members.

### 39 **Guidelines**

40 The board should provide the screening committee with specific, written guidelines to follow while screening  
41 every applicant.

42 The screening process should be consistent and adhere strictly to these guidelines.

## 1 Checklist

2 The screening committee could adopt the use of a screening checklist that contains the board's guidelines and  
3 tracks the progress of the screening process. This checklist would aid in the efforts of the committee to keep  
4 accurate records of correspondence (emails or letters) and other communications (phone calls and meetings).

5 This checklist could be used as proof that any one application was screened identical to the others.

## 6 Tasks

7 The screening committee's tasks may include the following:

- 8     ▪ Review the application package for completeness and accuracy
- 9     ▪ Schedule and conduct an interview with the applicant. (See the following slides for interview topics.)
- 10    ▪ Make recommendations to the board regarding the applicant.
  - 11       ○ The screening committee, upon completion of their review of the application package and interview  
12       with the applicant, should make a recommendation to the board of directors to either approve or  
13       reject this application.
- 14    ▪ Advise the applicant of the board's decision.
  - 15       ○ Once the board has either approved or rejected the application, a screening committee member,  
16       the board, or the screening company may be asked to contact the applicant in writing to advise  
17       them of either the approval or rejection of their application. However, in some cases, this task may  
18       fall to you, as the CAM.

Congratulations! You've  
been approved! Welcome  
to our community!



Wow! That's great! I look  
forward to being a member  
of your association!

19 Note: Remember, reasons for a rejection are not required to be included, and could open the association to a  
20 complaint. We recommend that the association review all rejections with its attorney before the denial.

21 Exception: Miami-Dade and Broward Counties (see earlier discussion).

## 22 The Interview

23 It's the screening committee's responsibility to schedule and conduct the interview with the applicant prior to  
24 the board's final decision to either approve or reject the application.

- 25     ▪ **Purpose:** The purpose of the interview is for the screening committee to meet the applicant so that it  
26     may provide the board of directors with its recommendations. It's also an opportunity for the committee  
27     and applicant to discuss the applicant's qualifications, and association's rules and regulations, thereby  
28     answering any questions for both parties.
- 29     ▪ **Attendance:** Some associations require that all of the proposed occupants attend the screening  
30     interview. For instance, a mother and father, who have two teenagers, have applied; therefore, all four  
31     members of the family should be present for the interview.
- 32     ▪ **Location:**
  - 33       ○ **Pre-determined location:** Within the governing documents, the location for the interview may be  
34       stated. In that case, the screening committee must hold the interview at the pre-determined  
35       location, which is usually the association office located on the property.
  - 36       ○ **Skype:** Some associations allow the interview to be conducted via Skype or by using some other  
37       online meeting program. This allows everyone to see everyone when it's not possible to be  
38       physically present in the same location. For example, the applicant resides in New York and is  
39       purchasing the unit as a vacation home, but can't return to do the interview.
  - 40       ○ **Telephone:** Some associations allow the interview to be conducted via telephone.

## *The Review Process*

Conducting a review of the application package and procedures before the board makes its final decision is an excellent means to ensure that it adhered to the standards and procedures adopted by the board.

The person who conducts the review could be you, the CAM, or some other designated individual.

It's important for the reviewer to make sure that the recommendations from the screening committee were made by following the guidelines as set forth by the board, and were made fairly and without bias.

For example, if the applicant is the president's sister but she did not meet the pre-determined criteria, the committee was correct in recommending the rejection of her application.

## **WHO'S MOVING IN? SUMMARY**

### Summary

That's the end of our course. Let's summarize what we've learned.

In many of our communities, the demographics are changing dramatically. Because some of these older complexes are more affordable than single-family homes, younger individuals and families have begun buying these units. They have different needs than the original, older population had. A wise board will take note of this and keep in mind that association rules and regulations, including those for conveyances (sales, rentals, and transfers) should be reasonable, and preserve, protect, and enhance the association property value and assets, promote harmonious living, and ensure that residents can use and enjoy the property.

Therefore, the association documents may need to be amended from time-to-time in order to reflect the needs and desires of the current owners and residents. This includes, possibly, screening for prospective residents, and amending the rules that define and regulate guests.

Some association documents provide criteria for screening prospective residents. Some documents include a minimum percentage down on the sale of units; some allow a security deposit for rentals. Some associations have established financial criteria to ensure that new owners will be able to pay not only their mortgage, but maintenance as well. If an association does not have specific criteria in its documents, it may be challenged if it denies a transfer. Some attorneys suggest that, if an association fairly and equitably applies criteria, including financial standards, it may be able to turn down prospective purchasers and lessees for valid reasons. We suggest that associations use licensed screening companies to provide background and credit checks on purchasers and new residents.

We recommend that associations establish screening criteria and standards that will apply to all purchasers, lessees, and transfers. In changing the documents to reflect procedures to screen prospective residents, we need to be aware of federal, state, and local laws and regulations that may affect our ability to screen prospective residents and guests, including an association's ability to deny a resident or guest. These laws range from permitting group homes and sober houses, to potentially disallowing sexual predators and pedophiles. Recent court cases have even addressed smoking in buildings, when a pet is permitted in a no-pet building, and whether an individual can use his residence as a religious facility.

Boards and managers may want to schedule periodic orientations or open houses with local real estate firms. The board can share information regarding the requirements it has for selling or leasing units, and can learn from local agents about any issues or concerns they have. Local agents are also a good source of information regarding market trends.

In this course, we have discussed a variety of issues. Let's take a look back.

- We discussed the criteria that your board may wish to adopt for guests.
- We considered solutions for squatters.
- We reviewed information regarding the ADA and Fair Housing Act as it applies to sales and rentals.
- We discussed assistance, service, and emotional support animals, the laws that govern them, and implementing a reasonable accommodation policy for your association.
- We examined sober houses, halfway houses, and group homes in relation to your association's screening policies.
- We discussed the considerations and criteria an association might adopt for screening standards and procedures.



- 1     ▪ We recommended that your association involve the owners when attempting to develop a screening  
2     policy, and ensure that all owners receive copies of screening application packages and procedures.
- 3     ▪ We emphasized the importance of confidentiality and fairness in screening prospective owners and  
4     renters.
- 5     ▪ We noted that consultation with the association's attorney when dealing with these issues and drafting  
6     criteria and procedures is essential.

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## WHO IS MOVING IN?

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Use the answer sheet on page 159 to indicate your responses

1. **Which of the following statements best describes a provision of the Condominium Act?**
  - a. It provides clear guidelines on screening prospective owners and renters.
  - b. It does not provide guidance for transfers, sales, and conveyances.
  - c. It provides that, if the association amends its documents to restrict rentals, then such an amendment applies only to owners who voted yes and new owners to whom property was conveyed after the effective date of the amendment.
  - d. It does not allow the association to charge a transfer fee, even if the documents permit screening of new owners and residents.
  
2. **An association's governing documents allow it to screen and approve or reject prospective purchasers and lessees. In this case, which of the following has the Third District Court of Appeals (DCA) held?**
  - a. The association cannot reject a prospective purchaser or lessees for any reason or no reason.
  - b. The association may reject a prospective owner or lessee based upon past action by the association.
  - c. Restrictions on an owner's right to transfer property are invalid.
  - d. A board has the irrevocable right, under Florida statute, to determine who will be permitted to reside in the community.
  
3. **Association documents, even if silent on screening, could have criteria by which it could reject a prospective owner or lessee. Which of the following is such a criterion?**
  - a. The prospective owner or lessee has a criminal record.
  - b. The prospective owner advises the association that he or she does not intend to adhere to the documents.
  - c. Acceptance of the prospective owner or lessee may offend or alienate current residents.
  - d. The prospective owner, who is 45 years old, is purchasing a unit for her mother, who his 71 years old, to live in exclusively in a 55 or older community.
  
4. **A squatter has taken up residence in a unit that is undergoing foreclosure. What action can the association take?**
  - a. Call the police and have the squatter evicted
  - b. Ask the bank or current owner to evict the squatter
  - c. Demand rent from the squatter if the owner is delinquent in payment of assessments or other monies
  - d. Change the locks on the unit so the squatter cannot enter
  
5. **Which of the following best describes an emotional support animal?**
  - a. It is a pet.
  - b. It is an animal that is trained to perform tasks for the benefit of an individual with a disability.
  - c. It is an animal certified by the AMA to provide therapeutic benefit, such as alerting a diabetic to a low blood sugar condition.
  - d. It is a companion pet that provides therapeutic benefit, such as alleviating a person's depression.
  
6. **Which of the following actions might an association take in regards to service and/or emotional support animals?**
  - a. Require an owner to pay a security deposit for any damages caused by a service animal or emotional support animal
  - b. Amend the documents to disallow a service animal or emotional support animal
  - c. Request information from a qualified medical professional to document the need for an emotional support animal
  - d. Allow the owner or lessee to retain a service animal or emotional support animal, without requesting further documentation.

7. **Which of the following actions might an association take in regards to the approval of service and/or emotional support animals?**
  - a. It does not need to have formal procedures for reviewing and approving or denying assistance animals since they are licensed through the ADA.
  - b. It should consider adopting formal procedures for reviewing and approving or denying assistance animals.
  - c. It must rely upon published guidelines from ADA or Fair Housing to establish the categories of animals acceptable for emotional support to a resident.
  - d. It may appeal to the Fair Housing Commission to deny a resident the right to keep an emotional support animal.
  
8. **Which of the following best describes a sober house?**
  - a. It is not legal in the state of Florida.
  - b. It is a group home for disabled teenagers and adults.
  - c. It is governed by the U.S. Department of Housing.
  - d. It is a halfway house where people who are recovering from addiction can live in a supervised and sober environment with structure and rules.
  
9. **What must an entity accomplish in order to open a sober house?**
  - a. It should establish a clear set of rules for residents and comply with local regulations and zoning.
  - b. It must apply to the DBPR for a license.
  - c. It must apply to the Department of Children and Families for a license.
  - d. It should seek screening approval from an association for each resident.
  
10. **Which statement best describes a halfway house?**
  - a. It is a place where individuals with disabilities, recently released from a facility, may reside.
  - b. It is a place where elderly residents live when no longer able to reside on their own.
  - c. It is a place where convicted criminals begin the process of reintegration with society, while receiving monitoring and support.
  - d. It is a place that is operated by the Florida Department of Prisons.
  
11. **For which of the following is RLUIPA the abbreviation?**
  - a. Religious Land Use and Institutions (Penal) Act
  - b. Religious Lighting and Incense Purification Act
  - c. Religious Liberty under International Protection Act
  - d. Religious Land Use and Institutionalized Persons Act
  
12. **Which statement best describes the purpose of RLUIPA?**
  - a. It restricts the local government's ability to impose a land use regulation that would impose a substantial burden on the religious exercise of a person, including religious assemblies.
  - b. It requires that associations set aside space for religious activities of its residents.
  - c. It permits local governments to pass zoning that disallows religious facilities in certain neighborhoods.
  - d. It prevents religious facilities from occupying space or buildings within 1,200 feet of a community association.
  
13. **Which of the following statements is true regarding the hierarchy of law and documents?**
  - a. Local ordinance may be less restrictive or contradict federal law.
  - b. The declaration may be stricter than local ordinances, but may not contradict them.
  - c. The articles of incorporation are governed by real estate law.
  - d. Roberts Rules of Order governs all association activities regardless of any provisions in the formal documents that might be to the contrary.
  
14. **Broward and Miami-Dade Counties have adopted ordinances that require an association to take which of the following actions?**
  - a. Respond to a prospective owner or lessee within 15 days, approving or denying the application
  - b. Respond to a prospective owner or lessee within 30 days, approving or denying the application
  - c. Respond to a prospective owner or lessee within 45 days, approving or denying the application
  - d. Respond to a prospective owner or lessee within 60 days, approving or denying the application

**15. Which of the following is a provision of the Florida Clean Air Act?**

- a. A ban on smoking in all indoor common elements in community associations
- b. A ban on smoking in all common elements in community associations
- c. A ban on smoking anywhere, including inside units in condominium and cooperative associations
- d. A ban on smoking in all indoor limited common elements in community associations

**16. What must an association do in order to be a “55 or older”?**

- a. Require all persons residing in the community be over 55
- b. Require all purchasers in the community be over 55
- c. Require that 75% of persons residing in the community be over 55
- d. Require that 80% of units or homes in the community have at least one resident over 55

**17. In regards to the Housing Choice Voucher Program (HCV), what might an association do?**

- a. Provide for rental restrictions in its covenants that disallow HCV participants
- b. Complain to HUD if more than 15% of the units or homes are leased to HCV participants
- c. Provide for rental restrictions in its covenants that apply to HCV lessees as well as other lessees
- d. Require more stringent screening for HCV participants

**18. Which of the following statements is true regarding the definition of a “guest”?**

- a. It is found in Florida Statutes 718, 719, and 720.
- b. It is defined by common law as anyone who stays overnight in a unit.
- c. It does not include or apply to business units in an association.
- d. It should be defined by an association and its owners, and included in amended documents.

**19. What should an association do in regards to adopting screening standards or criteria?**

- a. Always exclude anyone who has a felony record
- b. Always exclude anyone who has had a bankruptcy
- c. Use criteria established by local government
- d. Reflect the desires or will of the community

**20. In addition to having screening standards or criteria, what should the association do?**

- a. Clearly define time frames for approval or denial of a prospective owner or lessee
- b. Create different screening packages and criteria for owners and lessees
- c. Interview prospective owners or lessees before considering approval of the application
- d. Include details of an owner’s or lessee’s background check in the community newsletter

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