

## WANDERMERE ESTATES HOMEOWNERS ASSOCIATION

### Special Meeting

August 15, 2016

This is an informational meeting to address some of the issues that have been raised recently by some of the homeowners regarding the 55+ requirements in our CC&Rs, and the rules and regulations, and related forms, adopted by the prior Board of Directors.

- Wandermere Estates is a 55+ community. What does that mean, and what are the rules?
  - In general, discrimination in housing is illegal under the Fair Housing Act, whether based on race, gender, religious affiliation or age/familial status.
  - However, HUD regulations permit certain types of discrimination under limited circumstances.
    - Examples include religious organizations providing housing for only members of their faith, and 55+ communities.
  - In order to qualify for the exemption, 55+ communities are required to be made up of at least 80% households with at least one person who is 55 or older. Some of the relevant HUD regulations are:
    - At least 80% of occupied units must be occupied by at least one person 55+. 24 CFR § 100.305(a)
    - Each community may determine the age restriction, if any, for units that are not occupied by at least one 55+ person. 24 CFR § 100.305(h)
    - In order to qualify as 55+ housing, the community must publish and adhere to policies and procedures that demonstrate its intent to operate as 55+. This includes advertising, rules and regulations, actual practices, public posting of 55+ community status. 24 CFR § 100.306(a).
- Section 8.25 of the CC&Rs is intended to require Wandermere Estates to comply with the HUD regulations. It consists of our sentences that form the basis for the rules and regulations, and associated forms, recently adopted by the board.

8.25 Housing for 55 and Older. The Declarant through the Association and the Association thereafter and each Owner of a Lot in Wandermere Estates shall cooperate and assure compliance with Federal and State law for housing for persons 55 years of age and older. At no time shall less than eighty percent (80%) of the occupied Lots and Dwellings be occupied by one person 55 years of age or older, except as otherwise allowed by such law. The Declarant, in the sale of any lot for which there is a dwelling in existence, and any Lot Owner of a Lot with a dwelling thereon, shall take steps to assure that during their ownership and after sale of the occupied Lot, the dwelling shall be occupied by at least one person 55 years of age or older. The Declarant and any such Lot owner shall (1) include in their Lot sale materials language advising of this requirement and requiring written confirmation from the buyer(s) thereof of compliance with the 55 and older requirements upon sale. (2) obtain at each such Lot sale closing and provide to the Declarant and/or Association written verification of the age of the occupants of such Dwelling by obtaining copies of the buyers or occupants drivers licenses or similar identification or by other methods described in the Associations Rules and Regulations for Housing for Persons 55 Years of Age or Older, and (3) cooperate with the Declarant and/or Association in any and all surveys and verifications of compliance with such laws as may from time to time occur.

- 1<sup>st</sup> Sentence. The Association and each Owner in Wandermere Estates will "cooperate and assure compliance with" laws for 55+ housing. A simple statement of the intent for

Wandermere Estates to be 55+ housing, and the obligation of the HOA and all owners to cooperate in keeping it that way.

- 2<sup>nd</sup> Sentence. "At no time shall less than eighty percent (80%) of the occupied Lots and Dwellings be occupied by one person 55 years of age or older, except as otherwise allowed by such law." A statement of the minimum percentage of homes in Wandermere Estates to be occupied by 55+ occupants.
  - 80% is not a maximum - it is an absolute minimum
  - Note that there is no mention of 20%. There is no right to have 20% of the dwellings occupied by people under 55.
  - The 20% is intended as a safety valve. If the HUD regulations or the CC&Rs required 100% occupancy by 55+, it would guarantee failure. The 20% allows for involuntary transfers of ownership or under-55 occupancy resulting from changes within a household. Examples:
    - 1) A married couple own a home. One is over 55, the other is under 55. The spouse who is over 55 dies. The under-55 spouse is allowed to continue living in the home. If the regulations required 100% 55+ occupancy, then the newly widowed spouse would have to vacate, or Wandermere Estates would be out of compliance.
    - 2) Same couple, but they get divorced, and the home is awarded to the under-55 spouse. Same result – the under-55 spouse is allowed to stay in the home.
    - 3) Inheritance. Home was occupied by a 55+ person, but upon their death, the home is inherited by his/her under-55 child. The 80/20 rule would allow the under-55 child to occupy the house
    - In all of the above examples, when the under-55 occupant voluntarily sells the house, they must sell to someone 55+. There is no "grandfathering" of under-55 occupancy.
  - If the HOA allowed 20% of homes to be occupied by under-55 occupants, then what happens the next time one of the examples above happens? Or if another homeowner wants to sell to someone under 55, and that sale would push under-55 occupancy beyond 20%?
    - Essentially, the HOA would have to have 2 sets of rules - one to apply when less than 20% are under 55, and another to apply when the 20% is reached. That would require very close monitoring, and it would make for a race to closing any time the 20% limit is close. The situation could easily occur where two sellers have pending sales and the first one to close is the last available 20% house, so the other seller is required to cancel their sale at the last minute - possibly inviting a lawsuit by their intended buyer. This creates a nightmare scenario for management of the HOA.
- 3<sup>rd</sup> Sentence. For any lot with a home on it, the owner "shall take steps to assure that during their ownership and after sale of the occupied Lot, the dwelling shall be occupied by at least one person 55 years of age or older." This imposes duties upon the owners of homes in Wandermere Estates.
  - Note that there are two "shall" statements in this sentence:
    - 1) Each owner "shall" assure that they and their buyers comply with the 55+ requirements; and,
    - 2) each dwelling "shall" be occupied by at least one person 55+
  - The word "shall" means that those are mandatory
  - There is no mention here of 20% being allowed to be occupied by persons under 55.
- 4<sup>th</sup> Sentence. The final sentence has 3 subsections, each with additional requirements for Lot owners:

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- 1) "lot sale materials" must advise of the 55+ requirement, and must require written confirmation from buyers of compliance with 55+ requirement;
- 2) at the sale of a Lot, get proof of the age of occupants by getting copies of drivers licenses or similar identification;
- 3) cooperate with "any and all" surveys and verifications of compliance with 55+ laws.
- These requirements line up exactly with the intent of the rules and regulations, and the forms required by the HOA – the "Rules and Regulations for Housing for Persons 55 Years of Age and Older."
- What about the 3rd Amendment?
  - The 3rd Amendment attempted to weaken the language of Section 8.25, presumably because the developer wanted to make it easier for itself to sell lots in the wake of the recession.
  - It kept sentences 1 and 2, so the minimum 80% was still stated, and no explicit allowance for 20% under-55 occupancy was included
  - Its primary change was to sentence 3, but still required notification of "the eighty percent (80%) requirement" and required age verification at any sale closing.
- Why was the 3rd Amendment invalidated?
  - It was never valid.
  - The developer executed it without holding a vote of the homeowners
  - The developer did not have enough votes at the time
    - 75% required to amend the CC&Rs
    - Only had 62.4% when the 3rd Amendment was executed and recorded
- What does it mean for the 3rd Amendment to have been invalid?
  - The original Section 8.25 has always been in effect
  - The 3rd Amendment cannot simply be "reinstated" as some homeowners are apparently wanting to do
    - It would take a 75% vote of the association to create a new amendment to the CC&Rs
- What if I bought thinking the 3rd Amendment was valid?
  - Your issue is not with the HOA or the Board - it is with the developer, and perhaps the person you bought your house from.
- Why didn't the members of the HOA get to vote on the Rules and Regulations for Housing for Persons 55 Years of Age and Older?
  - The Bylaws of Wandermere Estates Homeowners Association give the Board the power to adopt rules and regulations. Section 5.14 of the Bylaws says,  
5.14 Powers and Duties. The business and affairs of the Association shall be managed by the Board. The Board shall have the power to:
    - (a) Adopt and publish rules and regulations governing compliance with the laws and regulations governing housing for persons fifty-five (55) years of age and older, the use of the common property and facilities, and the personal conduct of the members and their guests thereon and to establish penalties for the infraction thereof;
  - Neither the Bylaws nor the CC&Rs state that the members of the HOA are required, or even permitted, to vote on rules and regulations.

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- Section 5.14 of the Bylaws goes on to state, “It shall be the duty of the Board to: ... (h) ensure that the Property obtains and maintains its status as housing for persons 55 years of age and older.”
  - Because of this duty, the Board took action very quickly after the 3<sup>rd</sup> Amendment was declared invalid to institute rules, procedures and forms to enforce the 55+ requirements.