

The City Attorney
City of San Diego
MEMORANDUM
236-6220

DATE: September 16, 1986

TO: Bonnie Contreras, Housing Inspection
Division, Building Inspection Department
FROM: City Attorney
SUBJECT: The Requirement for a Caretaker at Condominium
Complexes

By memorandum to this office dated August 25, 1986, you asked two questions relative to the "Caretaker" provisions contained in Title 25 of the California Administrative Code, as adopted by The City of San Diego, San Diego Municipal Code Section 98.0103. Your memorandum, which I have attached hereto, clearly states the questions you have posed to this office, therefore, I will not restate them herein. The regulation which you have labeled Reference (a) in your memorandum is entitled "Caretaker." in the California Administrative Code and provides as follows:

A manager, janitor, housekeeper, or other responsible person shall reside upon the premises and shall have charge of every apartment house in which there are 16 or more apartments, and of every hotel in which there are 12 or more guest rooms, in the event that the owner of any such apartment house or hotel does not reside upon said premises. Only one caretaker would be required for all structures under one ownership and on one contiguous parcel of land. If the owner does not reside upon the premises of any apartment house in which there are more than four but less than 16 apartments, a notice stating his name and address, or the name and address of his agent in charge of the apartment house, shall be posted in a conspicuous place on the premises.

The term "APARTMENT HOUSE" is defined in A Sec. 402. of the 1982 Edition of the Uniform Building Code, as adopted by The City of San Diego, as follows:

APARTMENT HOUSE is any building or portion thereof which contains three or more dwelling units.

"DWELLING UNIT," as that term appears in the definition of "APARTMENT HOUSE," is defined in D Sec. 405. of the 1982 Edition of the Uniform Building Code as follows:

DWELLING UNIT is any building or portion thereof which contains living facilities, including provisions for

sleeping, eating, cooking and sanitation, as required by this code, for not more than one family.

As you indicated in your memorandum, Reference (b) is in the 1985 Edition of the Uniform Building Code and it contains a revised definition of "APARTMENT HOUSE," which reads as follows:

APARTMENT HOUSE is any building or portion thereof which contains three or more dwelling units and, for the purpose of this code, includes residential condominiums.

The definition of "DWELLING UNIT" in the 1985 Edition of the Uniform Building Code is unchanged from the 1982 Edition of the Uniform Building Code definition.

The terms condominium, residential condominium, or condominium form of ownership are not defined in the 1982 or 1985 Editions of the Uniform Building Code or Housing regulations codified in Chapter IX, Article 8, Divisions 1 and 2, of the San Diego Municipal Code.

With the foregoing provisions in mind, we must conclude that the requirement of having a resident caretaker is not altered by the definitional change in the term "APARTMENT HOUSE" as provided in the 1985 Edition of the Uniform Building Code. We so conclude because a condominium form of ownership does not alter the ultimate conclusion that the building (i.e., physical structure) is an apartment house. If the building is an apartment house, then, "A manager, janitor, housekeeper, or other responsible person shall reside upon the premises and shall have charge of every apartment house in which there are 16 or more apartments,"

However, the Caretaker requirement also provides that a caretaker is required to reside on the premises only, ". . . in the event that the owner of any such apartment house or hotel does not reside upon said premises."

If a condominium form of ownership exists for a building which is classified as an apartment house and any one of the condominium owners resides on the premises, a reasonable argument could be made that a caretaker is not required to be provided per the California Administrative Code Caretaker regulation.

In my view, the Caretaker provision in the California Administrative Code was not adopted with a view towards regulating an apartment house which is held in a condominium form of ownership. Therefore, I would suggest that careful thought be given to this subject by the Housing Inspection Division, and an amendment to the San Diego Municipal Code be drafted which would clearly state the requirements for caretakers in an apartment house which is held in a condominium form of ownership.

I will be available to assist you or your staff when you consider any such amendment.

JOHN W. WITT, City Attorney

By

Thomas F. Steinke

Deputy City Attorney

TFS:ta:270
Attachment
MS-86-6