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APARTMENT  
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SUMMER 2019

# multifamily florida

## LEGISLATIVE WRAP-UP:

FAA Counts Wins  
for Affordable  
Housing and More

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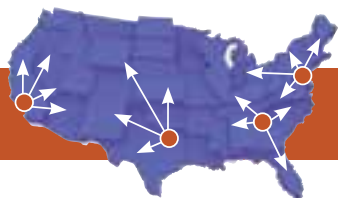
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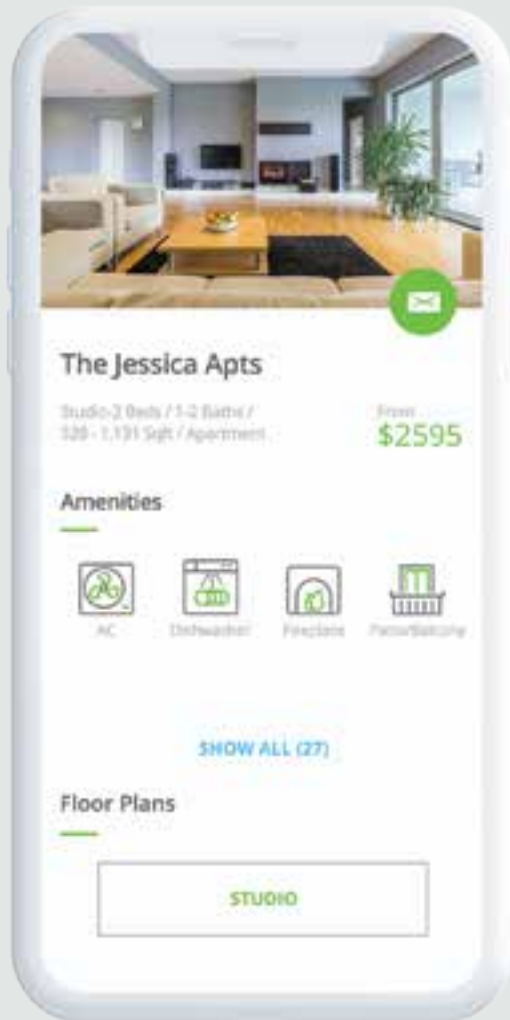
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## PRESIDENT'S MESSAGE

# Together, Let's Address Housing Affordability

BY **BONNIE SMETZER**, CPM, HCCP  
JMG REALTY INC.

**T**he affordable housing crisis in our state continues to grow, and many Floridians find it difficult to find housing they can afford. It's a downside to our vibrant economy and population growth, and the problem didn't happen overnight.

During the real estate boom of the early 2000s, Florida lost numerous multi-family rental units to condo conversions. Then, during the Great Recession, no new units were built in Florida. Now that we have a robust economy, tremendous in-migration, and great job growth, we can't build units fast enough to meet demand. When supply is constrained, rents increase. In most housing cycles, as new units are delivered, older units become more affordable. Currently, however, the rental housing supply is missing the units that were converted to condos that would naturally have become part of the older, more affordable housing stock.

As Florida is struggling with affordable housing throughout the state, local municipalities have been working to find solutions. Too often, those local governments try to use mandates to force developers to build affordable housing. Time and again, we have seen how that practice is ineffective and actually constrains supply by forcing developers to build in areas with less regulation. Instead, local governments could lead the way in increasing affordable development by offering financial incentives for voluntary development of affordable housing, including a discount or waiver on impact fees or reduction of real estate taxes.

In addition, local governments could make it feasible for developers to deliver new units to the market quickly. From initial project review to delivery of new units, it can take up to two years for new apartments to come to market. That needs to be cut in half.

FAA members have given their time to speak at workshops and public meetings to explain why restrictions, such as inclusionary zoning and rent control, don't work in the long term.

Because this is a statewide crisis, FAA members need the ability to engage with many municipalities around the state. In order to help meet this growing need, I have formed a Housing Affordability Committee within FAA. Our committee members include many market rate and affordable managers and developers, which gives us a collectively unique perspective and an ability to work together within our field of expertise. The Housing Affordability Committee will help educate our members across the state on solutions that work, so we can all bring local governments workable, long-term solutions that will help solve this crisis.

In addition, we need to educate the public about apartments and remind them that apartment communities are good neighbors. Many apartment residents choose to rent rather than buy homes, so development is good for the residents of the community. Apartment development also pays its way up front in building infrastructure, including roads and schools to help prevent overcrowding.

It is my goal that committee members will become educated on the issues in order to be a resource for their location association. This will include speaking with local municipalities that are seeking solutions or proposing regulations that would negatively impact our industry. Additionally, committee members should be willing to engage with others outside of FAA who are dedicated to finding solutions for increasing housing affordability in Florida. If you have an interest in joining this newly formed committee, please contact me at [bsmetzer@jmgrealty.com](mailto:bsmetzer@jmgrealty.com).

If we work together, we can make a difference. ▲



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# Standards: Raising the Bar in Member Service

BY **JOSH GOLD**, CAE, CMP  
FAA EXECUTIVE VICE PRESIDENT

**F**rench fries are a menu staple at McDonalds. They may be served covered in gravy in Canada or waffle cut in Austria, but McDonalds knows their consumers expect fries on the menu regardless of region. Similar to the fast food mogul, NAA and its affiliates have to deliver a standard of service to meet the expectations of our members across the nation. A similar affiliate experience provides members with consistency and an expected level of care. Affiliates, regardless of their size, should be available to members and provide them with useful services such as networking opportunities, advocacy involvement, and monthly newsletters.

Last year, NAA engaged in a stakeholder's experience study with McKinley Advisors to evaluate the current structure for serving the rental housing industry and identify opportunities to deliver a more consistent stakeholder experience across all networks. The NAA Stakeholder Experience Task Force found that performance standards are a key element in the future of NAA and its affiliates. McKinley recommended NAA commit to high but realistic minimum performance standards to be met by all affiliates across a timeline that spans several years. The performance standards include three rollout cycles that lay out goals for operations, leadership, communications, advocacy, and stakeholder experience. Some of the goals and standards included in each cycle are:

- **Cycle One:** Maintain an active board; maintain monthly communication with members; offer at least one advocacy event annually; maintain an up-to-date events calendar; and promote Click and Lease exclusively.
- **Cycle Two:** Offer education opportunities; maintain an interactive website; require incoming affiliate presidents to complete leadership training; and maintain an association management system.



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- **Cycle Three:** Establish and realize annual political action committee fundraising goal; define and maintain term limits for board and committee chair positions; submit annual operating budget and establish annual strategic priorities and report on progress toward goals.

Organizational and operational standards help affiliates reach their full potential and maximize the impact delivered to the multifamily industry. According to the task force findings, “through a highly collaborative and innovative network, NAA and its affiliates deliver unparalleled resources and foresight that drive success in the rental housing community.” Standards of service and operations make our organizations strong, which in return makes our industry stronger.

Just as every management company has high expectations for serving residents, every affiliate needs core elements that constitute effective service. Having clear standards and expectations makes it easier for affiliates to meet them and to understand the level at which they should be performing. An association is only as strong as its weakest affiliate, which means the responsibility to standardize service and operations belongs to all of us.

NAA has been working with affiliates to gather feedback on goals and standards and how to implement them across the nation. FAA is here as a resource to help facilitate those standards and aid affiliates in making changes to function in the best way possible. ▲





# FAA Counts Wins for Affordable Housing and More

BY AMANDA GILL

**T**wo laws that were passed during the 2019 Florida Legislative Session will help developers continue to deliver much-needed apartment homes across the state by clarifying the impact fee process and limiting the powers of municipalities to mandate affordable housing. Both laws represent wins for the Florida Apartment Association, whose members advocated for them as legislative priorities. As of press time, the laws were awaiting the signature of Gov. Ron DeSantis.

In addition, FAA and other members of the Sadowski Housing Coalition secured \$200.6 million for affordable housing programs within the state budget. This funding amounts to a 62 percent increase from the 2018-2019 budget, which is critically needed to help address housing affordability challenges throughout the state.

## HOUSE BILL 207: CLARIFYING THE IMPACT FEE PROCESS

*HB 207, which was sponsored by Rep. Byron Donalds (R-80), passed the House on March 27 by a vote of 101 to 12. Upon receipt of HB 207, Senate leadership withdrew the bill's committee assignments and sent it straight to the Senate floor. HB 207 passed by a vote of 39 to 1 on April 4.*

Impact fees are taxes that developers pay to local governments when constructing a new apartment community. These fees are intended to pay for the additional

resources, such as schools, parks, or fire services, that will be needed by the population generated by the construction project — in other words, to offset the impact the development is expected to have on the current community.

Unfortunately, Florida's statutes lacked clarity regarding how impact fees should be calculated and how the revenue could be used within the local government's budget. In some cases, impact fees were being used to pay for earlier capital projects — meaning they were not available to offset the impact of the current project.

In addition, current law does not specify when local governments can collect impact fees, which has resulted in varying procedures at municipalities across the state and complicated processes for developers who do business in various regions.

The passage of this legislation was a critical victory for multifamily construction projects because it will establish consistency by allowing impact fees to be collected only when building permits are issued and will earmark impact fee revenue for acquiring or improving capital facilities to serve the population generated by the new development. Overall, these policy changes will make it easier for multifamily developers to operate across the state. In turn, this will allow the apartment industry to continue to grow, which will result in more jobs and rental housing for Floridians.

The law is to go into effect July 1 unless vetoed by the governor.

## HOUSE BILL 7103: INCLUSIONARY ZONING UNFUNDED MANDATE PREEMPTION

*HB 7103, which was sponsored by Rep. Jason Fischer (R-16), passed the House on April 25 by a 72 to 37 vote and was amended and passed by the Senate on May 3. HB 7103 will require local governments that have an inclusionary zoning mandate to provide incentives to fully offset a developer's costs for his/her affordable housing contribution.*

Legislation was introduced to prohibit local governments from enacting



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**FOR MORE ON THE EFFECTS OF MANDATORY INCLUSIONARY ZONING VS. VOLUNTARY INCENTIVES, SEE APARTMENTS BY THE NUMBERS ON PAGE 30.**

inclusionary zoning policies, which require a specific portion of new apartments to be “affordable housing.” FAA supported this legislation because although inclusionary zoning mandates are well-intentioned, in practice, they can discourage development or renovation of multifamily housing where it is needed most.

At the behest of local municipalities, the legislation was amended to allow inclusionary zoning mandates only if the local government offsets the costs of building the affordable units through incentives or funding.

As a result of this policy change, local governments will have some skin in the game and an incentive to work collaboratively with multifamily developers to address housing affordability concerns across the state.

The law is to go into effect when it is signed by the governor.



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## OTHER NOTABLE 2019 FAA ADVOCACY VICTORIES

### *House Bill 891/Senate Bill 620: Military-Friendly Initiatives*

One of the provisions in HB 891, sponsored by Rep. Mel Ponder (R-4), and SB 620, sponsored by Sen. Doug Broxson (R-1), as introduced would have capped a service member’s security deposit and advance rent to the aggregate amount he/she would otherwise pay in 60 days rent. While this

policy is well-intentioned, the 60-day cap could be problematic for individuals who require a higher security deposit. After this bill was introduced, the association met with the bill sponsors and committee chairs in the House and Senate to discuss the industry’s concerns.

As a result of FAA’s advocacy, the cap on security deposits and advance rent was removed from both HB 891 and SB 620 before the legislation reached the House and Senate floor. Therefore, the version of SB 620 that passed the Senate on April 26 and the House on May 1 did not include this cap.

### *House Bill 565/Senate Bill 958: Housing Discrimination*

HB 565, introduced by Rep. Patricia Williams (D-92), and SB 958, introduced by Sen. Darryl Rouson (D-19), would have amended Florida statute to allow individuals who believe they are victims of housing discrimination to proceed straight to legal remedies without going through the free administrative complaint process. The passage of this legislation could have resulted in increased legal costs for apartment communities that would be faced with frivolous and unvetted lawsuits. In light of these concerns, FAA met with committee leaders in both the House and Senate to discuss the potential negative implications of this legislation.

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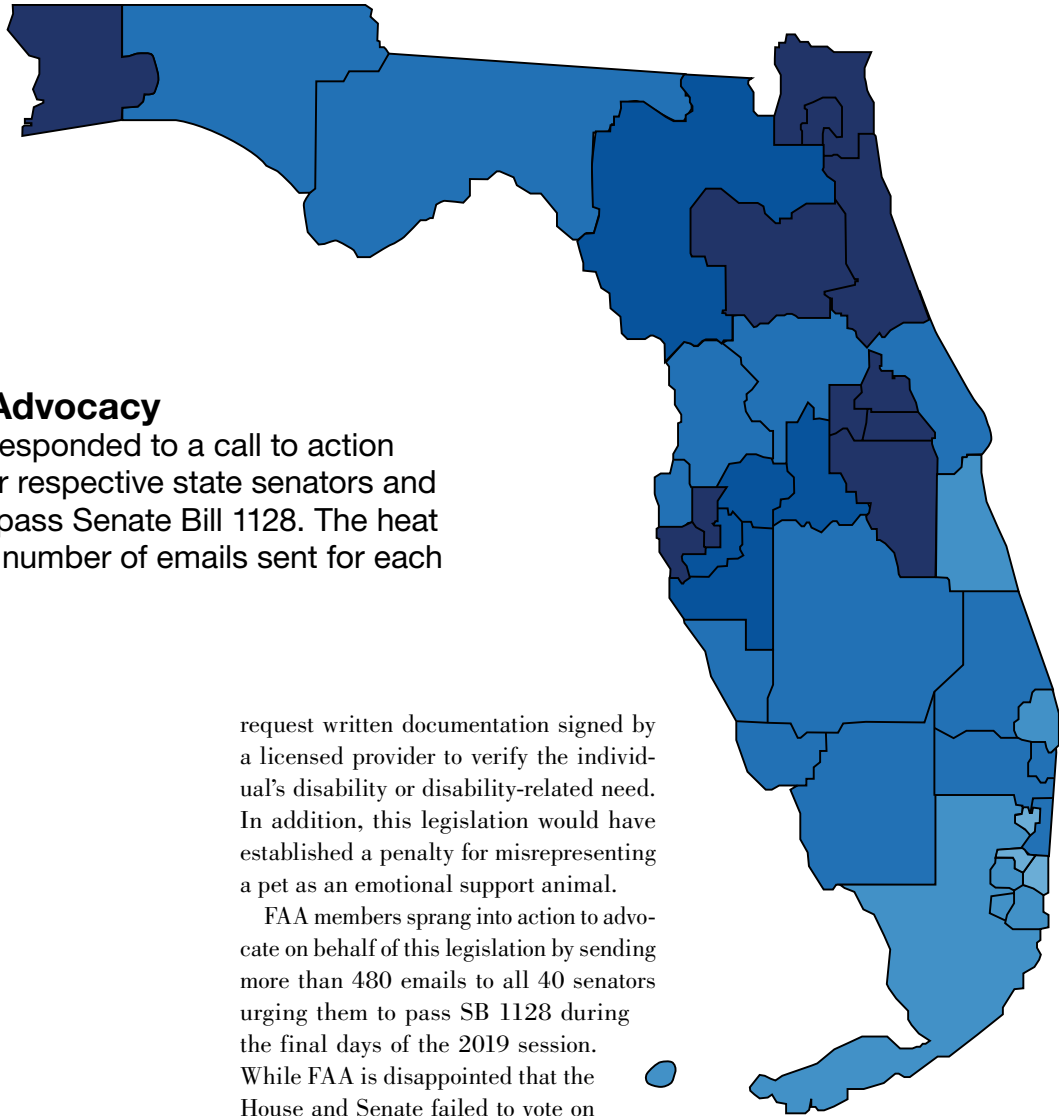
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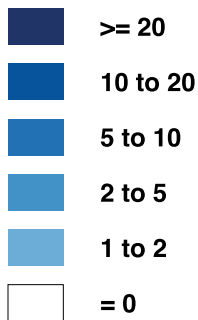
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## Grassroots Advocacy

FAA members responded to a call to action by emailing their respective state senators and asking them to pass Senate Bill 1128. The heat map shows the number of emails sent for each Senate district.



request written documentation signed by a licensed provider to verify the individual's disability or disability-related need. In addition, this legislation would have established a penalty for misrepresenting a pet as an emotional support animal.

FAA members sprang into action to advocate on behalf of this legislation by sending more than 480 emails to all 40 senators urging them to pass SB 1128 during the final days of the 2019 session. While FAA is disappointed that the House and Senate failed to vote on this important legislation before the end of the session, the association should be very proud of the industry's grassroots advocacy efforts. This policy priority will remain high on FAA's to-do list for the 2020 legislative session.

### Local Licensing Preemption Legislation Failed

House Bill 3, introduced by Rep. Michael Grant (R-75), passed its committee assignments with favorable recommendations and was later passed by the House on April 11. Unfortunately, HB 3 died in the Senate Community Affairs Committee. Senate Bill 1748, introduced by Sen. Keith Perry (R-8), did not have a committee hearing and was indefinitely postponed.

HB 3 and SB 1748 would have prohibited local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor or journeyman licensed by the

state. The bill would have specifically prevented local governments from requiring a license for the following jobs: painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, and decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

While this legislation was not one of FAA's priorities during the 2019 session, FAA strongly supported the passage of HB 3 and SB 1748 because this legislation would have protected apartment communities and supplier members from additional regulations that could be imposed by local governments. Since occupational licensing reform was strongly supported by DeSantis, this legislation or a similar proposal is expected to be reintroduced during the 2020 session. ▲

As a result of FAA's advocacy efforts, both HB 565 and SB 958 died in committee and did not advance to the House or Senate floor during the 2019 session.

### House Bill 721/Senate Bill 1128: Emotional Support Animal Legislation Update

Both HB 721, introduced by Rep. Sam Killebrew (R-41), and SB 1128, introduced by Sen. Manny Diaz Jr. (R-36), advanced through their respective committee assignments during the first six weeks of session. By the time both bills were on the House and Senate floor, the legislature's primary focus was finalizing the state budget. Unfortunately, the clock ran out before this legislation could receive a floor vote in the House and Senate during the 2019 session.

If passed, these companion bills would have reduced emotional support animal fraud by allowing a housing provider to





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– **Jordan Petras, Carroll Management**

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# Smokable Medical Marijuana: MUM's the Word from Florida Courts

BY RYAN MCCAIN

**S**ome five years after the Florida Legislature passed the state's first medical marijuana law, questions abound within the multifamily industry and elsewhere.

The first law, enacted in 2014, was the "Medical Use of Marijuana" or "MUM" law, codified as Florida Statute 381.986. Its latest amendments, effective March 18, expressly permit smokable medical marijuana. Meanwhile, during the 2016 General Election, voters passed a constitutional amendment concerning the right to possess or use marijuana for medical purposes.

Following the debut of these fairly recent Florida laws allowing the use of marijuana for medical purposes under certain legally and medically regulated circumstances, a number of new and different issues have emerged within the residential rental apartment property management industry — and thus within the area of residential landlord-tenant law — respecting how to respond to and deal with tenants possessing or smoking medical marijuana within apartment communities.

Federal law still prohibits possessing or consuming marijuana in any form. Not only would this seem to make possession or use of smokable marijuana illegal, but it would also seem to prohibit the use of any marijuana product (whether or not medically prescribed as now allowed under Florida law), in any form, including vapors, capsules, or patches. Moreover, under the federal Quality Housing and Work Responsibility Act of 1998 ("QHWRA"), HUD-assisted housing providers are required to deny admission to, or even evict, assisted housing recipients if anyone in their household has been determined to be illegally using a controlled substance. This includes marijuana, since it is classified as a Schedule I drug.

## WHY IT ALL SEEMS SO NEW AND DIFFERENT

Because the Florida legislation enacting these laws is new, there is little case precedent. Indeed, Florida courts have yet to issue opinions construing MUM other than the following instances:

- Holding that medical necessity may be a defense to criminal charges
- Upholding the validity of a petition for a state constitutional amendment on medical marijuana use for persons with certain medical conditions
- Holding that the constitutional amendment did not permit individuals to grow, cultivate, or process marijuana for personal medical use



As a result, property managers increasingly find themselves confused concerning the rights and responsibilities of their property, the medical marijuana patient, and other tenants' rights, particularly considering that so many standard apartment leases or their addenda contain drug-free policies, smoke-free provisions, or both.

Therefore, questions arise whether there may be some circumstances in which tenants must be permitted to smoke medically prescribed marijuana within an apartment community, whether an apartment community's management possesses any

discretion as to whether or not to allow it, and whether smoking medical marijuana may be grounds for a notice to cure or terminate a lease.

### FEDERAL LAW IS THE HIGHEST

While the federal Controlled Substances Act lists marijuana as a Schedule I drug (meaning the substance is federally prohibited in almost all circumstances), Florida's state medical marijuana law permits the use of medical marijuana for certain medically approved conditions. This difference creates a conflict between

Florida and federal laws as they pertain to the use of medically prescribed marijuana in numerous contexts, including within apartment communities.

Our system of government, known as federalism, combines an overall federal government with separate state governments, all within a single political system. While federal law is supreme, states have a right to make their own laws that do not conflict with the federal code or constitution. Article VI, Paragraph 2 of the United States Constitution, known as the Supremacy Clause, provides that the federal constitution and laws take precedence over any state law or constitution. It does not, however, allow the federal government to veto state laws before state laws take effect. After a state law takes effect, federal courts have power to find the state law violates the federal code or constitution, but that has not happened in the case of Florida's medical marijuana law.

### THE LANDLORD'S ARGUMENT SMOKING MEDICAL MARIJUANA IS NOT A REASONABLE ACCOMMODATION

In the context of medically prescribed marijuana use within an apartment community, landlords in jurisdictions outside of Florida have asserted it is not a reasonable accommodation to require a landlord to violate federal law by allowing a tenant to engage in conduct that is legal under state law. Thus, landlords should be free to prohibit the use or possession of marijuana as part of their smoke-free policies, even where medical marijuana use is allowed under state law. Landlords may, on the other hand, *voluntarily* allow medical marijuana use in Florida, where it is legal.

The foregoing is not, however, the end of the story. Entering stage left are the disability (also called "handicap") provisions of the Fair Housing Act. The Fair Housing Act defines as "handicapped" or "disabled" a person who has a physical or mental impairment that substantially limits one or more major life activity, has a record of having such an impairment, or has been regarded as having such an impairment. The act makes it unlawful for a housing provider to discriminate against such a person by refusing to make "reasonable accommodations" in rules, policies, practices, or services when such accommodations may



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19-18525

be necessary to afford such a person equal opportunity to both use and enjoy a dwelling. Notably, an accommodation is “reasonable” only if it does not cause or create an “undue burden.”

When a disability is not obvious, a housing provider may ask for information necessary to show the person meets the act’s definition of disability, states a needed accommodation, and shows the relationship between that person’s disability and the need for the requested accommodation. In the context of medically prescribed marijuana, the Fair Housing Act allows a

housing provider that elects to allow medical marijuana use to require a copy of the tenant’s medical marijuana use card.

Whereas an apartment community might *voluntarily* elect to allow the use of medically prescribed marijuana, landlords in other jurisdictions have asserted they should not be *required* to approve a violation of federal law by doing so. Their contention is that the accommodation would not be a “reasonable” one since it would place an “undue burden” upon the landlord by forcing him or her to condone the violation of federal law. In addition,

marijuana smoke, like tobacco or any other smoke, has a strong and distinctive odor that disturbs and offends others. This odor directly results in neighboring residents complaining to the landlord and even demanding to vacate the property early before their lease expires. In addition, it can discourage prospective residents from leasing at a property where they observe marijuana smoking.

## DOES THE CONTROLLED SUBSTANCES ACT PREEMPT (SUPERSEDE) MUM?

While case law from other jurisdictions, construing other states’ medical marijuana laws, is not binding in Florida, the cases are at least worth noting as rough possible outcomes. Some examples:

- An Alabama federal court held: “Congress expressly disclaimed in the Controlled Substances Act any intention to preempt state law completely.” The Controlled Substances Act did not preempt state medical marijuana law, and the defendant was not entitled to reasonable accommodation under the Fair Housing Act.
- A federal judge in Connecticut ruled that the Controlled Substances Act did not preempt state law prohibiting employers from discriminating against authorized persons who use medicinal marijuana.
- In the state of Washington, a federal judge ruled that, because there was no duty to reasonably accommodate tenant’s medical marijuana use under the Fair Housing Act, Americans with Disabilities Act, or Rehabilitation Act, the tenant evicted for drug use was not entitled to assert the medical necessity defense in action alleging failure to accommodate.

These and other medical marijuana issues are expected to unfold in Florida courts over the coming years, and FAA and its membership should continue to stay updated and educated on this issue as much as possible. ▲

*This article is for informational purposes only and should not be construed as legal advice. For guidance regarding specific situations, please contact your own attorney.*

Ryan McCain is a partner at Barfield, McCain PA.



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# Hello Alfred Hand at Boca

BY RANDA GRIFFIN

**B**etween the stress of work, everyday responsibilities and errands, sometimes it can seem like there just aren't enough hours in the day. Boca City Walk, located in South Florida, has taken steps to help their busy residents by providing them with their own personal butler in the form of Hello Alfred.

Hello Alfred is a personal concierge service that partners with communities to help residents get things done and reclaim their time, according to Hello Alfred's regional manager Sharmeen Ferrell. Residents simply request a service on their app, such as grocery shopping, dog walking, picking up dry cleaning, or tidying the apartment, and "Alfreds" come in and complete the task.

"Hello Alfred is a residential experience company on a mission to make trusted, personal help a utility that's actually built into people's homes," Ferrell said.

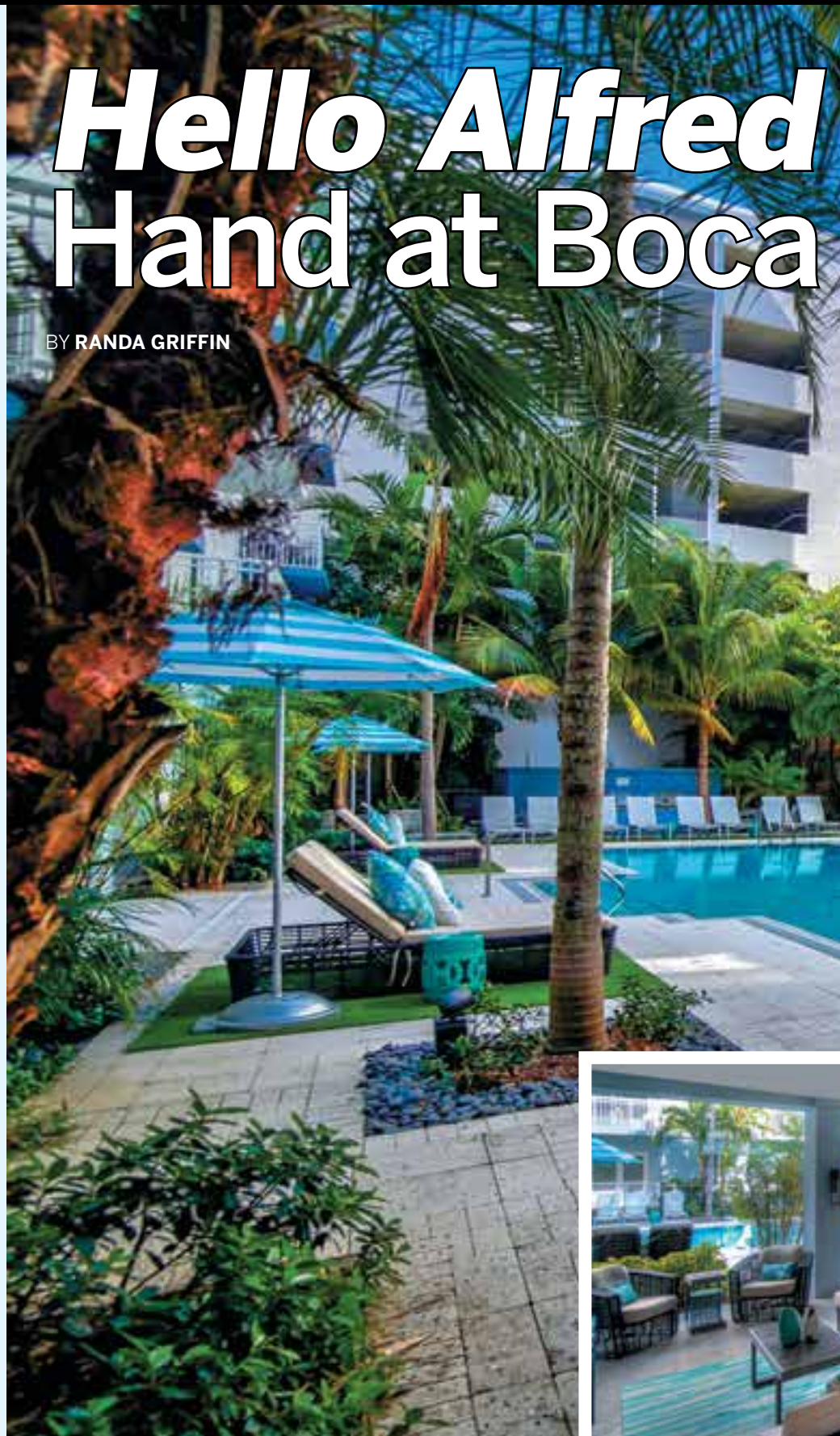
Alfreds are employed by Hello Alfred and given authorization by residents to enter units to complete their weekly tasks.

"It's the same Alfred each time, so residents get to know them on a personal level and feel comfortable," said Crystal Perez, community manager. "They even leave personalized notes in the apartment for residents."

Perez said Alfreds will sometimes attend community events so they can meet residents and connect with them. She said the overall feedback she's received from residents who use the service has been positive.

"Residents are excited to have this service available," she said. "Everyone's so busy that it's nice to come home and not have to worry."

Along with its new butler service, the community, managed by Greystar, provides





# Offers Helping City Walk



## BOCA CITY WALK FAST FACTS:

Units: 229  
Managed by: Greystar  
Location: Boca Raton  
Built: 2016  
Pet-friendly





residents with numerous ways to relax whether at the coffee café, 24-hour fitness center, outdoor grill area, or pool deck.

“We also have a community bicycle program with bikes residents can reserve and take out with their guests,” Perez said.

Located in downtown east Boca Raton, the community is situated close to grocery stores, shopping centers, nightlife, the beach, and local parks, making it a prime location, Perez said.

She said the location is not only nice for residents, but also ideal for the Hello Alfred service because stores and restaurants are conveniently located nearby.

The units themselves have modern touches, some with 12-foot ceilings and private balconies.

“All of the units have a washer and dryer, stainless steel appliances, large walk-in closet and open floorplan,” she said. “It’s a boutique-style property. It’s up-to-date with the latest services, so it’s pretty modern.”

Perez said compared to the larger communities nearby, Boca City Walk provides residents with a more personal home experience.

“It’s a little more intimate here,” she said. “Residents are friends compared to the larger projects, which can be less personal.”

The luxury amenities and personal touches at Boca City Walk make it not only a home for residents, but a helping hand in getting through life’s weekly stresses with Hello Alfred.

“We have something unique to offer that our competitors [do] not,” said Perez. “It’s a great amenity to have.” ▲



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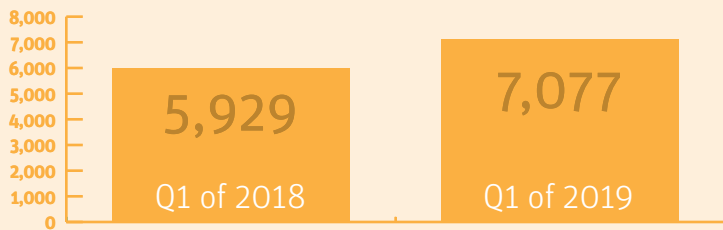
### ORLANDO

Voluntary Incentives for Affordable Housing Development  
(Ordinance of 2-22-1993): A development that allocates at least 20% of the total dwelling units to affordable housing may be eligible for:

- Reduced or waived fees
- Density bonus
- Alternative development standards
- Expedited permitting

**UNIT GROWTH** - 2,572 affordable units created from 2006 to 2019 (13 years)

#### UNITS UNDER CONSTRUCTION



CONSTRUCTION GROWTH = **19.36%**

#### AVERAGE ASKING PRICE FOR ONE BEDROOM

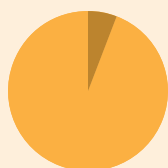


RENT GROWTH = **4.33%**

#### OCCUPANCY

**94.7%**

Q1 of 2019



## Inclusionary Zoning Mandate

### PALM BEACH COUNTY

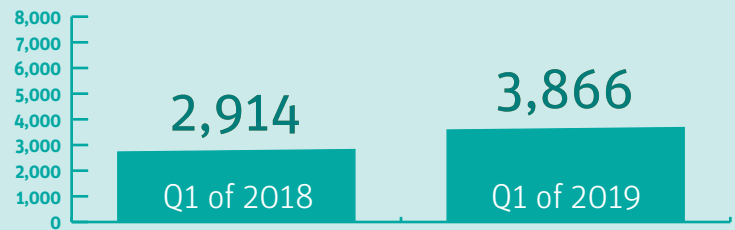
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Developments that create the required number of affordable units are eligible for:

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- Relief from some property development regulations, including traffic performance standards

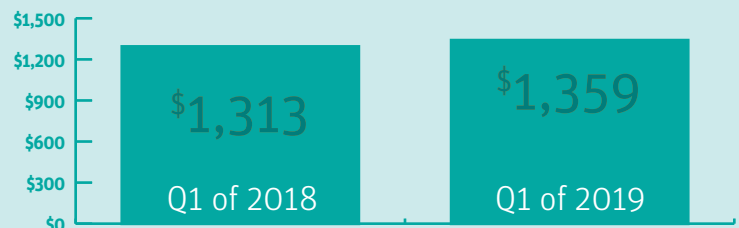
**UNIT GROWTH** - 873 workforce units created from 2006 to 2019 (13 years)

#### UNITS UNDER CONSTRUCTION



CONSTRUCTION GROWTH = **32.66%**

#### AVERAGE ASKING PRICE FOR ONE BEDROOM



RENT GROWTH = **3.50%**

#### OCCUPANCY

**93.9%**

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