

HOUSING FOR OLDER PERSONS – WHAT IS '55 AND OLDER' HOUSING?

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Effective March 12, 1989, it became unlawful to discriminate in any activities relating to the sale or rental of a dwelling because of race, color, religion, sex, handicap, familial status or national origin. Of particular concern to your Association is the addition of "familial status" to the classes protected under Title VIII of the Civil Rights Act of 1968. Familial status is defined as one or more individuals, who have not attained the age of 18 years, being domiciled with a parent or guardian, or the designee of such parent. An exemption under the Fair Housing Act, the Housing for Older Persons Act of 1995, and comparable legislation adopted by the State of Florida and local authorities is the only way to enforce any restrictions purporting to prohibit the permanent occupancy by children or regulate the activities of children under most circumstances. If the Association complies with the Federal mandates of the Housing for Older Persons Act and the Administrative Regulations regarding same, it will be able to promulgate Rules restricting children. To qualify under the Act the housing provider must be intended and operated for occupancy by persons age 55 and older, and

1. At least eighty (80%) percent of the occupied units must be occupied by at least one person age 55 or over (the term "occupied" is defined in the act, a temporarily vacant unit is considered occupied as is one occupied on a consistent periodic basis);
2. The housing provider must publish and adhere to policies and procedures demonstrating an intent to provide housing for persons 55 years of age, or older; and
3. The housing provider must engage in appropriate age verification procedures designed to ensure that future occupancy complies with the "55 and over" requirement (the law requires the housing provider prepare and renew surveys at least every two (2) years).

The first step in the process for qualifying as "Housing for Older Persons" is to conduct a survey of the residents of the community. The Association must prepare a summary of the survey and keep that record available for inspection in connection with any investigation of the Fair Housing Laws. The Association must collect copies of documents evidencing the age of the occupants of your community, such as driver's licenses, military identifications, immigration paperwork, passports, voter registration cards, birth certificates and the like. In the case of a birth certificate, the name on the certificate should match the name of the occupant. If the name is different for any reason (marriage, name change, etc.) the occupant should provide the Association an affidavit that he or she is the same individual named in the certificate. If none of the above documents are available, the unit occupant may submit an Affidavit that he or she meets the age criteria, although this is not recommended. Additionally, the new administrative rules published by the Department of Housing and Urban Development allow the housing provider (in this case, the Association) to obtain an Affidavit from someone who knows the age(s) of the occupant(s) and states his or her basis for the knowledge. The use of the latter type of Affidavit should be reserved for situations where obtaining the above named document(s) or self-certification Affidavit has proven difficult or impossible.

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Regulations published by HUD, define temporarily vacant units as occupied for the purpose of the occupancy threshold. Therefore, if the residents of a unit are only seasonal occupants or are otherwise absent from the unit for a temporary period of time (vacation, hospital stay, staying with relatives, etc.) and intend to return to the unit, the unit is considered occupied and is counted in the computation. On the other hand, if the unit is leased, the lessees are considered the "occupants" of the unit, not the unit owners, even if the lease is a seasonal lease.

The second part of the test requires the housing provider to publish and adhere to policies and procedures which demonstrate an intent to provide housing for persons 55 years of age or older. In essence, this means that the housing in question must, in its marketing to the public and in its internal operations, hold itself out as housing for persons age 55 or older. Factors considered are:

- a. The manner in which the housing facility is described to prospective residents.
- b. The nature of any advertising designed to attract prospective resident.
- c. Age verification procedures.
- d. Lease provisions.
- e. Written rules and regulations.
- f. Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules and regulations.

Thus the minimum procedures include:

1. ***Community Census and Age Verification:*** Verify the age of all current residents in order to determine compliance with the 80% threshold requirement. The Association should maintain these records in a form similar to the member roster, indicating the unit number the resident's name (whether seasonal, permanent or lessee), the resident's date of birth, the type of verification of age provided and the date the verification provided. The actual verification documents may be maintained in the unit files or in such other manner the Association deems appropriate. The survey must be updated at least every two years.
2. ***Amend the Declaration or other document of highest priority to preclude residency by individuals below age 55, unless they are accompanied by a person age 55 or over.*** This cannot be done by Board Resolution alone as membership voting requirements in governing documents are the standard.
3. **Adopt Rules and Regulations and publish procedures** designed to maintain a community for residents 55 or older.

After the housing provider finishes the surveys, the age verification, and the adoption and of an appropriate document change they must register with the Florida Commission on Human Relations pursuant to Florida Statutes, Section 760.29(e). This agency has adopted a rule governing registration and all qualified communities must comply with this rule. Since the statute and rule both require that communities qualify as housing for older persons and provide a penalty of \$500 for knowingly submitting false information, it is imperative that the community is in compliance with law and qualifies as housing for older persons.

The pertinent points of this rule are:

- Communities claiming an exemption under Section 760.29(4), Florida Statutes, must register with the Florida Commission on Human Relations and submit the statutorily required documentation to the Commission in the manner prescribed.
- Subsequent documentation must be submitted biennially on the first day of the month or up to seven days thereafter of the anniversary of the initial registration.
- The information in the Commission's registry is a public record.
- The Commission's registry is not admissible to prove compliance by the community with the requirements of the Statute.
- The biennial registration fee is \$20.00.
- Any community that knowingly submits false information will be assessed a \$500.00 fine.
- Association boards should be particularly concerned with this last statement, since filing the registration letter when the association has failed to update its census appropriately and/or failed to maintain documentation proving the ages of the residents could easily be interpreted as a "knowing" violation of the statute, justifying a fine.
- Accordingly, it is important to ascertain whether the Association qualifies before filing the registration.

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