

HOUSING FOR OLDER PERSONS – AGE 55 PLUS COMMUNITIES

An exception to the prohibition against discrimination on the basis of familial status (more commonly referred to as discrimination against families and children) is created under state and federal fair housing laws for those housing providers that qualify as “providers of housing for older persons”. There are two types of such communities, age 55 plus communities and those designed for persons 62 and older. This article addresses only communities operated for persons age 55 or older.

To qualify, a housing provider/community must meet three criteria:

1. **80% Occupancy** - 80% of the occupied units must be occupied by at least one person 55 years of age or older. Units occupied by bona fide caretakers or employees are not considered in the count of “occupied units”. 24 CFR 100.305
2. **Intent to provide Housing for Older Persons** - Housing provider/community must show its intent to operate as housing for persons age 55 plus:
 - a. Must publish and adhere to policies and procedures demonstrating its intent to provide housing for older persons.
 - b. Must maintain consistent application of procedures
 - c. Must reflect intent in advertising and public postings
 - d. Must not use the word “adult” to show its intent because “adult” is any one 18 or older.
 - e. If language in deed or other documents is inconsistent with intent, HUD shall consider “documented evidence of good faith attempt to remove such language in determining whether the housing facility or community complies”. 24 C.F.R. 100.306(7)(c).
3. **Verification of Age of Occupants** – Verify age of occupants at time of occupancy and update verification every two years.
 - a. Policies must require compliance with age verification procedures. The best documentation of age is government-issued identification, such as drivers license, passport. Alternative methods are available if such documentation cannot be provided. 24 C.F.R. 100.307(7)(f).
 - b. The biennial age survey must show 80% occupancy by someone age 55 or older.
 - c. You may use the same proof of age originally provided by the tenant if you verify the same tenant is in the home/unit.
 - d. The biennial survey must be maintained and available for public inspection upon request. The documentation of individual residents, however, is not open to public inspection.

All three criteria must be met to qualify as a provider of housing for older persons who are age 55 or older.

If a complaint of discrimination is made on the basis of familial status against a housing provider operating as an age 55 plus community, the investigation will usually:

1. examine whether the community is qualified at the time of the alleged discrimination,
2. review all rules, regulations, governing documents, and policies,
3. examine how rules, regulations, governing documents and policies are implemented,
4. review age verification documentation, and
5. look at the granting of exceptions to the age requirements, if any.

Discrimination on the basis of familial status is not the same as discrimination on the basis of age, although age is considered an indicator of such discrimination. If a community does qualify as a provider of housing for older persons, it may develop policies and rules that would be discriminatory in other settings, such as specifying a minimum age for residents or prohibiting the use of common facilities based on age.