

HUD MEMO

Conversion to 55+

As you may know, the Housing for Older Persons Act (HOPA) regulations have not allowed for the conversion of an existing all-age community to a 55+ community after May 3, 2000 (the end of the HOPA transition period). After that date, only new communities could achieve 55+ status in most circumstances.

HUD has issued a new interpretation which, under certain circumstances, will now allow an all-age community to become a 55+ community. This could have a major impact on the manufactured home community sector. The main beneficiary of the new interpretation will be communities that have evolved into de facto 55+ communities but could not officially become one because of the existing rules.

Under the new interpretation, an all-age community can become a 55+ community with these stipulations:

1. Unlike the original transition period, the community owner cannot discriminate against families with children to achieve the requirement of 80% of units being occupied by at least one person 55 or older. It cannot reserve unoccupied homes for 55+ residents, advertise as a 55+ community or evict families to achieve the 80% threshold.
2. If a family with children seeks to occupy a home before the 80% threshold is met, the community cannot prevent them from doing so.
3. The community cannot make existing families feel "unwelcome" or otherwise encourage those families to move, but nothing prevents the community owner from "offering positive incentives that might lead some families to seek housing elsewhere."

If the community attains the 80% threshold without discriminating against families during the process, it may then "publish and adhere to policies and procedures that demonstrate an intent to provide housing for persons 55+ or older and comply with the verification of occupancy rules." The community CANNOT publish its policy prior to attaining the 80% threshold.

Following is the HUD memorandum on the change and a copy of the original HOPA rules for your information and for any members interested in becoming a 55+ community. You should strongly advise any members that want to pursue 55+ status under this new interpretation to consult with legal counsel.

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US DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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SUBJECT:

CONVERSION TO HOUSING FOR OLDER PERSONS UNDER THE FAIR HOUSING ACT AND THE HOUSING FOR OLDER PERSONS ACT OF 1995 (HOPA)

The Fair Housing Act (the Act) and the Housing for Older Persons Act of 1995 (HOPA) amending it, excludes from the Act's prohibitions against familial status discrimination communities and facilities that have met certain conditions demonstrating an affirmative intent to provide housing for older persons.

A question has arisen regarding whether an existing community or facility can become housing for older persons after May 3, 2000, the expiration date of the transition period provided for in HUD's HOPA regulations, 24 CFR § 100.305 (e).

The Department's HOPA regulations established a transition period to provide a mechanism for communities or facilities to become housing for older persons, if they had abandoned or did not achieve such status before HOPA. The transition period allowed a community or facility that did not yet meet all of the HOPA requirements to deny housing to families with children in order to get 80 percent of its units filled by at least one person 55 or older. During the transition period, if a housing facility or community demonstrated an intent to be housing for older persons and adopted age verification procedures, it could reserve all unoccupied units for occupancy by at least one person 55 or older. If an eligible family with children wanted to occupy a vacant unit during the transition period, a community or facility that had not yet met the 80 percent threshold could have legally refused to admit the family. However, at the end of the transition period, any community that failed to have 80 percent of its units occupied by at least one person at least 55 years of age had to cease reserving unoccupied units for persons over 55 years of age and could no longer discriminate against families with children.

This memorandum provides clarification on how communities that did not convert to "housing for older persons" by May 3, 2000, can become housing for older persons. There are two ways to establish housing for older persons after the transition period; conversion and new construction.

First, an existing community or facility can convert to "housing for older persons" if 80 percent of its occupied units become occupied by at least one person 55 years of age or older. Unlike during the transition period, housing providers cannot discriminate against families with children in order to achieve 80 percent occupancy by persons 55 or older. In other words, a community or facility cannot reserve unoccupied units for persons 55 or older, advertise itself as housing for older persons, or evict families

with children in order to reach the 80 percent threshold. If a family with children seeks to occupy a vacant unit in an existing facility before it has met all of the requirements necessary to become housing for older persons, the community or facility must permit the family to live there. Additionally, the facility may not make existing families with children feel unwelcome or otherwise encourage those families to move. While the facility or community may not take any measures deliberately designed to discourage families with children from continuing to reside in the community, nothing prevents the offering of positive incentives that might lead some families to seek housing elsewhere. If the community or facility achieves the 80 percent threshold, without discriminating against families with children, it may then publish and adhere to policies and procedures that demonstrate an intent to provide housing for persons 55 years or older and comply with verification of occupancy roles. The facility or community cannot publish such policies or procedures in advance of meeting the 80 percent threshold (without discrimination) as such policies and procedures would have a chilling impact upon potential applicants or current occupants who are families with children.

A second way to establish housing for older persons is to construct a new housing community or facility and meet the three requirements set forth in HOPA:

- (1) 80 percent of the occupied units are occupied by at least one person 55 years of age or older,
- (2) the housing community or facility publishes and adheres to policies and procedures that demonstrate an intent to provide housing for persons 55 years or older; and
- (3) the community or facility complies with roles issued by the Secretary for verification of occupancy through reliable surveys and affidavits.

Newly-constructed housing includes a facility or community that has been entirely unoccupied for at least 90 days prior to re-occupancy, due to renovation or rehabilitation. Newly-constructed housing is permitted to discriminate against families with children until 25 percent of its units are occupied. If, at that time, the housing community or facility does not have a resident 55 years or older in at least 80 percent of occupied units, then the community or facility may not discriminate against families with children.

For further information on this subject, please contact Renae Campbell, at (202) 619-8046, ext. 7246.

Maintaining 55+ Age Status: Remember to Take Regular Surveys of Residents

Many communities have operated successfully as “housing for older persons”, limiting residency in some fashion to households where at least one member is age 55-or-over. In order to maintain “housing for older persons”, certain requirements must be met.

Under the Federal Fair Housing Act, housing qualifies for the 55 or older exemption when it is “intended and operated for occupancy by persons 55 years of age or older, and when three additional requirements are satisfied: (i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older; (ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and (iii) the housing facility or community complies with rules for verification of occupancy. Sometimes, park operators overlook or do not understand the ongoing requirement for age verification.

The Federal regulations regarding this matter state that: (a) in order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed under this title, verification of compliance with §100.305 [i.e., at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older] through reliable surveys and affidavits. (b) A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement. (c) the procedures described in section (b) of this paragraph must

provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years.

A survey may include information regarding whether any units are occupied by persons described in paragraphs (e)(1), (e)(3), and (e)(4) of §100.305 (d). Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community: (1) Driver’s license; (2) Birth certificate; (3) Passport; (4) Immigration card; (5) Military identification; (6) Any other state, local, national, or international official documents containing a birth date of comparable reliability; or (7) A certification in a lease, application, affidavit, or other document signed by any member of the household age 18 or older asserting that at least one person in the unit is 55 years of age or older. (e) A facility or community shall consider any one of the forms of verification identified above as adequate for verification of age, provided that it contains specific information about current age or date of birth. (f) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section. (g) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person 55 years of age or older. Such evidence may include: (1) Government records or documents, such as a local household census; (2) Prior forms or applications; (3) A statement from an individual who has personal knowledge of the age of the occupants. The individual’s statement must set forth the basis for

such knowledge and be signed under the penalty of perjury. (h) Surveys and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy. (i) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

It is clear from the regulations above that a community wishing to operate as housing for older persons must make a conscious effort to obtain the specific information described, and to keep doing so at least every two years.

It is also of particular importance to make sure that a summary of occupancy surveys is created and kept on file by management for inspection upon reasonable notice and request by any person. Many park operators that conduct their surveys overlook the requirement to create summaries and retain those summaries for inspection.

Any community that wishes to maintain status as housing for older persons with an age limit of at least 55 years or older should review its procedures and policies regarding age verification, and maintain adequate records of its efforts in order to be prepared in the event that the age limitation of the property is someday challenged.

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