

## The Housing for Older Persons Act

The Fair Housing Act exempts “housing for older persons” from the Act’s prohibition of discrimination against families with children in two categories: 100% of the occupants must be 62 years of age or older or 80% of the occupied units must be occupied by at least one person who is 55 or older. The new requirements under HOPA are equivalent to the original provisions of the Fair Housing Act regarding the age categories. HOPA also requires that a facility or community seeking to claim the 55 and older exemption show the following two factors: (1) that the housing be intended and operated for persons 55 years of age or older; and (2) the housing facility or community publish and adhere to policies and procedures that demonstrate its intent to qualify for the exemption. The housing facility or community must also comply with rules issued by HUD for the verification of occupancy.

One major change made by HOPA was the elimination of “significant facilities and services” previously required by the Act to meet the 55 and older exemption. The Act originally required that housing designed for persons 55 years of age or older provide “significant facilities and services specifically designed to meet the physical or social needs of older persons.” This requirement has now been eliminated from the law.

HOPA also added the new requirement that a housing facility or community seeking the 55 and older exemption comply with HUD regulations on verification of occupancy. This should be performed through reliable survey, affidavit or other documentation of the individual’s choosing, a copy of which should be retained for record keeping purposes, which confirms that the 80% threshold is being met. A self-certification of his or her age by an individual will be adequate to meet this standard. Copies of information gathered in support of the occupancy verification may be kept in a separate file with limited access, created for the sole purpose of complying with HOPA and should be reviewed and updated every 2 years.

In regards to the housing facility or community publishing and adhering to policies and procedures that demonstrate its intent to qualify for the 55 and older exemption, the regulations state that simply publishing that this is an “adult community” is not sufficient to meet this standard. Clear policies and procedures must be published and adhered to. When advertising, the guidelines state that the best practice is to refer to such housing as “Senior Housing” or “A 55 and older community” or “retirement community” and discourages the use of the term “adult housing” or similar language. While the use of adult housing or similar phrases, standing alone, do not destroy the intent requirement of HOPA, they regulations state that they send a clear message which is inconsistent with the intent to be housing for older persons. If a community or facility has clearly shown its intent in other ways, and clearly meets the 80% requirement, then the intent requirement has been met even if the phrase “adult” or similar terminology is occasionally used. However, a community that describes itself as “adult”, leaves itself vulnerable to complaints about its eligibility for the exemption, which could result in an investigation or litigation to determine whether the community in fact qualifies for the exemption.