

E K M A R K & E K M A R K, L.L.C.

ATTORNEYS AT LAW

IMPLEMENTATION OF THE HOUSING FOR OLDER PERSONS ACT - FINAL RULE

The Department of Housing and Urban Development ("H.U.D.") recently published rules that age-restricted communities must abide by to qualify for the "housing for older persons" exemption under the Fair Housing Act. Following is a brief summary of the requirements:

1. At least 80% of the occupied units must be occupied by one person 55 years of age or older.
2. The Association must intend and operate its facilities for persons 55 years of age or older, and must publish and adhere to policies and procedures that demonstrate this intent.
 - a. Factors by H.U.D. considered relevant in determining whether the Association has complied with this requirement of intent:
 - (1). The manner in which the community is described to prospective residents;
 - (2). Any advertising designed to attract prospective residents;
 - (3). Lease provisions;
 - (4). Written rules, regulations, covenants, deed or other restrictions;
 - (5). The maintenance and consistent application of relevant procedures;
 - (6). Actual practices of the community; and
 - (7). Public posting in common areas of statements describing the community as housing for persons 55 years of age or older.
 - b. Avoid phrases like "adult living" or "adult community."
 - c. Based on the examples provided by H.U.D., the Association also should provide all occupants with its rules regarding age restriction, and inform realtors of this restriction.
3. The Association must verify that it complies with the occupancy requirements in the manner required by H.U.D.
 - a. Within six months of the publication of these rules, the Association must develop procedures for routinely determining the occupancy of each unit. Such procedures may be a part of a normal leasing or purchasing arrangement.
 - b. Additionally, the Association must provide for regular updates of this initial information supplied by the occupants. These updates must take place at least once every two years and must comply with H.U.D. requirements.
 - c. A summary of the occupancy surveys must be made available for inspection upon reasonable notice and request by any person.

The foregoing is a general overview of an issue and is not intended as specific legal advice regarding any particular situation. Associations are advised to seek competent legal counsel when confronted with legal issues. If you have any questions, please contact Ekmark & Ekmark at 480-922-9292.