

Age-Restricted Communities Frequently Asked Questions and Answers

The Federal Fair Housing Act generally prohibits discrimination against any person because of familial status in the course of selling or renting a residential dwelling.¹ “Familial status” is defined as one or more persons under the age of 18 who live with a parent or legal guardian.² Thus, the Federal Fair Housing Act makes it illegal to refuse to sell or rent a residential dwelling to an individual with children under the age of 18. However, housing intended and operated for occupancy by persons 55 years of age or older is expressly exempt from the prohibition against discrimination based on familial status in selling or renting a residential dwelling, so long as the residential community meets specific requirements.³ The following frequently asked questions and answers address these specific requirements and related issues concerning housing for older persons. “**Housing for older persons**” as used in this document means housing intended and operated for occupancy by persons 55 years of age or older.

1. **What must a residential community do to qualify for the housing for older persons exemption?**

Answer: To qualify for the exemption, the residential community must comply with all of the following requirements:

- (i) at least 80% of the *occupied* residential dwellings in the residential community are occupied by *at least 1 person* who is 55 years of age or older;
- (ii) the residential community publishes and adheres to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older; and
- (iii) the residential community:
 - a. develops procedures for routinely determining the occupancy of each residential dwelling in the community (including the identification of whether at least 1 occupant of each residential dwelling is 55 years of age or older);
 - b. is able to verify compliance with the 80% occupancy requirement through reliable surveys and affidavits in response to a complaint filed under the Federal Fair Housing Act; and
 - c. establishes and maintains appropriate policies that require occupants to comply with the age verification procedures developed by the residential community.⁴

¹ 42 U.S.C.A. § 3604.

² 42 U.S.C. § 3602(k).

³ 42 U.S.C.A. § 3607(b).

⁴ 24 C.F.R. § 100.305-100.307.

2. Must all occupants of a residential dwelling be 55 years of age or older for the community to qualify for the housing for older persons exemption?

Answer: No. 80% of the occupied residential dwellings in the community must be occupied *by at least 1 person who is 55 years of age or older.*⁵ The residential community may set forth the age restrictions, if any, for the remaining occupants of each residential dwelling that counts towards the 80% occupancy requirement and for the occupants of any residential dwellings in the community that are not occupied by at least 1 person 55 years of age or older, if any.⁶

Note: The restrictions for Chambers Creek and Fairway Pines provide that no person under 21 years of age may occupy a residential dwelling in the community.⁷

3. What if a residential dwelling that is counted toward the 80% occupancy requirement is temporarily vacant?

Answer: A residential dwelling is still considered “occupied” for purposes of satisfying the 80% occupancy requirement even if the residential dwelling is temporarily vacant, so long as the primary occupant (who is 55 years of age or older) has resided in the residential dwelling during the past year and intends to return on a periodic basis.

4. Are employees of the residential community and personal care providers who are under 55 years of age allowed to reside in the residential community without jeopardizing the community’s housing for older persons exemption?

Answer: Yes. A residential community may still satisfy the 80% occupancy requirement even if there are residential dwellings that are occupied by (i) employees of the residential community and their family members who are under 55 years of age, provided the employees perform substantial duties related to the management or maintenance of the residential community, or (ii) persons who are under 55 years of age and who are necessary to provide reasonable accommodation to disabled residents.⁸ The number of residential dwellings in the community occupied solely by such employees of the residential community and personal care providers would be excluded from the total number of occupied residential dwellings used to calculate the 80% occupancy requirement for purposes of qualifying for the housing for older persons exemption.

⁵ 42 U.S.C.A. § 3607(b)(2)(C)(i); 24 C.F.R. § 100.305(a).

⁶ 24 C.F.R. § 100.305(h).

⁷ Article II, Section 2.1, of the Declaration for Chambers Creek; Article II of the Supplemental Declaration for The Highlands [The Highlands, Section 4].

⁸ 24 C.F.R. § 100.305(e)(3)-(4).

5. **Are persons who are under 55 years of age restricted from visiting residents of a residential community that qualifies for the housing for older persons exemption?**

Answer: No. The housing for older persons exemption pertains to the primary occupants of residential dwellings in a residential community, and not the guests of such occupants. Persons who are under 55 years of age may visit or temporarily occupy the residential dwelling of a resident who lives in a residential community that qualifies for the housing for older persons exemption, subject to any other restrictions applicable to the residential community.

Note: The restrictions for Chambers Creek and Fairway Pines provide that a person under 21 years of age may temporarily occupy a residential dwelling as a guest of an occupant who is 55 years of age or older for a period of not more than 30 consecutive days and not more than 90 days in any 12 consecutive month period.⁹

6. **Can the owner of a residential dwelling in a residential community that qualifies for the housing for older persons exemption lease his residential dwelling to a person who is under 55 years of age?**

Answer: Generally, yes. However, since the housing for older persons exemption pertains to the primary *occupant* of a residential dwelling (and not the owner), leasing a residential dwelling in a residential community that qualifies for the housing for older persons exemption to a person who is under 55 years of age may jeopardize the residential community's exemption status if the tenant's occupancy results in less than 80% of the residential dwellings in the community being occupied by persons 55 years of age or older. The residential community may also have other restrictions on leasing residential dwellings to persons who are under 55 years of age.

Note: The restrictions for Chambers Creek and Fairway Fines provide that a prospective tenant of a residential dwelling in the community must submit to the Chambers Creek Community Association, Inc. or Fairway Pines at The Highlands Community Association, Inc., as applicable, a written certificate as to the tenant's compliance with the 55 years of age or older 80% occupancy requirement. Upon receipt of such certificate, the Board of Directors of the respective Association will determine whether the tenant's proposed occupancy of the residential dwelling is in compliance with the 80% occupancy requirement and either grant or deny the tenant's proposed occupancy on that basis.¹⁰

7. **How often must the residential community provide updates, through surveys or other means, to determine the occupancy of each residential dwelling in the community (including the identification of whether at least 1 occupant of each residential dwelling is 55 years of age or older)?**

⁹ Article II, Section 2.1, of the Declaration for Chambers Creek; Article II, paragraph (d), of the Supplemental Declaration for The Highlands [The Highlands, Section 4].

¹⁰ Article II, Section 2.3, of the Declaration for Chambers Creek; Article II, paragraph (h), of the Supplemental Declaration for The Highlands [The Highlands, Section 4].

Answer: At least once every 2 years.¹¹ A survey may also include information regarding whether any occupied residential dwellings are occupied by persons who are under 55 years of age and are (i) employees of the residential community or (ii) personal care providers.

Note: The restrictions for Chambers Creek and Fairway Pines provide that the respective Association must update its age records on all occupants of all residential dwellings in the community by surveys or other means at least once every 2 years.¹²

8. **What is considered reliable documentation used to establish the age of the occupants of a residential community?**

Answer: Any of the following documents, provided each document contains specific information about current age or date of birth: (i) driver's license; (ii) birth certificate; (iii) passport; (iv) immigration card; (v) military identification; (vi) any other state, local, national, or international official documents containing a birth date; or (vii) 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 1 person in the household is 55 years of age or older.¹³

9. **What if the occupants of a residential dwelling refuse to comply with the residential community's established age verification procedures?**

Answer: The residential community may consider the residential dwelling to be occupied by at least 1 person 55 years of age or older if it has sufficient evidence, such as (i) government records or documents (for example, a local household census), (ii) prior forms or applications, or (iii) a statement from an individual who has personal knowledge of the age of the occupants and the individual's statement sets forth the basis for such knowledge and is signed by the maker under penalty of perjury.¹⁴

10. **Is it lawful to market the 20% of the residential dwellings in a residential community that are not required to be occupied by at least one person 55 years of age or older to prospective tenants or purchasers who are under 55 years of age or to families with children under the age of 18?**

Answer: Yes. However, the marketing must clearly identify the residential community as housing for older persons.

Note: The restrictions for Chambers Creek and Fairway Pines require any sales contract or lease agreement for a residential dwelling in the community to include a provision which states that the residential dwelling is located in an age-restricted community as allowed under applicable law and that, except as otherwise set forth in

¹¹ 24 C.F.R. § 100.307(c).

¹² Article II, Section 2.1, of the Declaration for Chambers Creek; Article II, paragraph (e), of the Supplemental Declaration for The Highlands [The Highlands, Section 4].

¹³ 24 C.F.R. § 100.307(d)-(e).

¹⁴ 24 C.F.R. § 100.307(g).

the applicable Declaration, at least 1 person occupying the residential dwelling must be at least 55 years of age or older and there may be no person under 21 years of age occupying the residential dwelling.¹⁵

11. Can a residential community that qualifies for the housing for older persons exemption impose different restrictions on persons under 55 years of age who are permitted to reside in the community?

Answer: Yes. Since the housing for older persons exemption exempts a residential community from the Federal Fair Housing Act's prohibition against discrimination based on familial status, such residential community may establish different restrictions pertaining to persons under 55 years of age who reside in the community.

Note: The restrictions for Chambers Creek provide that persons 21 years of age or older who occupy a residential dwelling in the community that is also occupied by a person 55 years of age or older have the right to use all of the common area in the community for as long as they reside in the residential dwelling, subject to other applicable rules and regulations.¹⁶

¹⁵ Article II, Sections 2.3 and 2.4, of the Declaration for Chambers Creek; Article II, paragraphs (g) and (h), of the Supplemental Declaration for The Highlands [The Highlands, Section 4].

¹⁶ Article II, Section 2.1, of the Declaration for Chambers Creek.