

OPA! HOPA!

By: John P. Hale, ABR, CRS, GRI, REALTOR®

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Discrimination in any form is almost always a bad thing – there are some exceptions. Age discrimination, for example – especially as it may apply to all things related to real estate - is strictly prohibited by the Federal Fair Housing regulations published in the late 1960's. However, an exception to this was made in a follow-up federal regulation known as HOPA (Housing for Older Persons Act), located at the Department of Housing and Urban Development's 24 CFR (Code of Federal Regulations) Part 100 Subpart E, which was published as the implementation of the final rule in the Federal Register on April 2, 1999. Many of us think that's a good thing.

This rule implements the HOPA amended / interpreted requirements for qualification for the housing of persons who are 55 years of age or older - so called: "housing for older persons" exemption established in the Fair Housing Act. Specifically:

100.305 80 percent occupancy.

(a) In order for a housing facility or community to qualify as housing for older persons under § 100.304, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.

They also have additional, detailed provisions in this rule about how to deal with vacancies, honesty/verification of ages, possible exceptions, etc.

What the rule doesn't specifically address though, is what may be done with the remaining 20 percent of the population of the subject community. Simply put, it is up to each community to publish its own policies and rules about this issue.

This is the issue that some folks don't seem to understand very well. Every community that is claiming the exemption from the age discrimination act is free to establish whatever policies, rules, procedures, restrictions and practices it chooses. The preamble to the rule offers this discussion:

There continues to be confusion concerning what is often referred to as the 80/20 split. HOPA states that the minimum standard to obtain housing for persons who are 55 years of age or older status is that "at least 80%" of the occupied units be occupied by persons 55 years or older. There is no requirement that the remaining 20% of the occupied units be occupied by persons under the age of 55, nor is there a requirement that those units be used only for persons where at least one member of the household is 55 years of age or older. Communities may decline to permit any persons under the age of 55, may require that 100% of the units have at least one occupant who is 55 years of age or older, may permit up to 20% of the occupied units to be occupied by persons who are younger than 55 years of age, or set whatever requirements they wish, as long as "at least 80%" of the occupied units are occupied by one person 55 years of age or older, and so long as such requirements are not inconsistent with the overall intent to be housing for older persons.

Whatever policy is established, it must be published and adhered to, and they must periodically audit themselves to ensure compliance - as this requirement from the regulation provides:

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 paragraph (b) of this section 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.

DISCLAIMER

John P. Hale is a licensed real estate agent in Maryland and Pennsylvania. He is affiliated with Coldwell Banker Residential Brokerage in Westminster, Maryland. John has been licensed since 2000 and also practiced in Tucson, Arizona for many years. Mr. Hale holds the following designations and certifications awarded by the National Association of REALTORS® (NAR) and other authorized institutions: ABR-Accredited Buyers Representative, AHWD-At Home With Diversity, CNE-Certified Negotiation Expert, CRMS-Certified Risk Management Specialist, CRS-Certified Residential Specialist, CTA-Certified Tourism Ambassador, e-PRO-Online Real Estate Practice, GRI-Graduate of Realtor Institute, MRE-Master of Real Estate, MREP-Mortgage Real Estate Professional, and MRP-Military Relocation Professional.

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