

- ADULT COMMUNITIES, THE 55+ ASSOCIATIONS:** Laws of the land today say that you cannot discriminate for age along with other issues. The Federal Housing for Older Persons Act of 1995 allowed association and communities to be exempt from age discrimination if they followed certain guidelines (55+). Basically and simply it says that one person living in each home must be 55 years of age or older and than no one under 18 can reside in the home and there are other requirements.

76. *I live in an adult community. One of our homeowners is in a nursing home and his 18-year-old granddaughter and her boy friend are residing in his home. The exterior of the home is in disrepair. Our president states that our association attorney says that she can stay as long as her grandfather gives permission. I am concerned not only about our property value, but that we comply with the Housing of Older Persons Act. Can you provide any guidance to our problem?* BR- New Port Richey

The Federal Register, Part IV, 24 CFR Part 100 [for a copy go to www.talkwithcam.com and search under information] agrees with your attorney's answer. Children 18 or older can live in the unit. However, that does not mean that the property can decline in maintenance and lower the value of the community. The board must evaluate the maintenance standard for the community and require that this home meet the standard. This may involve a difficult task to communicate to the owner since he is in a nursing home. Your attorney should be able to help locate a trustee of the estate if the grandfather is unable to respond to the needed maintenance or repairs. Your first must determine a responsible party for the estate. Find out who is paying the fees. Search your records to find out if any emergency number or relative is listed. Your documents may allow the association to enter on the property to make necessary repairs. This is called self-help. It is extremely important to understand that self-help is not a carte blanche right by the association to enter on a property and make repairs. Notification to the owner is required because any expenses will be charge to the unit. I would suggest that the board seek guidance from the association's attorney before any self-help is initiated.

77. *Is the housing for older persons act a state law or a federal law? How does one get a copy of the law that applies to the 55 and older restriction on housing in the state of Florida? Can a subdivision already sold out and occupied change the covenants to specify 55 and older persons? If so, what are the requirements and what percentage of the owners must vote to change the subdivisions restrictions?* TS- Homosassa

It is both a federal act and a state act. There is a vast amount of information on the internet but I would suggest that you contact the Florida Commission On Human Relations, Housing For Older Persons division. One of the best sources of information is the Federal Register, Part IV, 24 CFR Part 100. The Florida Commission may provide a copy and other documents. As to changing your community, you would need to amend your documents. This will require an attorney to guide you through the process and he/she can advise you on the percentage needed to alter the documents.

78. *We are an over 55 community. When renting or buying, the prospective resident is asked to submit a photo ID with birth date. Is it legal to ask for a photo ID prior to purchasing or renting?* CD- Ft. Lauderdale

Yes, the Federal Act for Adult Communities requires the association to take a census ever two years to confirm that at least 80% of the homes are occupied by one resident who is 55 years of age or older. With that census, they are required to have an affidavit from each home that one person is 55 years of age or older. In addition, they must supply a copy of some identification with their age, sorry ladies you must be truthful and tell your age. To complete the association's records, it appears that your association is properly conducting the requirements by completing the unit records with the identification. In addition, each adult community must submit to the State a signed letter that the association has completed the necessary requirement for an adult community. The president must sign the letter. Since the president must sign the letter, he/she must truthfully have the documents available. If the records are falsely signed, then the president and the association could be held responsible. For more information contact the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, FL 32301

79. *We are an adult condominium and I understand the regulations concerning occupancy. The association recently passed an amendment to our documents stating that new owners must be over 55 years of age in addition to the occupants being over 55. Does this new rule conflict with state regulations?* HR- Safety Harbor

Federal and State laws say you [the association] cannot discriminate against any age in sales or rentals of real estate. The Adult Community Act is an exemption that allows communities to discriminate for occupancy as long as the community complies with other requirements. The rule that your board approved apparently would violate the Act because it will discriminate against buyers. Would the rule affect an adult child, under 55 years of age, buying a unit for their adult parents to occupy? The other part of the equation involves did the board seek guidance from an attorney in amending the documents? If a prospective buyer is refused and they file a lawsuit for discrimination, the board and their attorney must prove that the amendment is proper.

80. *A 52-year-old man and his 50-year-old wife are planning to purchase a unit in our 55 and older condominium. He wishes to do some fixing up. Can he stay overnight to do this? I feel that he may want to come down a couple times a year and stay for a week or two while he is fixing up. Can we allow this under the 20% rule?* ML- Tampa

This appears not to violate the Adult Association Laws; however, each association can place some rules that may disallow the occupancy. The procedures of your association's operations in enforcing the Adult Community Laws will have some bearing on the answer. The Law only requires 80% to have one person 55 years of age or older in resident. It could be possible for the new owner to rent the home to someone who is 55 or older. In most situations, I would not be concerned about a new owner who is

not 55 or older; however, you must understand that I do not know all the details of your community. In short, it does not appear that this would be a violation of the Adult community laws.

81. *In your column you quote The Adult Community Act and I have been unable to locate it on the Internet either through Federal or Florida government websites. If you have a website, would appreciate your sharing.* SS- Boynton Beach

The Federal Act is cited as Housing for Older Persons Act of 1995. The act in short form is only one page; however it impacts thousands of pages of information. The best printed document would be Federal Register, April 2, 1999, Part IV, HUD, 24 CFR Part 100, www.hud.gov/offices/fheo/seniors/hopa.pdf, or go to www.hud.gov. In 2000 the State of Florida provided that FS 760.29 was to be amended to follow the Housing for Older Person Act of 1995. You can obtain information from Florida Commission on Human Relations, PO Box 3388, Tallahassee, FL 32315 or on the state's web page at <http://fchr.state.fl.us>. In addition, you can go to my web page under information, www.talkwithcam.com.

82. *I live in 55 and older community with adult rules. The board has fought vigorously to maintain that designation. I have recently learned that one of the daughters of a board member very quietly moved in to one of the units and she is 50 years old. They keep a copy of all the resident's licenses and I wondered if I have a right to ask to see it to verify her age? Since they are a clique I suspect they will refuse my request. Do I have any rights in this situation? If she is under 55 and I strongly suspect she is, what impact does this have on the deed restrictions? My home is currently on the market and I would like to be able to offer it to individuals under 55. Can I do this? I really do not have a great deal of success with attorneys--I hope you can help me with this.* NS- Key Largo

The term adult community or 55+ does not mean that all residents need to be over 55 years of age or older. The law says that only one person 55 years of age or older must reside in each home and no one under 18 can live in the home. That means ownership has no limitations to this law, only residents. Take a man who is just 55 but is married to a young woman, say 39, and they rent a home from an owner who inherited the property from her grandfather even though she is only 17 years of age. As long as she does live in the home, it qualifies under the law in that the renter is 55. Yes, you can sell to any age but they must understand that someone must live in the home that is 55 or older and no one less than 18 years of age. The law involves residency, who lives in the property, and not ownership. There is also a 20% exemption of the homes that do not qualify as having no resident 55 or older. Take the man who is 55 and has a 39 year old wife. What happens if he dies and she now becomes the single resident? Because the home would fall under the 20% exemption, the home would not cause the association to lose the adult status. I am sorry that you do not trust attorneys, but in certain cases, you need to seek professional opinions or guidance. There is some attorney who can help you with your legal problems and you must learn to trust their guidance.

83. *I live in a community where we have deeded lots. We have discussed at a homeowners association meeting the pros and cons of becoming a 55+ community. We were told by one of our board members that if we were ever to sell our property we could only sell it to someone 55 or older. Is that statement correct assuming we have more than an 80% ownership factor?* GA- Davenport

I have received several similar questions about selling to buyers who are under the age of 55. When it comes to the way the Adult Community Act was written, it has no relation to ownership. It only refers to occupancy in that only one person living in the home must be 55 years of age or older and no one under 18 years of age may reside in the home. The 20% exception clause of the act only says that percentage of homes is exempt from having someone 55 or older living in the home. This allows heirs to live in the home and without being forced to sell because they are not 55.

84. *We live in an adult community. We have a situation where an under 55 person is making an application to move into the community. He is handicapped and has a mobile home he uses for transportation. Our community has rejected his application. Do not the federal laws protect handicap people?* SD- Spring Hill

Your one question has many issues in it. You could be addressing the adult community's approval to allow a person less than 55 years of age to move into the community. In that case, if no one will live in his home who is over 55, the association can reject the application, but only if they are rejecting all applicants under 55. If your association has a rule against mobile homes and trailers parked in the community, again they can reject the application only if he was not handicapped and plans to park it within the association. If you are addressing the situation of just handicap laws, if the only issue of occupancy is that he is handicapped, then the association cannot reject his application. In the situation where there is any question of possible discrimination, I strongly suggest that the board consult with an attorney for guidance. There are several laws that come into play, both federal laws and state laws. A violation of one may cause an error in any final decision.

85. *We want to petition the owners of our condominium to become a 55 and older community. Do we need to amend our documents? They do not say anything about age.* BH- Melbourne

Federal laws restrict discriminating for age, sex, religion, and other qualifications. Since you cannot restrict against age, you must qualify with exceptions. That means you must qualify under the Federal Fair Housing Act, January 4, 1995, called Housing for Older Persons Act of 1995. To do so you must amend your documents. That means you need the guidance of an attorney to make sure that you properly document the changes. If you do not make the proper changes, you could find your association in court charged with violation of discrimination acts.