

# What Can and Should be Said: Practical Issues in Implementing Age Restrictions under HOPA

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## Topics Covered

- Distinguishing Business Strategy from Marketing Message
- Disclosure of Age Restrictions
- Selling into the “20% Buffer”
- Definition of Occupancy
- Practical Issues for Tracking Occupancy
- Interface with Disability Law
- Other Hardship Situations
- Effect of State and Local Laws

1

## Distinguishing Business Strategy From Marketing Message

- ❖ There may be certain new home product in a certain location that is especially attractive to “empty-nesters”, but there is no such thing as age-targeted housing.
- ❖ Recall that housing discrimination based on familial status is prohibited, with a limited, specifically defined statutory exception for Older Persons under HOPA.
- ❖ Advertising that sends an age-restricted message for a non-HOPA community may be impermissibly exclusionary.

2

## Disclosure of Age Restrictions

- ❖ Advertising should include specific information about age-restricting covenants. “At least 80% (or more) must have 55+, no one under \_\_\_ may occupy”.
- ❖ Buyers should receive covenants and a full explanation of the age restriction and occupancy requirements at the point of sale.
- ❖ Sales agents need training not only on HOPA basics, but on “what ifs” as well.

3

## Selling into the 20% "Buffer"

- ❖ Historically, HUD interpreted the 20% exception narrowly, strictly as a "life change buffer" to allow younger residents to remain after a death or divorce without affecting the community's status.
- ❖ The 1999 regulations and recent policy pronouncements provide for more flexibility in making the buffer available to younger buyers, but this number and the message must be carefully controlled.
- ❖ Don't forget buyer expectations.

4

## Definitions of Occupancy

- ❖ Partly important to the HOPA census, but especially important to the exclusionary covenant.
- ❖ There is a need to strike a balance between those who want extended visits by grandchildren, and those who see an age-restricted community as a blissful haven from (especially) teenagers.
- ❖ If occupancy means staying overnight for at least 90 days in a 12-month period, grandkids can visit for summer vacation.

5

## Practical Issues in Tracking Occupancy

- ❖ HOPA regulations require “routine procedures” for verifying compliance with 80% occupancy test on ongoing basis.
- ❖ Methods are flexible, though regular surveys are suggested.
- ❖ Can obtain initial information with contract, but must check actual residents.
- ❖ Issuance of Community IDs to occupants provides a good capture point for age data.

6

## Interface with Disability Law

- ❖ Remember that HOPA is an exception statute, allowing an otherwise impermissible private covenant.
- ❖ Courts have found that waiver of an age-restricting covenant can be required as a reasonable accommodation of a buyer's disability.
- ❖ Cases are fact-specific, but trend appears to be that public policy supporting the disabled outweighs policy supporting Housing for Older Persons.

7

## Other Hardship Situations

- ❖ Some age-restriction covenants provide, in addition to statutory occupancy exceptions, Association Board authority to grant hardship waivers (i.e., for grandkids who lose parents).
- ❖ Important to disclose such an exception.
- ❖ Another approach is to stick to a bright line covenant but to waive enforcement for a certain period of time, allowing those with sudden hardships time to relocate.

8

## Effect of State and Local Laws

- ❖ State and local laws can be more stringent in terms of the occupancy required to achieve age-restricted status.
- ❖ California's Unruh Act does not have a numeric buffer, only certain categories of exceptions to 55+.
- ❖ Local authorities, especially those unfamiliar with age restriction and fearful of school impacts, may also be less flexible than HOPA.

9

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