

What Can I Say?
**Legal Considerations When Marketing
and Selling 50+ Housing**






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**Creating an Age-Restricted Community:
Overview of Housing for Older
Persons Act of 1995**

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Housing for Older Persons Act

Statutory Requirements

- At least 80% of occupied units must have at least one occupant who is 55+
- Must publish and adhere to policies demonstrating intent to comply
- Must comply with HUD rules for verification of occupancy



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HUD Regulations

“Housing Facility” or “Community”

- Any dwelling or group of dwellings governed by common set of rules
- Specifically includes condominium & HOA
- Cannot split a single building, but can have age-qualified neighborhood within PUD if separately marketed



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1. At Least 80% of Occupied Units Must Have at Least One Occupant 55 +

Calculation of 80%

- Don't count unoccupied units (but do count if just temporarily vacant)
- Don't count units occupied by management or maintenance staff
- Don't count noncomplying units occupied by disabled persons
- New communities don't need to satisfy 80% rule until 25% of units occupied



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Calculation of 80%

Unit Counted as Long as

- Unit is not rented out to a non-qualifying occupant
- Qualified Occupant returns on at least a periodic basis
- Qualified Occupant maintains legal & financial responsibility for unit



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2. Publish and Adhere to Policies and Procedures Demonstrating Intent to Operate as Housing for 55+

- ❑ **Some Relevant Factors**
 - Manner described to prospective residents
 - Advertising designed to attract qualified residents
 - Written rules, regulations, covenants or deed restrictions
 - Posting in common area statements describing community as housing for 55+



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3. Verification of Occupancy

- ❑ **Adopt Procedures for Reliable Verification**
 - Update occupancy information at least every 2 years
 - Obtain reliable documentation of age



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Marketing Considerations

Sales Approach

- Restriction on occupancy, not ownership
- May establish age restriction, if any, that applies to units not occupied by 55+
- May restrict children, if desired



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Legal Documentation

Elements of Occupancy Restriction

- Definition of “qualifying occupant”
- Minimum age permitted (if desired)
- Language regarding intent to comply
- Provisions for monitoring compliance
- Provisions for enforcement



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Other Considerations

- Addressing the 20%**
 - Definition of “qualifying occupant”
- Enforcement**
 - Must take measures to enforce restrictions



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HUD Involvement

- When does HUD become involved in determining whether HOPA compliant?**
 - Complaint filed by person alleging discrimination
 - HUD initiates investigation



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Liability Issues

- ❑ **Facility or Community liable if not compliant**
 - Good faith is not a defense
 - Developer can be liable if restrictions or procedures not correctly established or not enforced at outset

