

Adopted: Adopted as Amended – January 25, 2001

CONWAY PLANNING BOARD

MINUTES

JANUARY 16, 2001

A meeting of the Conway Planning Board was held on Tuesday, January 16, 2001 beginning at 3:14 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Sheila Duane; Selectmen's Representative, Gary Webster; Secretary, Conrad Briggs; Robert deFeyter; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

PUBLIC HEARING – PETITIONED ARTICLE – ARTICLE 147-6- DEFINITION OF A SENIOR HOUSING UNIT

Stephen Hallett appeared before the Board. The public hearing was opened at 3:14 p.m. Ms. Duane asked for public comment; there was none. The public hearing was closed at 3:15 p.m. Mr. Irving stated that there is still a concern with the age discrimination. Mr. Hallett stated that this is constantly done. Mr. Irving stated that there can be an age restriction in the covenants and deed. Mr. deFeyter stated that the Town Attorney's concern is this is being done town wide. Mr. Hallett stated that it is written so it is not spot zoning.

Mr. Briggs stated that this has been done in other New Hampshire towns and the Board should recommend it. **Mr. Briggs made a motion, seconded by Mr. Webster, to recommend the petitioned article. Motion carried with Mr. deFeyter voting in the negative.**

Meeting adjourned at 3:29 p.m.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary

PETITION FOR ZONING AMENDMENT

The undersigned, being twenty-five (25) or more registered voters in the Town of Conway, New Hampshire, hereby petition pursuant to the provisions of RSA 675:4 that the following article to amend the Conway Zoning Ordinance be submitted to the voters of the Town of Conway at the annual meeting to be held in March 2001.

I. Adopt New Definition Chapter 147, Zoning Ordinance:

“SENIOR HOUSING UNIT”

A dwelling, or portion thereof capable of providing living quarters limited to two (2) adults per unit, having a minimum age of sixty two (62) years old. Said dwelling unit(s) must be within a single building having at least twenty-five (25) overall separate units under the same roof. Said building must provide for a commercial kitchen and common dining facility as a minimum. Said **“SENIOR HOUSING UNITS”** shall be exempt from provisions under the existing definition of “Residential Unit”, which define a unit as providing a kitchen. **“SENIOR HOUSING UNITS”** within such an aforementioned age restricted “Retirement Housing Complex”, shall be allowed to have separate individual kitchens. For density purposes the overall building housing all said individual dwelling units within said building, under the same roof will be considered one unit.

HASTINGS LAW OFFICE, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

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HUGH W. HASTINGS 1914-1947

DAVID R. HASTINGS II
PETER G. HASTINGS
DAVID R. HASTINGS III
PETER J. MALIA, JR.
JOHN LISNIK, JR.

MEMORANDUM VIA FAX AND MAIL

TO: Thomas Irving, Town Planner

FROM: Peter J. Malia, Jr., Esquire 

DATE: January 15, 2001

RE: Petitioned Zoning Article on Senior Housing Unit

I have reviewed the letter to yourself from Stephen Hallett of NCRV, LLC, regarding the constitutionality of the proposed definition for "Senior Housing Unit." I have also reviewed the documents provided with that letter, and researched the constitutionality issue in both Federal and State law.

As a result, I am not in a position to alter or amend our concerns regarding the constitutionality of this proposed warrant article as set forth in the letter from Peter Hastings to yourself dated January 10, 2001. Please call me if you wish to discuss this further.

Furthermore, you had inquired as to whether the Town was obligated to place this Article, the constitutionality of which is in question, on the ballot. In my opinion, having been properly petitioned, the Town does have an obligation to place this Article on the ballot despite the questions surrounding its legality.

Conway memo01.Irving.011501

RECEIVED

JAN 12 2001

TOWN OF CONWAY



Mr. Thomas B. Irving
Planning Director
Town Of Conway
P.O. Box 70
Center Conway, NH 03813

January 12, 2001

Sent Via Fax and 1st Class mail this Date to above and Copies below to Town Attorney Directly.

Dear Tom,

As a result of the Pubic Hearing of Thursday, January 11, 2001, and the Memorandum from Conway Town Counsel together with your request for me to respond to his concerns, please find the following, all said legislation stems from the "Housing For Older Persons Act of 1995";

- Federal Law, by means of the "Fair Housing Amendments Act of 1988" specifically enables Municipalities, together with developers as well as other groups to discriminate for "All residents of a housing development to be deed restricted to persons 62 or older". I've enclosed the section a of; Public Health And Welfare 42 USCS / 3605. Please note section 3607.(2) (B).

The only change to this was legislation as it relates to deed restricted persons 55+ in age, as entered into law as H.R. 660 on 12/28/95. This revision eliminates the requirement that 55 and older housing provide significant facilities and services for its residents, in essence reducing the service aspect as it relates to such developments.

With respect to restricting and or establishing the numbers of units within a building this is clearly within the power of any town. We've reviewed this today with Amziah W. Craig, Director of Fair Housing Enforcement Division of U.S. Dept. of HUD, at Office of Fair Housing and Equal Opportunity at Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston Massachusetts. Please feel free to contact them directly. We have also spoke to the New Hampshire Attorney Generals Office, as it relates to number of unit restrictions within a development. They also support and state that nothing prohibits a municipality to set limits on the amount of units within a building, taking into account other considerations such as building codes etc...

We run into such municipality-imposed limits on a regular basis, and can provide samples to the board if you so desire. The main reason to establish a limit above a threshold of about 15 units is to insure that the project is truly a "Retirement

PO Box 172 • North Hampton, NH 03862 • tel: 207-324-9452 • fax: 207-490-3661

Development", and not a means for someone to try and slip in the back door and get more units when the development really isn't "retirement friendly".

I'm hopeful that this information is helpful, if I can provide you any further information prior to the continuation of our public hearing scheduled for 12/17/2001 at 3:00 PM; please do not hesitate to ask me. Please call me directly at (207)-363-0358, my fax number is (207)-351-1381, my cell number is (603)-661-9723.

Amziah W. Craig, from HUD was going to mail me additional sets of the formal full laws, I will give them to you and have a set for the Town Attorney on Wednesday, so they are available for your reference and use in the future.

Cordially

Stephen T. Hallett
Managing Partner NCRV, LLC

CC: Peter Hastings and Peter Malia via Fax This date
Enc: Materials on Laws

Ref
KF
65
.S3
TITLE
42
v. 14
POCKET
PART

(KEPT IN
REFERENCE,
MAIN
FLOOR)



**UNITED STATES
CODE SERVICE**



Lawyers Edition

Issued in

May, 1995

CUMULATIVE SUPPLEMENT

By The Publisher's Editorial Staff

**42 USCS
The Public Health
and Welfare
§§ 2571-3700**



Lawyers Cooperative Publishing
Aqueduct Building, Rochester, New York 14694

IT-140

Law Review Articles:

Ulrich, The Fair Housing Amendments Act of 1988: new litigation looks for housing advocates, 46 *Bia Law J* 333, November 1990.

Payne, Fair housing for the 1990s: the Fair Housing Amendments Act and the Ward's Cove [Wards Cove Packing Co v Atonio, 109 S Ct 2115] case, 18 *Real Est L J* 307.

INTERPRETIVE NOTES AND DECISIONS

Black female insurance agent fails to state cause of action under 42 USCS §§ 3604 and 3605 against insurer based on insurer's alleged practice of "redlining," defined as arbitrary refusal to underwrite risks of persons residing in predominantly black neighborhoods, since neither section prohibits alleged hazard insurance redlining practice. *Mackey v Nationwide Ins. Cos.* (1984, CA4 NC) 734 F2d 419, 33 CCH EPD ¶ 34048, 1984-1 CCH Trade Cases ¶ 65795.

Evidence supported court's finding that mortgage lender did not engage in discrimination in financing of housing under 42 USCS § 3605, where evidence submitted showed large number of mortgage loans granted in white areas but not minority areas, but borrower failed to present evidence regarding how many applications were received and rejected in particular geographical areas, and statement by bank officer that urban renewal area could not afford proposed home in \$90,000 range reflected lender's legitimate financial concern regarding market value of property and likelihood that property would retain adequate value over term of loan. *Cartwright v American Sav. & Loan Assn.* (1989, CA7 Ind) 880 F2d 912.

Fair Housing Act is applicable to property and casualty insurance written or withheld in connection with purchase of real estate. *NAACP v American Family Mut. Ins. Co.* (1992, CA7 Wis) 978 F2d 287, 24 *ER Serv Jd* 278, reh. en banc, den. (CA7) 1992 US App LEXIS 32171 and petition for certiorari filed (Mar 8, 1993).

Developer stated claim under Fair Housing Act where he alleged that mortgage lenders refused because of ethnic and racial bias to provide long-term mortgage financing for 7 apartment buildings in predominantly minority neighborhoods. *Ring v First Interstate Mortg., Inc.* (1993, CA8 Mo) 984 F2d 924.

Minority homebuyers' claim against area planning association for violating 42 USCS § 3605 is dismissed, where planning association makes no commercial real estate loans

and in fact has no connection whatsoever in financing of real estate, since § 3605 deals only with associations whose business consists in whole or part in making commercial real estate loans. *Steppe v Beverly Area Planning Assn.* (1987, ND Ill) 674 F Supp 1313.

Claim that mortgage lender engaged in discriminatory practice of redlining survives summary judgment, where plaintiffs presented proof that (1) creditworthy buyers submitted application for loan to purchase housing located in minority neighborhood and were rejected for questionable reasons, and (2) lender rejected higher percentage of conventional mortgage loan applications originating from integrated or minority neighborhoods than from white neighborhoods over 6-year period, because plaintiffs have presented evidence from which reasonable minds could find that lender's actions were motivated by intent to discriminate. *Old West End Assn. v Buckeye Federal Sav. & Loan* (1987, ND Ohio) 673 F Supp 1100.

Discrimination and conspiracy claims against mortgage loan arranger must fail, even though arranger which assisted in completion of mortgage loan application and transmission to lender affirmed lender's allegedly discriminatory policy which led to rejection of plaintiffs' application, because discriminatory policy was lender's and loan was rejected by lender, not arranger. *Old West End Assn. v Buckeye Federal Sav. & Loan* (1987, ND Ohio) 673 F Supp 1100.

Summary judgment denying black couple's 42 USCS § 3605 claim is inappropriate, where couple has presented evidence that their mortgage loan application was rejected even though they were qualified for loan requested, because conflicting inferences from loan file data showing similarly situated applicants of other races both rejected and accepted leave open question as to whether couple was denied loan on basis of race. *Watson v Pathway Financial* (1988, ND Ill) 702 F Supp 186.

§ 3606. Discrimination in the provision of brokerage services

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin.

(As amended Sept. 13, 1988, P. L. 100-430, § 6(b)(1), 102 Stat. 1622.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1988, Act Sept. 13, 1988 (effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note), inserted "handicap, familial status".

RESEARCH GUIDE

Federal Procedure I. Ed:

1 Fed Proc L 156, Civil Rights § 11:212, 357, 358, 360, 501.

INTERPRETIVE NOTES AND DECISIONS

Black female not hired for job of leasing consultant may pursue 42 USCS § 3606 claim against real estate management corporation, where complaint alleges corporation policy to exclude blacks from positions where they might lease property to other blacks, because broad language of § 3606 implies right of action for denying employment with

housing rental firm on basis of race, given antidiscriminatory aims of Fair Housing Act (42 USCS §§ 3601 et seq) and nature of "back door" scheme alleged, which would deter blacks' access to rental housing. *Favors v MAQ Management Corp.* (1990, ND Ga) 131 F Supp 941.

§ 3607. Religious organization or private club exemption

(a) Nothing in this title shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this title prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a

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commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b)(1) Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this title regarding familial status apply with respect to housing for older persons.

(2) As used in this section, "housing for older persons" means housing—

(A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) intended for, and solely occupied by, persons 62 years of age or older; or

(C) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Secretary shall develop regulations which require at least the following factors:

(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) persons residing in such housing as of the date of enactment of this Act who do not meet the age requirements of subsections (2)(B) or (C); Provided, That new occupants of such housing meet the age requirements of subsections (2)(B) or (C); or

(B) unoccupied units; Provided, That such units are reserved for occupancy by persons who meet the age requirements of subsections (2)(B) or (C).

(4) Nothing in this title prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(As amended Sept. 13, 1988, P. L. 100-430, § 6(d), 102 Stat. 1623.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1988, Act Sept. 13, 1988 (effective on the 180th day beginning after enactment, as provided by § 13(a) of such Act, which appears as 42 USCS § 3601 note) designated the existing provisions as subsec. (a); and added subsec. (b).

Other provisions:

Regulations clarifying the term "housing for older persons", Act Oct. 28, 1992, P. L. 102-550, Title IX, Subtitle A, § 919, 106 Stat. 3883, provides: "The Secretary of Housing and Urban Development shall, not later than 180 days after the date of the enactment of this Act, make rules defining what are 'significant facilities and services especially designed to meet the physical or social needs of older persons' required under section 807(b)(2) of the Fair Housing Act [subsec. (b)(2) of this section] to meet the definition of the term 'housing for older persons' in such section."

INTERPRETIVE NOTES AND DECISIONS

Nonprofit organization was not exempt under 42 USCS § 3607 as religious organization or private club, where although Catholic Church approved of organization of summer bungalows and permitted religious services on premises, there was no formal or legal relationship with Church, and where private club exemption did not apply to sale of bungalows but only exempted rental or occupancy of lodgings, United States v. Columbus Country Club (1990, CA 3 Pa) 915 F.2d 877.

Ordinance restricting to 4 the maximum number of unrelated occupants living in homes zoned for single families did not violate FHA, since ordinance fell within statutory exemption under 42 USCS § 3607(b)(1) permitting reasonable maximum occupancy restrictions that apply equally to all occupants, notwithstanding claim that ordinance was unreasonable because it had disparate impact on handicapped individuals, Elliott v. Athens (1992, CA 11 Ga) 960 F.2d 973.

Although subdivision homeowners' association was eligible for older persons' exemption under 42 USCS § 3607, association did not satisfy policies and procedure prong of statutory test for exemption, where association had not instituted age-verification procedures evidencing intent to provide housing for persons 55 years of age and older prior to taking action against younger homeowners with children, rule against residency by those under 18 years of age was not sufficient basis to qualify subdivision for older persons' exemption, association board failed to develop credible process for enforcing bylaws, and secretary of association testified that she did not believe that under 55 restriction bylaw amendment was enforceable, and association did not enforce it, Muscarello v. Mainland Section 1 &

2 Civic Ass'n (1993, CA 11 Fla) 3 F.3d 1472, 7 FLW Fed C 387.

For purposes of 42 USCS § 3604 action alleging discrimination on basis of familial status after trailer park owners refused rentals and sales to persons with children and to young adults, "older persons" exemption in § 3607(b)(2)(C) was affirmative defense and could not be basis for challenge to standing of plaintiffs, and evidence was insufficient to meet "older persons" exemption, where only 78.9 percent of units were occupied by older persons, Hosker v. Weathers (1993, CA 6 Ohio) 490 F.2d 913, 25 FR Serv Jd 988.

Mobile home park operators are not entitled to 42 USCS § 3607(b)(2) exemption from general prohibition of discrimination on basis of familial status, where operators' rules prohibit residence by children in their mobile home parks, because operators failed to prove that their parks (1) provide "significant facilities and services specifically designed to meet physical or social needs of older persons, or (2) that it is not practicable, due to high cost or otherwise, for them to provide such facilities and services, Park Place Home Brokers v. P-R Mobile Home Park (1991, ND Ohio) 771 F. Supp. 46.

Homeowners with small children lose challenge to residential subdivision restriction barring children under 16 years of age from residing in community, where age verification procedure verified that over 90 percent of houses in community had at least one resident who was over 55 years of age, association demonstrated numerous programs and facilities designed for elderly, and passage and enforcement of bylaws showed intent to provide housing for older persons, because community qualifies as "housing for older

Please Note

- Public and common areas must be accessible to persons with disabilities
- Doors and hallways must be wide enough for wheelchairs
- All units must have:
 - An accessible route into and through the unit
 - Accessible light switches, electrical outlets, thermostats and other environmental controls
 - Reinforced bathroom walls to allow later installation of grab bars and
 - Kitchens and bathrooms that can be used by people in wheelchairs.

If a building with four or more units has no elevator and will be ready for first occupancy after March 13, 1991, these standards apply to ground floor units.

These requirements for new buildings do not replace any more stringent standards in State or local law.

Housing Opportunities For Families

Unless a building or community qualifies as housing for older persons, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under 18 live with:

- A parent
- A person who has legal custody of the child or children or
- The designee of the parent or legal custodian, with the parent or custodian's written permission.

Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

Exemption: Housing for older persons is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State or local government program or
- It is occupied solely by persons who are 62 or older or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units; has significant services and facilities for older persons; and adheres to a published policy statement that demonstrates an intent to house persons who are 55 or older. The requirement for significant services and facilities is waived if providing them is not practicable and the housing is necessary to provide important housing opportunities for older persons.

A transition period permits residents on or before September 13, 1988, to continue living in the housing, regardless of their age, without interfering with the exemption.

If You Think Your Rights Have Been Violated

HUD is ready to help with any problem of housing discrimination. If you think your rights have been violated, you may fill out a Housing Discrimination Complaint form (which will be available for downloading soon!), write HUD a letter, or telephone the HUD Hotline. You have one year after an alleged violation to file a complaint with HUD, but you should file it as soon as possible.

What to Tell HUD:

- Your name and address
- The name and address of the person your complaint is against (the respondent)
- The address or other identification of the housing involved
- A short description of the alleged violation (the event that caused you to believe your rights were violated)
- The date(s) of the alleged violation

HASTINGS LAW OFFICE, P.A.
P.O. BOX 290 - 71 MAIN STREET
FRYEBURG, ME 04037

Phone: 207/935-2061

Fax Number: 1-(207) 935-3939

*** FAX MESSAGE ***

Date: 1/10/01

TO: Tom Irving
(Name)

FAX NO. _____

(Firm name)

FROM: Peter Hastings
(Attorney's name)
HASTINGS LAW OFFICE, P.A.
P.O. Box 290 - 71 Main Street
Fryeburg, Maine 04037
Tele: 1 (207) 935-2061

RE: Senior Housing Unit

Hard copy to follow:

Including this cover page, we are transmitting 3 pages.

COMMENTS:

If transmission is incomplete, please call 1-(207) 935-2061 and ask for assistance.

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

HASTINGS LAW OFFICE, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

DAVID R. HASTINGS 1847-1896
EDWARD E. HASTINGS 1879-1939
HUGH W. HASTINGS 1914-1967

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PETER G. HASTINGS
DAVID R. HASTINGS III
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TELEPHONE (207) 935-2861
FAX (207) 935-3992
E-MAIL: hlo@landmarknet.com

January 10, 2001

Via: Facsimile and U.S. Mail

Tom Irving, Town Planner
Town of Conway
P.O. Box 70
Center Conway, NH 03813

Re: Petition Zoning Article on Senior Housing Unit

Dear Tom:

You have asked me to review the petitioned article dealing with senior housing units. There is a proposal to amend the definition section of the ordinance so that a senior housing unit would allow multi-residences on a small lot (minimum size lot possibly) so long as the building exterior met the requirements of setback and other site plan review conditions. Furthermore, an existing building whether or not meeting site plan requirements would, as far as setback, be permitted to create multi-residential units. The only condition imposed is that the residents in each unit shall not exceed two and shall have a minimum age of 62 years.

I am concerned regarding this article as proposed for the following reasons:

1. The Town Zoning Ordinance basically is intended to control use of land rather than type of individuals occupying the same. A primary State and Federal requirement is that there shall be no discrimination of individuals based on age, sex, race, creed or color. It seems appropriate that while the developer may impose restrictions on individuals who may use the premises, it is not within the powers of a town to so regulate individual's use. As an example, I do not believe that you could have a Town park that could only be used by people 62 years of age or older. The fact that this is a private development does not

insure the legality of a Town regulation imposed upon the property. Therefore, it is my opinion that an age limitation is clearly discriminatory and either would be invalid or would permit any other development regardless of age, to be developed in the same manner in the Town.

2. This proposal effectively alters the density requirements for a particular class of citizens inasmuch as the area involved for a minimum lot size is only controlled by the possible parking issues and size of the structure that could be put on the premises. The units within the structure, which are not to be counted as a separate unit, could be of very small size perhaps as little as 300 or 400 square feet, and thus a building of 4,000 or 5,000 square feet could perhaps contain 10 or more units. This would substantially enhance the density of use of the lot. Again, as it is limited to a particular class of citizens, I do not understand that this would meet the nondiscriminatory test on usage. The Town Zoning Ordinance would be held to a much higher standard on review if it were to deal with a particular class of individuals such as proposed. This is contrary to General Zoning Ordinances that apply to all individuals and thus meet the constitutional test so that a lower standard on review is required by the Court. Again, I doubt that for this reason the ordinance would stand up to constitutional review.

For the above reasons, I do not believe it is in the best interest of the Town to adopt this definition on the basis that it clearly would establish potential litigation by those developers excluded from the class and could have unintended consequence to the other provisions of the existing Zoning Ordinance regarding density.

If you have any further questions regarding any of this, please feel free to contact me.

Yours sincerely,



Peter G. Hastings

PGH/jpm

townconway/plantbd/tir Irving 011001



January 12, 2000

Mr. Thomas B. Irving
Planning Director
Town of Conway
Town Hall
Center Conway, NH 03813

Dear Tom:

Steve asked me to send you information on the legal status of restricting the age of residents in a complex. I understand you and he are meeting with Town Counsel on Wednesday to review this.

I spoke today at length with Amziah Craig, Director of the Office of Fair Housing in Boston. He provided me with copies of the pertinent legislation which I have enclosed.

Both the Town and Developers have the right to implement the age restriction. To his knowledge there is not reason why the Town of Conway cannot create age restricted zoning statutes, and there is nothing that dictates a minimum or maximum unit requirement. The Town can include a minimum number in the zoning.

If he wishes, your Town Counsel can call Mr. Craig's Office of Counsel and speak to Tom Rodnick at 617-565-5126.

Please let me know if I can be of any further assistance.

Best regards,

John P. Wells
President

Cc: Steve Hallett

FAX COVER SHEET

U.S. Department of
Housing and Urban
Development

Office of Fair Housing
and Equal Opportunity

Fair Housing
Enforcement Branch

New England Office

AMZIAH W. CRAIG,
CHIEF, LAERPE

JAN 12 2001



Originator: Amziah W. Craig Phone: (617) 565-5314

Subject: Housing For Older Persons
No. of Pages: 12
Originator Fax Number: (617) 565-7313

RECIPIENT NAME AND TITLE: John Wells
RECIPIENT ORGANIZATION: Senior Resource Development

RECIPIENT FAX NUMBER: 603 394-9927

COMMENTS: Attached are materials discussed. Questions, give me a call @ 617 565-5314.



OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-2000

January 16, 1997



Dear Interested Citizen:

Please find enclosed a copy of the U.S. Department of Housing and Urban Development's Proposed Rule, Docket No. FR-4094-01, 24 CFR Part 100, Implementation of the Housing for Older Persons Act (HOPA) of 1995, published in the Federal Register, Volume 62, on January 14, 1997. The HOPA, Public Law 104-96, which was signed into law by President Clinton on December 28, 1995, amends the requirements of the 55 and older senior housing exemption to the Fair Housing Act's (the Act) prohibition against discrimination based on familial status.

In addition to eliminating the requirement that housing for older persons have significant services and facilities, the HOPA also establishes standards for verification of the ages of occupants and identifies the specific criteria which the Department will consider when a specific complaint involving a community claiming to be exempt from the familial status provisions of the Act is filed with the Department. The HOPA also establishes a good faith reliance defense for monetary damages for persons who illegally acted to exclude children based on a legitimate belief that the housing was entitled to an exemption.

All interested members of the public are invited to submit written comments on the proposed rule change during the 60-day comment period following the date of publication. The Department will review each individual comment received during that period and will consider all of the issues raised when drafting the Final Rule. The public comment period ends March 17, 1997. Immediately thereafter, a Final Rule will be published.

Written comments regarding the Proposed Rule should be submitted to the Office of General Counsel, Rules Docket Clerk, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

The Department appreciates your interest in the HOPA, and thanks all of you for your continued support.

Sincerely

Susan M. Forward
Deputy Assistant Secretary for
Enforcement and Investigations

Enclosure

H.R. 660

One Hundred Fourth Congress
of the
United States of America

AT THE FIRST SESSION

Began and held at the City of Washington on Wednesday,
the fourth day of January, one thousand nine hundred and ninety-five

An Act

To amend the Fair Housing Act to modify the exception from certain familial
status discrimination prohibitions granted to housing for older persons.

Enacted by the Senate and House of Representatives of
the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Housing for Older Persons
Act of 1995".

SEC. 2. DEFINITION OF HOUSING FOR OLDER PERSONS.

Section 807(b)(2)(C) of the Fair Housing Act (42 U.S.C.
3607(b)(2)(C)) is amended to read as follows:

(C) intended and operated for occupancy by persons 55
years of age or older, and—

(i) at least 80 percent of the occupied units are occu-
pled by at least one person who is 55 years of age or
older;

(ii) the housing facility or community publishes and
adheres to policies and procedures that demonstrate the
intent required under this subparagraph; and

(iii) the housing facility or community complies with
rules issued by the Secretary for verification of occupancy,
which shall—

(I) provide for verification by reliable surveys and
affidavits; and

(II) include examples of the types of policies and
procedures relevant to a determination of compliance
with the requirement of clause (ii). Such surveys and
affidavits shall be admissible in administrative and
judicial proceedings for the purposes of such verifica-
tion.

SEC. 3. GOOD FAITH ATTEMPT AT COMPLIANCE: DEFENSE AGAINST
CIVIL MONEY DAMAGES.

Section 807(b) of the Fair Housing Act (42 U.S.C. 3607(b))
is amended by adding at the end the following new paragraph:

(5)(A) A person shall not be held personally liable for monetary
damages for a violation of this title if such person reasonably
relied, in good faith, on the application of the exemption under
this subsection relating to housing for older persons.

(B) For the purposes of this paragraph, a person may only
show good faith reliance on the application of the exemption by
showing that—

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"(i) such person has no actual knowledge that the facility or community is not, or will not be, eligible for such exemption; and
(ii) the facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption."

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

Tuesday
January 14, 1997

Federal Register

Part IV

Department of
Housing and Urban
Development

24 CFR Part 100
Implementation of the Housing for Older
Persons Act of 1995; Proposed Rule

This rule proposes to revise § 100.304, which presents an overview of the 55-or-older exemption, to more closely track the HOPA requirements. The rule also proposes to create a new § 100.305, which would update the 80 percent occupancy requirements. A new § 100.306 would describe how a facility or community may establish its intent to operate as 55-or-older housing. New § 100.307 would set forth the necessary procedures for verification of the 80 percent occupancy requirements. Finally, a new § 100.308 would implement the good faith defense against civil money damages.

Section 2 of HOPA requires that any implementing HUD regulations "include examples of the types of policies and procedures relevant to a determination of compliance with" the statute's intent requirement. Accordingly, paragraph (a) of proposed § 100.306 would list several factors which HUD considers relevant in determining whether the housing facility or community intends to operate as housing for older persons. However, 24 CFR 100.306(b) would state that the use of phrases such as "adult living," "adult community," "40 and-over community," or similar statements in any written advertisement or prospectus do not create a presumption that the housing community satisfies HOPA's intent requirement. The use of such phrases does not show that the facility or community truly intends to operate as housing for older persons and are inconsistent with that intent. HUD, in order to make a valid assessment of intent, will consider the other measures taken by the facility or community to demonstrate the intent required by HOPA. Moreover, the housing facility or community may not evict families with children in order to achieve occupancy

of at least 80 percent of the occupied units by at least one person 55 years of age or older.

HUD also proposes to provide guidance to assist housing facilities and communities in applying the requirements of this proposed rule. These examples are contained in an appendix to this proposed rule. The appendix would not be codified in title 24 of the CFR. HUD may update or revise the appendix as necessary.

II. Findings and Certifications
Public Reporting Burden

(a) The information collection requirements contained in §§ 100.305 and 100.307 of this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(b) In accordance with 5 CFR 1320.5(f)(4)(iv), the Department is setting forth the following concerning the proposed collection of information:

(1) *Title of the information collection proposal:* Proposed Rule—Implementation of the Housing for Older Persons Act of 1995.

(2) *Summary of the collection of information:* (i) Section 100.306 of this proposed rule would require that a housing facility or community seeking to qualify as 55-or-older housing publish and adhere to policies demonstrating that intent.

(ii) Section 100.307 of this proposed rule would establish two information collection requirements. First, § 100.307 would require that an occupant of 55-or-older housing provide reliable

documentation regarding the occupancy of its unit, including the identification of whether at least one occupant of the unit is 55 years of age or older.

Occupants would be further required to regularly update this information. Secondly, § 100.307 would require a housing facility or community to maintain records of these occupancy surveys. The housing facility or community would be required to produce the records upon: (1) the filing of a discrimination complaint; and (2) the request of any person.

(3) *Description of the need for the information and its proposed use:* To appropriately determine whether a housing facility or community qualifies for the housing for older persons exemption, certain information is required. HUD must determine whether the housing facility or community: (1) has published and adhered to policies demonstrating its intent to operate as 55-or-older housing; and (2) can demonstrate, through reliable surveys and affidavits, that at least 80 percent of its occupied units are occupied by at least one person 55 years of age or older.

(4) *Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:* Respondents will be: (1) occupants of 55-or-older housing; and (2) providers of 55-or-older housing, such as manufactured home parks, home owners associations, and property managers. (Please see paragraph (5) below for the number of likely respondents and the proposed frequency of the response to the collection of information.)

(5) *Estimate of the total reporting and recordkeeping burden that will result from the collection of information:*

Type of collection	Proposed section of 24 CFR affected	Number of respondents	Frequency of responses	Est. avg. response time (hrs.)	Annual burden hrs.
Publication of policies demonstrating intent to operate as 55-or-older housing.	24 CFR 100.306	1,000	1	2 hrs.	2,000
Data on the age of occupants in 55-or-older housing.	24 CFR 100.307	10,000	1	1 hrs.	1,000
Recordkeeping	24 CFR 100.307	1,000	One time every other year.	5 hrs.	2,500
Total Burden					5,500

(c) In accordance with 5 CFR 1320.6(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(d) OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule. Comments on the paperwork collection requirements contained in this rule must be submitted to those persons indicated in the ADDRESSES section of this preamble.

Unfunded Mandates Reform Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Environmental Impact

In accordance with 24 CFR 50.10(c)(3) of the Department's regulations, published in a final rule on September 27, 1996 (61 FR 50914), the policy set forth in this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official, under section 8(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule proposes to implement the requirements of HOPA by revising the parameters for "55-or-older" housing found at 24 CFR part 100, subpart E. It effects no changes in the current relationships among the Federal government, the States, and their political subdivisions in connection with HUD programs.

Executive Order 12806, The Family

The General Counsel, as the Designated Official under Executive Order 12806, *The Family*, has determined that this proposed rule would not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. This proposed rule would update HUD's regulations governing "housing for older persons" to reflect the changes made by HOPA. No significant change in existing HUD policies or programs would result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule proposes to update HUD's regulations implementing the "housing for older persons" exemption to the Fair Housing Act. Specifically, the rule would implement the statutory amendments made by HOPA. These revisions would provide housing facilities and communities with a better understanding of what housing qualifies for the "55-or-older" exemption to the Fair Housing Act's prohibitions against discrimination on the basis of familial status. This proposed rule would not have any meaningful impact on small entities.

List of Subjects in 24 CFR Part 100

Aged, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 100 is proposed to be amended as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority citation for 24 CFR part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600-3019.

2. Subpart E is amended by revising § 100.304, and by adding § 100.305, 100.306, 100.307, and 100.308, to read as follows:

Subpart E—Housing for Older Persons

§ 100.304 55 or over housing.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for

persons 55 years of age or older. Housing qualifies for this exemption if:

(1) The alleged violation occurred before December 28, 1995 and the housing community or facility complied with the HUD regulations in effect at the time of the alleged violation; or

(2) The alleged violation occurred on or after December 28, 1995 and the housing community or facility complies with:

(i) Sections 807(b)(2)(C) and 807(b)(3)(A) and (B) of the Fair Housing Act; and

(ii) 24 CFR 100.305, 100.306, and 100.307.

(b) For purposes of this subpart, housing facility or community means any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to:

- (1) A condominium association;
 - (2) A cooperative;
 - (3) A property governed by a homeowners' or resident association;
 - (4) A municipally zoned area;
 - (5) A leased property under common private ownership; and
 - (6) A mobile home park.
- (c) For purposes of this subpart, older person means a person 55 years of age or older.

§ 100.305 80 percent occupancy.

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

(b) For purposes of this subpart, occupied unit means:

- (1) A dwelling unit that is actually occupied by one or more persons on the date that the exemption for 55-or-older housing is claimed; or
- (2) A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(c) For purposes of this subpart, occupied by at least one person 55 years of age or older means that on the date the exemption for 55-or-older housing is claimed:

- (1) At least one occupant of the dwelling unit is 55 years of age or older; or
 - (2) If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was vacated was 55 years of age or older.
- (d) Newly constructed housing for first occupancy after March 12, 1989

need not comply with the requirements of this section until at least 25 percent of the units are occupied. For purposes of this section, newly constructed housing includes facilities or communities that have been unoccupied for at least 90 days prior to re-occupancy due to renovation or rehabilitation.

(e) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 60 percent of the occupied units in the housing facility or community were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the units occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

(3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.

(4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by § 100.204.

(5) There are insufficient units occupied by at least one person 55 years of age or older, but the housing facility or community, at the time the exemption is asserted:

(i) Reserves all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and

(ii) Meets the requirements of §§ 100.304, 100.305, 100.306, and 100.307.

(f) Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

(g) Each housing facility or community may determine the age restriction for units that are not occupied by at least one person 55 years of age or older.

§ 100.306 Intent to operate as 55 or over housing.

(a) In order for a housing facility or community to qualify as 55-or-older housing, it must publish and adhere to policies and procedures that

demonstrate its intent to operate as housing for persons 55 years of age or older. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

(1) The manner in which the housing facility or community is described to prospective residents;

(2) Any advertising designed to attract prospective residents;

(3) Lease provisions;

(4) Written rules, regulations, covenants, deed, or other restrictions;

(5) The maintenance and consistent application of relevant procedures;

(6) Actual practices of the housing facility or community; and

(7) Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.

(b) The use of phrases such as "adult living", "adult community", "40 and over community", or similar statements in any written advertisement or prospectus do not create a presumption that the housing facility or community intends to operate as housing for persons 55 years of age or older.

(c) If there are substantial legal impediments to removing language from deed or other restrictions that may be inconsistent with the intent to provide 55-or-older housing, HUD shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section.

(d) The fact that a unit is occupied by a family with a child under eighteen years of age, and not by a person 55 years of age or older, shall not be considered in determining whether the housing facility or community intends to operate as 55-or-older housing.

§ 100.307 Verification of occupancy.

(a) In order for a housing facility or community to qualify as 55-or-older housing, it must be able to produce, in response to a complaint filed under this title, verification of compliance with § 100.305 through reliable surveys and affidavits.

(b) A facility or community shall, within 180 days of the effective date of a rule finalizing the policies and procedures described in this proposed 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 described in paragraphs (e)(1), (e)(3), and (e)(4) of § 100.305.

(d) The following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

- (1) Driver's license;
- (2) Birth certificates;
- (3) Passports;
- (4) Immigration card;
- (5) Military identification;
- (6) Any other state, local, national, or international official documents containing a birth date of comparable reliability; or
- (7) A certification in a lease, application, affidavit, or other document signed by an adult member of the household asserting that at least one person in the unit is 55 years of age or older.

(e) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

(f) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person 55 years of age or older. Such evidence may include:

- (1) Government records or documents, such as a census;
- (2) Prior forms or applications; or
- (3) A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge.

(g) Surveys and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

(h) Occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

§ 100.308 Good faith defense against civil money damages.

(a) A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good faith belief that the housing facility or community qualified as 55-or-older housing.

(b)(1) A person claiming the good faith defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies as 55-or-older housing. The person claiming the good faith defense must demonstrate this actual knowledge through reliable evidence.

(2) For purposes of this section, an authorized representative of a housing facility or community means the individual, committee, management company, owner, or other entity having the responsibility for adherence to the requirements established by this subpart.

(c) A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as 55-or-older housing. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in paragraph (b) of this section.

Dated: October 11, 1996.

Elizabeth K. Julian,

Assistant Secretary for Fair Housing and Equal Opportunity.

Note: This Appendix will not be codified in Title 24 of the CFR.

Appendix—Examples of Applications of HUD's Regulations Governing the 55-or-older Exemption to the Fair Housing Act

Sections

- 1. Purpose.
- 2. 80 percent occupancy.
- 3. Intent to operate as 55-or-older housing.
- 4. Verification of occupancy.
- 5. Future revisions to this appendix.

1. Purpose.

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-3619) (the Act) exempts "housing for older persons" from the prohibitions against discrimination because of familial status. Section 807(b)(2)(C) of the Act exempts housing intended and operated for occupancy by persons 55 years of age or older that satisfies certain criteria. HUD has implemented the "housing for older persons" exemption at 24 CFR part 100, subpart E. Specifically, §§ 100.304, 100.305, 100.306, and 100.307 set forth the requirements for housing seeking to qualify for the 55-or-older exemption. The purpose of this appendix is to provide guidance to housing facilities or communities in applying these HUD requirements.

2. 80 Percent Occupancy

Section 100.305 provides that in order for a housing facility or community to qualify as 55-or-older housing, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older. This occupancy requirement must be met at the time of any alleged violation of the Act. Paragraph (f) of § 100.305 states that where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

Example: A community or facility contains 83 occupied units. Eighty percent of 83 equals 66.4. Under § 100.305(d), 67 units would require occupancy by at least one person 55 years of age or older.

Section 100.305 also sets forth the other requirements a housing facility or community must follow in calculating occupancy. The following examples illustrate these requirements:

Example 1

Buena Vista is a condominium association of 120 units. On September 13, 1988, twenty (20) of the occupied units are not occupied by at least one person 55 years of age or older.

On April 1, 1996, Buena Vista declares itself to be 55-or-older housing. On that date:

- (1) The twenty (20) persons described above are still residing at Buena Vista;
- (2) Ten (10) of the total 120 units are unoccupied;
- (3) One (1) of the units is occupied by the association's maintenance supervisor; and
- (4) Two (2) units are occupied by live-in health aides who provide reasonable accommodations to residents with disabilities.

How many of the occupied units must be occupied by at least one person 55 years of age or older in order for Buena Vista to qualify as 55-or-older housing?

Under § 100.305(e), Buena Vista would calculate its compliance with the 80 percent occupancy requirement by subtracting the following units from the total 120 units:

- (1) The 20 units not occupied by at least one person 55 years of age or older on September 13, 1988 (See § 100.305(b)(1));
- (2) The ten (10) unoccupied units (See § 100.305(b)(2));
- (3) The one (1) unit occupied by the maintenance person (See § 100.303(a)(3)); and
- (4) The two (2) units occupied by the health aides (See § 100.305(a)(4)).

Subtracting these 33 units from the total of 120 units leaves 87 units. At least 80 percent of these 87 units must be occupied by at least one person 55 years of age or older. Eighty percent of 87 equals 69.6. Due to § 100.305(d), 70 units must be occupied by at least one person 55 years of age or older.

Example 2

Topaz House is a cooperative of 100 units. On January 20, 1996, Topaz House

announces its intent to be 55-or-older housing and publishes policies and procedures sufficient to satisfy § 100.306. On that date, of the 100 total units:

- (1) Sixty (60) of the occupied units are occupied by at least one person 55 years of age or older;
- (2) Thirty (30) of the occupied units do not have occupants 55 years of age or older; and
- (3) Ten (10) units are unoccupied.

Since 60 out of the 90 occupied units are occupied by at least one person 55 years of age or older, the Topaz House only has 67 percent of its occupied units occupied by at least one person 55 years of age or older. Under § 100.305(a)(5), Topaz House may still qualify for the 55-or-older exemption if it:

- (1) Reserves all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and
- (2) Meets the requirements of §§ 100.304, 100.305, 100.306, and 100.307.

There is no requirement that Topaz House take any action concerning the residents under 55 years of age who are occupying units on the date the building declares its intent to be 55-or-older housing.

Example 3

Snowbird City is a mobile home community in Texas with 100 units. Snowbird City complies with all other requirements of 55-or-older housing, but is uncertain of its compliance with the 80 percent occupancy rule.

Fifty out of the 100 units are occupied year round. Of these fifty units, 12 units are not occupied by at least one person 55 years of age or older. Of the remaining 38 units, 5 are unoccupied and offered for sale, and the remaining 33 are occupied by at least one person 55 years of age or older each winter on a routine and recurring basis.

If a complaint of familial status discrimination is filed in December, the community meets the 80 percent occupancy requirement because 63 out of the 93 occupied units (67 percent), are occupied by at least one person 55 years of age or older. If the complaint is filed in July, Snowbird City still meets the requirement. Under § 100.305(b), a temporarily vacant unit is considered occupied by a person 55 years of age or older if:

- (1) The primary occupant has resided in the unit during the past year; and
- (2) The occupant intends to return on a periodic basis.

Example 4

The King Philip Senior Community is a newly renovated building originally built in 1952. It has been vacant for over one year while extensive renovations were completed. The building contains 280 units. The King Philip Senior Community is intended to be operated as a 55-or-older community.

Under § 100.305(d), newly constructed housing need not comply with the 80 percent occupancy requirement until 25 percent of the total units are occupied. For purposes of § 100.305(d), newly constructed housing includes housing that has been unoccupied for at least 90 days due to renovation or

rehabilitation. Accordingly, the King Philip Senior Community need not comply with the 50 percent occupancy requirement until 50 out of its 200 units (25 percent) are occupied. Subsequent to occupancy of the 50th unit, however, the building will have to satisfy the 80 percent occupancy rule in order to qualify as 55-or-older housing.

3. Intent To Operate as 55-or-Older Housing

Section 100.308 provides that in order for a housing facility or community to qualify as 55-or-older housing, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. Section 100.306 also details the factors HUD will utilize to determine whether a housing facility or community has met this intent requirement. The following are examples of housing facilities and communities which satisfy the intent requirement described in § 100.306.

Example 1

A mobile home park which takes the following actions satisfies the intent requirement:

- (1) Posts a sign indicating that the park is 55-or-older housing;
- (2) Includes lease provisions stating that the park intends to operate as 55-or-older housing; and
- (3) Has provided local realtors with copies of the lease provisions.

Example 2

An area zoned by a unit of local government as "senior housing" satisfies the intent requirement if:

- (1) Zoning maps containing the "senior housing" designation are available to the public;
- (2) Literature distributed by the area describes it as "senior housing";
- (3) The "senior housing" designation is recorded in accordance with local property recording statutes; and
- (4) Zoning requirements include the 55-or-older requirement or a similar provision.

Example 3

A condominium association satisfies the intent requirement if it has:

- (1) Adopted, through its rules and regulations, restrictions on the occupancy of units consistent with HUD's regulations governing 55-or-older housing at 24 CFR part 100, subpart E;
- (2) Has distributed copies of the rules to all occupants; and
- (3) Has notified local realtors of the restrictions.

The following is an example of a housing facility which has failed to satisfy the intent requirement described in § 100.308.

Example 4

A homeowners association has failed to meet the intent requirement if it has Covenants, Conditions and Restrictions which refer to an "adult community," has posted a sign stating "A 40 and over community" and has restricted visiting children to a maximum of two weeks, but contains no similar restriction for visiting adults.

4. Verification of Occupancy

Section 100.307 provides that in order for a housing facility or community to qualify as 55-or-older housing, it must be able to produce, in response to a complaint alleging a violation of the Act, verification of compliance with § 100.305 through reliable surveys and affidavits. Paragraph (d)(7) of § 100.307 includes self-certifications in a list of documents considered reliable documentation of the age of occupants. The self-certification may be included in a lease or other document, and must be signed by an adult member of the household asserting that at least one person in the unit is 55 years of age or older. The following examples provide acceptable self-certification provisions:

Example 1

All new leases, new purchase agreements, or new applications contain a provision directly above the signatory line for lessees,

asserting that at least one occupant of the dwelling will be 55 years of age or older. In addition, the community surveys all current residents for their occupancy status in compliance with the 55-or-older requirements.

Example 2. Sample certification

I, (name), am over the age of 18 and a member of the household that resides at (housing facility or community), (unit number or designation). I hereby certify that I have personal knowledge of the ages of the occupants of this household and that at least one occupant is 55 years of age or older.

Paragraph (e) of § 100.307 requires that the housing facility or community establish appropriate policies to require that all occupants comply with the age verification procedures. The following examples illustrate acceptable policies:

Example 3

A condominium association establishes a rule that the board of directors must approve all new occupants. One criteria for approval is that new occupants of each unit inform the condominium association whether at least one person occupying the unit is 55 years of age or older.

Example 4

A homeowners association amends its Covenants, Conditions and Restrictions, and records them at the appropriate government recording office. The amendments require applicants to state whether at least one occupant is 55 years of age or older.

Example 5

The owner of a mobile home park where the residents own the coach but rent the land requires a statement of whether at least one occupant is 55 years of age or older before any sublease or new rental.

5. Future Revisions to This Appendix

HUD may update or revise this appendix as necessary.

(FR Doc. 97-040 Filed 1-13-97; 8:45 am) BLMING CODE 4210-20-2

FAIR HOUSING ACT AS AMENDED, EFFECTIVE MARCH 12, 1969

Sec. 800. [42 U.S.C. 3601 note] Short Title

This title may be cited as the "Fair Housing Act".

Sec. 801. [42 U.S.C. 3601] Declaration of Policy

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

Sec. 802. [42 U.S.C. 3602] Definitions

As used in this subchapter--

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) " Dwelling " means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) " Family " includes a single individual.

(d) " Person " includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 [of the United States Code], receivers, and fiduciaries.

(e) " To rent " includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) " Discriminatory housing practice " means an act that is unlawful under section 804, 805, 806, or 818 of this title.

(g) " State " means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) " Handicap " means, with respect to a person--

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

Sec. 806. [42 U.S.C. 3606] Discrimination in provision of brokerage services

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin.

Sec. 807. [42 U.S.C. 3607] Religious organization or private club exemption

(a) Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b) Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. It does not apply to any provision in this title regarding familial status applicable with respect to housing for older persons.

(2) As used in this section "housing for older persons" means housing --

(A) provided under any State or Federal program that Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

(B) intended for, and solely occupied by, persons 62 years of age or older; or

(C) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons

(7) As used in this subsection, the term "covered multifamily dwelling" means--

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this title shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this title.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

805. [42 U.S.C. 3605] Discrimination in Residential Real Estate-Related Transactions

(1) In General.--It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in selling, leasing, or otherwise disposing of a dwelling, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Definition.--As used in this section, the term "residential real estate-related transaction" means any of the following:

(A) The making or purchasing of loans or providing other financial assistance--

(i) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(ii) secured by residential real estate.

(B) The selling, brokering, or appraising of residential real property.

(C) Appraisal Exemption.--Nothing in this title prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

under this subsection, the Secretary shall develop regulations which require at least the following factors:

(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) persons residing in such housing as of the date of enactment of this Act who do not meet the age requirements of subsections (2)(B) or (C); provided, That new occupants of such housing meet the age requirements of sections (2)(B) or (C); or

(B) unoccupied units: provided, That such units are reserved for occupancy by persons who meet the age requirements of subsections (2)(B) or (C).

(4) Nothing in this title prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Sec. 908. [42 U.S.C. 1400] Administration

(a) Authority and responsibility

The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) Assistant Secretary

The Department of Housing and Urban Development shall be provided an additional Assistant Secretary.

(c) Delegation of authority; appointment of administrative judges; location of conciliation meetings; administrative review

The Secretary may delegate any of his functions, duties and power to employees of the Department of Housing and Urban Development or to boards of such employees, including functional duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this subchapter. The person to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 1105, 1144, 5372, and 7521 of title 5 [of the United States Code]. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe the rights of appeal from the decisions of his administrative law judges to other administrative law judges or to other officers of the Department, to boards of officers or to himself, as shall appropriate and in accordance with law.

(d) Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes

All executive departments and agencies shall administer the programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.

(e) Functions of Secretary

The Secretary of Housing and Urban Development shall---

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies, including an annual report to the Congress--

(A) specifying the nature and extent of progress made nationally in eliminating discriminatory housing practices and furthering the purposes of this title, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and

PETITION FOR ZONING AMENDMENT

The undersigned, being twenty-five (25) or more registered voters in the Town of Conway, New Hampshire, hereby petition pursuant to the provisions of RSA 675:4 that the following article to amend the Conway Zoning Ordinance be submitted to the voters of the Town of Conway at the annual meeting to be held in March 2001.

I. Adopt New Definition Chapter 147, Zoning Ordinance:

"SENIOR HOUSING UNIT"

A dwelling, or portion thereof capable of providing living quarters limited to two (2) adults per unit, having a minimum age of sixty two (62) years old. Said dwelling unit(s) must be within a single building having at least twenty-five (25) overall separate units under the same roof. Said building must provide for a commercial kitchen and common dining facility as a minimum. Said "**SENIOR HOUSING UNITS**" shall be exempt from provisions under the existing definition of "Residential Unit", which define a unit as providing a kitchen. "**SENIOR HOUSING UNITS**" within such an aforementioned age restricted "Retirement Housing Complex", shall be allowed to have separate individual kitchens. For density purposes the overall building housing all said individual dwelling units within said building, under the same roof will be considered one unit.