

Insights

Age-Restricted Communities: How to Comply with Federal and State Law

Article

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Many communities desire to place age restrictions on who can live in the community as such restrictions allow a community to provide the benefits of senior housing to its residents, including a prohibition of children under the age of eighteen (18) or nineteen (19) as full time residents. There also is the possibility of saving a significant amount of development costs by getting a waiver of the requirement to pay school impact fees levied by a county. Some counties also have reduced transportation impact fees for age-restricted communities. Yet Federal and Florida law prohibit discriminating on the basis of family status, and this prohibition, in general, bars communities from imposing age restrictions on who can live in the community. But a community can impose age restrictions if it qualifies for an exemption as provided under Federal and Florida law. In other words, a community may prohibit grandchildren from living with their grandparents only if the community complies with the applicable laws.

The penalties for not qualifying for the exemption pursuant to Federal and Florida law can be significant. For example, a community may be required to pay a civil penalty in addition to attorney's fees and actual damages suffered by the person(s) against whom the community discriminated. In addition, the community may have to pay impact fees that have been waived or reduced along with additional penalties.

In general, age restrictions may be adopted if a community (i) requires that eighty percent (80%) of the houses in the community are occupied by at least one person fifty-five (55) years old or older, (ii) publishes and adheres to policies that demonstrate the community's intent to operate as housing for persons fifty-five (55) years old or older, and (iii) develops a procedure for routinely determining who occupies each residence and whether at least one person occupying the residence is fifty-five (55) years old or older. To impose age restrictions and comply with the applicable laws is more nuanced than this general rule, and some communities fail to qualify. Some of the more nuanced questions, for example, arise when determining what is considered the community, especially if a developer is planning a phased development where some phases will have residence

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available for occupancy sooner than others.

If you are considering imposing age restrictions on who can reside in your community or future development, contact a lawyer to ensure compliance with local, state, and federal law.