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Common Misconceptions About Senior Housing

The purpose of this article is to highlight some common misunderstandings among the general public, including some subdividers, regarding senior citizen housing developments (i.e., “55+” housing). As a real estate licensee, you may come across one or more of these misunderstandings in connection with your representation of a buyer or seller of a home in this type of an age-restricted (or senior) community.

By way of background, both federal and state laws generally prohibit housing discrimination on the basis of age and other distinguishing characteristics such as gender, race, and religion; this body of law in California is referred to as the Unruh Act. However, both federal and state laws do allow for the creation and marketing of homes exclusively for older persons in certain communities generally referred to as “senior housing” or “senior citizen housing developments.” (The marketing term that may be used by subdividers is “active-adult” or “lifestyle” communities [the use of the term “adult” in characterizing these developments is discouraged at the federal level]). In California, the law requires that at least one of the occupants of a home in these communities must be a “Qualifying Resident” or “Senior Citizen,” i.e., a person who is 55 years of age or older. However, there is more to the law than simply this and, as the law can be complex, the following misunderstandings may arise:



You must be at least 55 years old to buy a home in the community.

The law does not care who buys the home or who is on title. The law is only concerned with who resides in the home. This means that the children or grandchildren of a 55+ parent or grandparent can buy the home (and be solely listed on the recorded deed) as long as the 55+ parent or grandparent, or other age-qualified individual, is the actual person who resides in the home.



Every person who resides in the home must be at least 55 years old.

California law allows other persons to permanently reside in the home (other than mobile homes [see below]) who are younger than 55 years old; each of these younger persons is called a “Qualified Permanent Resident” or “QPR.” For example, the spouse or cohabitant of the 55+ Qualifying Resident can be younger than 55 years old. Also, a younger person who occupies a room in a home (such as a friend, other relative, or someone who is renting a room) can reside in the home as long as that younger person is at least 45 and at least one 55+ Qualifying Resident also resides there.



If the spouse or cohabitant is younger than 55 years old then they must be at least 45 years of age to reside in the home.

The spouse or cohabitant can be of any age. So the thirty-something-year-old who marries or cohabitates with the 55+ Qualifying Resident can reside in the home without restriction as a QPR.



As long as 80 percent of the homes in the community are occupied by at least one person who is 55 years of age or older, then the remaining 20 percent of the homes in the development can be occupied by underage families with children.

There has been much debate regarding whether 20 percent of the homes can be a “set aside” for occupancy by underage



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families with children. When considering the applicable federal and state laws together, the answer to this question is an emphatic “no.” Federal law requires that to qualify as senior housing at least 80 percent of the homes must be occupied by at least one person who is 55 years of age or older. Next, the preamble to the applicable federal regulations on senior housing states, “There is no requirement that the remaining 20 percent of the occupied units be occupied by persons under the age of 55, nor is there a requirement that those units be used only for persons where at least one member of the household is 55 years of age or older.” Note that California law requires that certain underage persons be allowed to occupy homes in a senior citizen housing development (this does not include homes in mobile home communities [see below]). Further note that California law makes no reference to an 80 percent “minimum floor” or “safe harbor” at all. However, state law does provide for preemption by federal law in some cases. Accordingly, so as not to endanger the status of the community as a senior citizen housing development under California law, the 20 percent arising from the 80/20 provision in federal law should be regarded under state law as applying to those homes where the underage surviving spouse, cohabitant, or other individual who qualifies as a QPR remains in the home after the 55+ Qualifying Resident no longer permanently resides there rather than as a “set aside” for underage families with children. Moreover, if the percentage of nonsenior

occupied homes approaches 20 percent, then the senior community may begin to deny occupancies to underage persons in order to maintain the federally-mandated 80 percent senior-occupancy requirement.

A failure to follow both federal and state laws could cause a senior community to lose its status as such under the law.

Please carefully note that mobile home communities are exempt from the Unruh Act provisions in state law concerning senior citizen housing developments, but they are subject to the senior housing provisions in federal law. Accordingly, the foregoing information relating to California law does not apply to a mobile home community unless it has expressly adopted the provisions for senior citizen housing developments as set forth in the Unruh Act.

Because the majority of senior communities today are 55+ housing, this article pertains to this type of housing only (as opposed to, for example, housing for persons who are 62 years of age or older). Also, this article is not intended to cover all provisions of the law applicable to 55+ housing including those provisions relating to temporary or permanent occupancy by disabled nonseniors. Therefore, as always, legal counsel should be consulted to confirm those particular provisions of the law that apply to a specific senior community where you may be representing a buyer or seller. ■

