

AVOID LEGAL PITFALLS IN ACTIVE ADULT COMMUNITIES

By Wendell A. Smith, Esq.

Active adult community developers can avoid costly and time consuming local, state and federal legal consequences which may be incurred when failing to recognize or act upon several existing statutes governing the senior housing industry in New Jersey. Here is my "Top Ten" list of such legal pitfalls which could affect the planning, construction, marketing and successful completion of an active adult community.

- **Failure to register a project with DCA if it contains less than 100 fee simple homes or is a rental project.**
PREDFDA exemption does not apply because of survival of Retirement Community Full Disclosure Act [N.J.S.A. 45:22A-1 et seq.].
- **Requiring at least one purchaser of an active adult unit to meet the minimum age qualifications for the community.**
- **Imposing age restrictions which do not comply with minimum age requirements or local zoning ordinances or approvals that are more restrictive than the "55 or over" exemption under the Federal Housing for Older Persons Act of 1995 (HOPA).**
- **Prohibiting permanent occupancy of age restricted homes to any persons under 55 unless required by local zoning.**
HOPA exemption only requires that one permanent occupant of at least 80% of the dwellings be 55 or over. Registration under PREDFDA requires at least 85% of units be occupied by at least one person who is 55 or over.
- **Failure to emphasize "55 or over" in advertisements and other written marketing materials for age restricted community.**
Expressions such as "Adult Living," "Active Adult Community," or "Mature Living" in advertising do not meet HOPA regulations. Descriptions such as "Senior Housing," "Retirement Community" or "55 or Over" are preferred.
- **Ignore the requirements of HOPA to verify compliance with the HOPA exemption requirements for an active adult community.**
HOPA requires reliable surveys and valid proof of age affidavits (drivers licenses, birth certificates, etc.). Failure to prove compliance could invalidate the exemption from prosecution for violations of the familial status provisions of the Fair Housing Act.
- **Ignoring the consequences of penalties under HOPA for unlawful discrimination because of familial status.**
Civil penalties up to \$50,000, compensatory damages (economic and emotional), and punitive damages for disregard of plaintiff's rights may be imposed.
- **Denial of exceptions to the minimum age requirements for underage handicapped persons.**
Physical and mental impairments are broadly defined as factors which limit an afflicted person's life activities, including caring for oneself, performing manual tasks, walking, seeing hearing, breathing, learning and working.
- **Establish separate "All Age" and "Age Restricted" sections in the same community.**
In order to meet the 80% test provided in the HOPA exemption, the calculation must be based upon the total number of units in the community (calculation threshold is 25% sales level).
- **Failure to provide your advertising agency with the specific advertising guidelines required by PREDFDA regulations (N.J.A.C. 5:26-5.2)**
All advertising, except billboards, must conform to these standards:
 - Full price of offering must be clearly stated.
 - Statements regarding property taxes must be an accurate estimate based on current tax rate, value and ratio. (Descriptive terms such as "low," "stable," are not acceptable.)
 - The advertised facility must exist at time of publication unless a proposed completion date is prominently displayed.
 - Any proposed improvements from which the purchaser will be assessed should be clearly stated as such and include the costs.
 - No costs already included in the advertised price can be described as "free."
 - Photographs or renderings of facilities for sale must be accompanied by an adjacent description. All renderings must be clearly acknowledged as such.
 - Advertising shall not disclose in wording or graphics the existence of "lifestyle" facilities (recreational, medical, shopping, etc.) if they are not located within the planned community. Mention of such facilities outside of the planned community must include their approximate distance from the community, in miles.
 - Price increases must include the amount and date of inception.
 - Advertising of premium incentives, i.e., vacations, promotions, intended to induce visits to the planned community, must clearly state all validity requirements—including attendance, time frames and effective dates.
 - Any model unit used in promoting the planned community shall exhibit substantial conformity to subsequently constructed units unless otherwise noted in the sales contract. Any changes to be made in structural detail shall be conspicuously placed in the model advising prospective purchasers as such.
 - Items in the model available to purchasers only at additional cost will be prominently posted in the model unit and described as such.
 - Avoid employing out-of-state media to sell New Jersey communities, if possible. New York, for instance, has a different set of guidelines—more restrictive in some areas—than New Jersey. Instead, use the "zoning" option offered by large newspapers to focus your message more accurately (advertise the New York Times New Jersey edition, for example).

For more information about legal pitfalls in marketing active adult communities, visit www.build4boomers.org.

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