

2003. Housing for Older Persons – Exemptions from Prohibitions Against Discrimination on the Basis of Familial Status

A) A respondent may claim an exemption from the provisions of the Fair Housing Act prohibiting discrimination on the basis of familial status by proving that:

1) a housing accommodation is provided under any state or federal program which is designed and operated to assist elderly persons and is designated as such by the Secretary of the Department of Housing and Urban Development under section 807(2)(A) of the Fair Housing Act of 1968 as amended;

2) a housing accommodation is of four (4) units or less, the owner actually maintains and occupies one (1) of such living quarters as his or her residence and one (1) of those units is already occupied by a senior citizen or infirm person for whom the presence of children would constitute a demonstrated hardship. To claim the exemption the owner must prove that: the housing unit contains four (4) units or less and that one of the units is already occupied by a senior citizen or infirm person for whom the presence of children would constitute a demonstrated hardship. The hardship may be proven with a submission of two (2) physicians' certificates attesting to anticipated or past physical or psychological impairment caused by the presence of children;

3) a housing accommodation is intended for and solely occupied by persons sixty-two (62) years of age or older;

4) a housing accommodation is intended and operated for occupancy by at least one (1) person fifty-five (55) years of age or older per unit, Provided that:

a) at least eighty percent (80%) of the units are occupied by at least one (1) person fifty-five (55) years of age or older per unit; and

b) the housing accommodation has significant facilities and services designed to meet the physical and social needs of older persons. Significant facilities and services include, but are not limited to, social and recreational programs, continuing education, information and counseling, recreational services, homemaker services, outside maintenance and referral services, accessible physical environment, emergency and preventive health care programs, congregate dining facilities, transportation to facilitate access to social services; and

c) the owner or manager has published and adhered to policies and procedures which demonstrate an intent to provide housing for persons fifty-five (55) years of age or older. The Commission will look at the following factors in evaluating this requirement: the manner in which the housing facility is described to prospective residents; the nature of any advertising designed to attract prospective residents; age verification procedures; lease provisions; written rules and regulations; and actual practices of the owner or manager; and

d) if the provision of significant services and facilities is not practicable, it must be demonstrated that such housing provides important opportunities for older persons. To demonstrate this the owner or manager can show the demand for housing for older persons in the relevant geographic area; the range of housing choices for older persons in the relevant geographic area; the income range for older persons and the rent or sales price of available housing for older persons in the relevant geographic area.

B) An exemption under Rule 2003(A)(3) or (A)(4) of the Commission Rules and Regulations can be claimed if the housing did not meet the requirements of Rule 2003(A)(3) or (A)(4) of the Commission Rules and Regulations as of September 13, 1988 only if:

1) new occupants of such housing met the age requirements of Rule 2003(A)(3) or (A)(4) of the Commission Rules and Regulations after September 13, 1988; or

2) unoccupied units were reserved for occupancy by persons who met the age requirements of Rule 2003(A)(3) or (A)(4) of the Commission Rules and Regulations after September 13, 1988.