

Exemptions for Housing for Older Persons

Legal Opinion: GME-0005

Index: 9.211

Subject: Exemptions for Housing for Older Persons

November 19, 1991

Mike and Sue Van Camp
54999 Martinez Tr. #67
Yucca Valley, Ca. 92284

Dear Mr. and Ms. Van Camp:

This responds to your October 3, 1991 letter following up on your previous letter to which we responded on September 17, 1991. You have requested information about housing for older persons exempted from provisions of the Fair Housing Act (the "Act").

In your previous letter, you stated that you believe the Act would prohibit park management at your mobile home park from evicting your adult children should you and your wife move out of the park. The park apparently claims an exemption from the Act as "55 and over" housing. This office advised that we were unable to ascertain from the information provided whether the mobile home park satisfies all the Act's requirements in order for park management to be able to limit occupancy to older persons. Assuming it does, however, park management may use any non-discriminatory method it wants to qualify for the exemption or keep the exemption, as long as it comports with applicable State and local laws. See 24 C.F.R. Subtitle B, Ch. I, Subch. A, App. I (1991) at 717.

Because the Act does not protect persons based on age but permits 20% of units to be occupied by persons under the age 55, park management could allow your children to remain in the park and not lose its exemption (as long as 80% of the units are still occupied by persons over 55 years of age and it meets the other requirements for the exemption), but the Act does not require it to do so.

In your October 3rd letter, you refer to the transition provision of the Act, section 807(b)(3), as it may affect your adult daughter. It appears that you also interpret the transition provision of the Act to require the park to allow your adult daughter to remain in the home as long as she occupied the home prior to September 13, 1988, the enactment date of the Act.

You advise that your adult daughter is deaf, and that you plan to move out of the property, leaving her residing there. The Act does not provide protection for adult children, although it does prohibit discrimination on the basis of familial status or handicap. Just as parks are not required to allow previous

residents to remain because only 80% of the units may be occupied by someone over the age of 55, nothing in the transition provision of the Act requires park management to allow persons

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under 55 who occupied a unit prior to the Act's passage to remain. Rather, the transition provision permits park management to allow those residents to stay if it so chooses without forfeiting the chance to attain the exemption.

If you or your children believe that you have been or are about to be aggrieved by a discriminatory housing practice in violation of the Fair Housing Act, you have a right to file a complaint with HUD's Office of Fair Housing and Equal Opportunity. Thank you for your interest in fair housing.

Sincerely,

Harry L. Carey
Assistant General Counsel for
Fair Housing