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TITLE 910 CIVIL RIGHTS COMMISSION

Proposed Rule
LSA Document #03-254

DIGEST

Adds 910 IAC 2-4-6 through 910 IAC 2-4-10 concerning housing intended and operated for persons at least 55 years of age. Effective 30 days after filing with the secretary of state.

910 IAC 2-4-6 **910 IAC 2-4-9**
910 IAC 2-4-7 **910 IAC 2-4-10**
910 IAC 2-4-8

SECTION 1. 910 IAC 2-4-6 IS ADDED TO READ AS FOLLOWS:

910 IAC 2-4-6 Housing for persons who are at least 55 years of age
Authority: IC 22-9.5-3-4; IC 22-9.5-4-2; P.L.89-2003
Affected: IC 22-9.5-1-2

Sec. 6. (a) The provisions regarding familial status shall not apply to housing intended and operated for persons fifty-five (55) years of age or older. Housing qualifies for this exemption if the alleged violation occurred:

- (1) before July 1, 2003, and the housing community or facility complied with the rules of the ICRC in effect at the time of the alleged violation; or**
- (2) on or after July 1, 2003 and the housing community or facility complies with:**
 - (A) IC 22-9.5-3-4; and**
 - (B) this section and sections 7 through 10 of this rule.**

(b) For purposes of this rule, "housing facility or community" means any dwelling or group of dwelling units governed by a common set of rules, regulations, or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to, the following:

- (1) A condominium association.**
- (2) A cooperative.**
- (3) A property governed by a homeowners' or resident association.**
- (4) A municipally zoned area.**
- (5) A leased property under common private ownership.**
- (6) A mobile home park.**
- (7) A manufactured housing community.**

(c) For purposes of this rule, "older person" means a person who is at least fifty-five (55) years of age. (Civil Rights Commission; 910 IAC 2-4-6)

SECTION 2. 910 IAC 2-4-7 IS ADDED TO READ AS FOLLOWS:

910 IAC 2-4-7 80 percent occupancy
Authority: IC 22-9.5-3-4; IC 22-9.5-4-2; P.L.89-2003
Affected: IC 22-9.5-1-2

Sec. 7. (a) In order for a housing facility or community to qualify as housing for older persons under IC 22-9.5-3-4(a)(3) at least eighty percent (80%) of its occupied units must be occupied by at least one (1) person who is at least fifty-five (55)

years of age.

(b) For purposes of this rule, “occupied unit” means:

- (1) a dwelling unit that is actually occupied by one (1) or more persons on the date that the exemption is claimed; or
- (2) a temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(c) For purposes of this section, “occupied by at least one (1) person who is at least fifty-five (55) years of age” means that on the date the exemption for housing designed for persons who are at least fifty-five (55) years of age is claimed:

- (1) at least one (1) occupant of the dwelling unit is at least fifty-five (55) years of age; or
- (2) if the dwelling unit is temporarily vacant, at least one (1) of the occupants immediately prior to the date on which the unit was temporarily vacated was at least fifty-five (55) years of age.

(d) Newly constructed housing for first occupancy after March 12, 1989, need not comply with the requirements of this section until at least twenty-five percent (25%) of the units are occupied. For purposes of this section, “newly constructed housing” includes a facility or community that has been wholly unoccupied for at least ninety (90) days prior to reoccupancy due to renovation or rehabilitation.

(e) Housing satisfies the requirements of this section even though, as follows:

(1) On September 13, 1988, under eighty percent (80%) of the occupied units in the housing facility or community were occupied by at least one (1) person who is at least fifty-five (55) years of age, provided that at least eighty percent (80%) of the units occupied by new occupants after September 13, 1988, are occupied by at least one (1) person who is at least fifty-five (55) years of age.

(2) There are unoccupied units, provided that at least eighty percent (80%) of the occupied units are occupied by at least one (1) person who is at least fifty-five (55) years of age.

(3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under fifty-five (55) years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.

(4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by 910 IAC 2-3-5 and who are under fifty-five (55) years of age.

(5) For a period expiring one (1) year from the effective date of this section, there are insufficient units occupied by at least one (1) person who is at least fifty-five (55) years of age, but the housing facility or community, at the time the exemption is asserted:

(A) has reserved all unoccupied units for occupancy by at least one (1) person who is at least fifty-five (55) years of age until at least eighty percent (80%) of the units are occupied by at least one (1) person who is at least fifty-five (55) years of age; and

(B) meets the requirements of sections 6 and 8 through 10 of this rule.

(f) For purposes of the transition provision described in subsection (e)(5), a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children who reside in the facility or community in order to achieve occupancy of at least eighty percent (80%) of the occupied units by at least one (1) person who is at least fifty-five (55) years of age.

(g) Where application of the eighty percent (80%) rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one (1) person who is at least fifty-five (55) years of age.

(h) Each housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one person who is at least fifty-five (55) years of age, so long as the housing facility or community complies with section 8 of this rule. *(Civil Rights Commission; 910 IAC 2-4-7)*

SECTION 3. 910 IAC 2-4-8 IS ADDED TO READ AS FOLLOWS:

910 IAC 2-4-8 Intent to operate as housing designed for persons who are at least 55 years of age

Authority: IC 22-9.5-3-4; IC 22-9.5-4-2; P.L.89-2003

Affected: IC 22-9.5-1-2

Sec. 8. (a) In order for a housing facility or community to qualify as housing designed for persons who are at least fifty-five (55) years of age, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons who are at least fifty-five (55) years of age. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

- (1) The manner in which the housing facility or community is described to prospective residents.**
- (2) Any advertising designed to attract prospective residents.**
- (3) Lease provisions.**
- (4) Written rules, regulations, covenants, deed, or other restrictions.**
- (5) The maintenance and consistent application of relevant procedures.**
- (6) Actual practices of the housing facility or community.**
- (7) Public posting in common areas of statements describing the facility or community as housing for persons who are at least fifty-five (55) years of age.**

(b) Phrases such as “adult living”, “adult community”, or similar statements in any written advertisement or prospectus are not consistent with an intent to operate as housing for persons at least fifty-five (55) years of age.

(c) If there is language in deeds or other community or facility documents that is inconsistent with the intent to provide housing for persons who are fifty-five (55) years of age or older, the ICRC shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section in conjunction with other evidence of intent.

(d) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of section 7 of this rule and subsection (a). (*Civil Rights Commission; 910 IAC 2-4-8*)

SECTION 4. 910 IAC 2-4-9 IS ADDED TO READ AS FOLLOWS:

910 IAC 2-4-9 Verification of occupancy

Authority: IC 22-9.5-3-4; IC 22-9.5-4-2; P.L.89-2003

Affected: IC 22-9.5-1-2

Sec. 9. (a) In order for a housing facility or community to qualify as housing for persons who are at least fifty-five (55) years of age, it must be able to produce, in response to a complaint filed under this article, verification of compliance with section 7 of this rule through reliable surveys and affidavits.

(b) A facility or community shall, within one hundred eighty (180) days of the effective date of this section, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one (1) occupant of each unit is at least fifty-five (55) years of age. Such procedures may be part of a normal leasing or purchasing arrangement.

(c) The procedures described in subsection (b) must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two (2) years. A survey may include information regarding whether any units are occupied by persons described in section 7(e)(1), 7(e)(3), and 7(e)(4) of this rule.

(d) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

- (1) Driver’s license.**
- (2) Birth certificate.**
- (3) Passport.**
- (4) Immigration card.**
- (5) Military identification.**
- (6) Any other state, local, national, or international official documents containing a birth date of comparable reliability.**

(7) A certification in a lease, application, affidavit, or other document signed by any member of the household eighteen (18) years of age or older asserting that at least one (1) person in the unit is at least fifty-five (55) years of age.

(e) A facility or community shall consider any one (1) of the forms of verification identified above as adequate for verification of age, provided that it contains specific information about current age or date of birth.

(f) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

(g) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one (1) person who is at least fifty-five (55) years of age. Such evidence may include the following:

(1) Government records or documents, such as a local household census.

(2) Prior forms or applications.

(3) A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

(h) Surveys and verification procedures that comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

(i) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person. *(Civil Rights Commission; 910 IAC 2-4-9)*

SECTION 5. 910 IAC 2-4-10 IS ADDED TO READ AS FOLLOWS;

910 IAC 2-4-10 Good faith defense against money damages

Authority: IC 22-9.5-3-4; IC 22-9.5-4-2; P.L.89-2003

Affected: IC 22-9.5-1-2; IC 22-9.5-6-15; IC 22-9.5-7-2; IC 22-9.5-8.1-2

Sec. 10. (a) A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status if the person acted with the good faith belief that the housing facility or community qualified for a housing for older persons exemption under this rule.

(b) A person claiming the good faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies for a housing for older persons exemption.

(c) Before the date on which the discrimination is claimed to have occurred, a community or facility, through its authorized representatives, must certify, in writing and under oath or affirmation, to the person subsequently claiming the defense that it complies with the requirements for such an exemption as housing for persons at least fifty-five (55) years of age in order for such person to claim the defense.

(d) For purposes of this section, "authorized representative", of a housing facility or community, means the individual, committee, management company, owner, or other entity having the responsibility for adherence to the requirements established by this rule.

(e) For purposes of this section, "person" means a natural person.

(f) A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as housing for persons at least fifty-five (55) years of age. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in subsection (b). *(Civil Rights Commission; 910 IAC 2-4-10)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 27, 2004 at 2:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Civil Rights Commission will hold a public hearing on proposed new rules to implement IC 22-9.5-3-4 as amended by P.L.89-2003 concerning housing operated and intended for persons at least 55 years of age. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room N103 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Sandra Leek
Director
Civil Rights Commission