HOUSING FOR OLDER PERSONS ACT ("HOPA") CHECKLIST

MIAMI REALTORS + RWorld

A GUIDE ON WHAT TO KNOW BEFORE YOU LIST, SHOW, OR WRITE AN OFFER

1 VERIFY THE AGE RESTRICTIONS

☐ Is the community represented as 55+ or 62+?

☐ Obtain the current Declaration and all recorded amendments. *See* 42 U.S.C. §3607(b)(2)(C)(ii); 24 C.F.R. §100.306; Fla. Stat. §760.29(4)(b)3.b.

☐ Obtain any current written age-occupancy policies (it might be called a HOPA policy, but might not).

☐ Identify where the restriction appears *(select all that apply):*

☐ Declaration ☐ Amendment ☐ Restrictive covenant ☐ Bylaws and/or rules ☐ Written policy

CAUTION! Do not rely solely on an MLS field, prior listing, sign, website, or verbal statement alone. Florida's FCHR 55+ registry was repealed in 2020 — a "registration letter" does not prove a current 55+ status. Verify the current documents and association policy.

2 KNOW WHAT THE 55+ RESTRICTION ACTUALLY DOES

☐ Does the restriction apply to occupancy, ownership, or both?

☐ Occupancy ☐ Ownership ☐ Both

☐ Must at least one occupant be age 55+? If so, in what percentage of all occupied units? __________.

☐ Does the association permit any occupancy of individuals under the age of 55?

☐ Yes *(if so, what are the rules and who is allowed?)* ☐ No ☐ Unknown

☐ Does the community impose a stricter standard, such as requiring a 55+ occupant in 100% of occupied units?

☐ Yes *(if so, what are the rules?)* ☐ No ☐ Unknown

☐ Are there minimum-age requirements for spouses, other occupants, or children?

☐ Yes *(if so, what are the rules and who is allowed?)* ☐ No ☐ Unknown

☐ Are there written exceptions or policies for caregivers, surviving occupants, inherited units, or hardship situations? (Fla. Stat. §760.29(4)(c) grandfathers certain pre-existing occupants and reserved vacant units.) You should seek legal counsel for advice on requests for reasonable accommodations based on the Fair Housing Act and the Florida Fair Housing Act.

☐ Yes *(if so, describe the situation, which exception/rule/policy applies, and make a copy of supporting documents for your files)* ☐ No ☐ Unknown

REQUIREMENTS TO QUALIFY FOR THE 55+ EXEMPTION!

To qualify for the 55+ exemption, a 55+ community must meet all three of the following conditions (42 U.S.C. §3607(b)(2)(C); 24 C.F.R. §§100.304–100.307; Fla. Stat. §760.29(4)):

1. **At least 80% of occupied units must have at least one occupant age 55 or older. The remaining 20% is NOT automatically available to under-55 buyers or occupants. The association's governing documents and current policies control how, or whether, that flexibility is used.**
2. **The community publishes and follows policies showing an intent to provide housing for persons 55+.**
3. **The community performs HUD-compliant age verification every 2 years.**

EVERYONE MUST BE 62+ IN A 62+ COMMUNITY!

For a 62+ community, EVERY occupant must be 62 or older. There is no 80/20 flexibility; an under-62 spouse or occupant is generally disqualifying (narrow exceptions only). *See* 42 U.S.C. §3607(b)(2)(B); 24 C.F.R. §100.303.

3 WHAT TO KNOW BEFORE MARKETING TO OR CONTRACTING WITH AN UNDER-55 BUYER

☐ Who has authority to determine eligibility *(select all that apply):*

☐ Association ☐ Management company ☐ Committee ☐ Another authorized representative *(if so, who?)*

☐ Obtain written confirmation of eligibility before representing that an under-55 purchaser/occupant may qualify.

☐ Do not advertise that a community has an "available 20%" without written confirmation from the association.

☐ Check for other restrictions – including but not limited to income and rental restrictions.

4 PROTECT YOURSELF – WHAT TO INCLUDE IN YOUR TRANSACTION FILE

☐ Obtain the association's formal written statement that the association complies with the housing-for-older-persons exemption. That statement — plus no actual knowledge of ineligibility — is the statutory defense to monetary damages. See 42 U.S.C. §3607(b)(5); Fla. Stat. §760.29(4)(d).

☐ In your transaction file, keep the governing documents, HOPA policy, and any other written association response used to verify the restriction or that otherwise affirms buyer / occupant eligibility.

☐ Use MLS age-restriction fields and remarks that match the verified information.

☐ If the association does not qualify, age-restricted marketing or refusing families with children is likely discrimination based on familial status under the Fair Housing Act ("FHA") and the Florida Fair Housing Act (Fla. Stat. §760.23). When eligibility or interpretation is unclear, refer the parties to the association and appropriate legal counsel.

5 SAMPLE QUESTIONS TO ASK THE ASSOCIATION BEFORE CONTEMPLATING A TRANSACTION

ASK THE ASSOCIATION	RESPONSE
Does the community currently operate as 55+ or 62+ housing?	
What are the documents that establish the age restriction?	
When was the last HUD-compliant age verification completed?	
Does the restriction apply to occupancy, ownership, or both?	
Does the current policy permit any under-55 occupancy?	
What age rules apply to additional occupants?	
Who can provide written confirmation that a proposed buyer and/or occupant qualifies?	
Are there any other restrictions? Income restrictions? Rental restrictions? Other?	