

Chapter 46-05-01
Housing for Older Persons

Section

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46-05-01-01. Housing for persons who are fifty-five years of age or older.

1. The provisions regarding familial status and age in North Dakota Century Code ch. 14-02.5 shall not apply to housing intended and operated for persons fifty-five years of age or older.

2. For purposes of this chapter, 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:

(a) A condominium association;

(b) A cooperative;

(c) A property governed by a homeowners' or resident association;

(d) A municipally zoned area;

(e) A leased property under common private ownership;

(f) A mobile home park; and

(g) A manufactured housing community.

3. For purposes of this chapter, older person means a person fifty-five years of age or older.

General Authority: N.D.C.C. § 14-02.5-11

Law Implemented: N.D.C.C. § 14-02.5-11; 24 CFR 100.304

46-05-01-02. Eighty percent occupancy.

1. In order for a housing facility or community to qualify as housing for older persons under North Dakota Century Code §14-02.5-11, at least eighty percent of its occupied units must be occupied by at least one person fifty-five years of age or older.

2. For purposes of this chapter, occupied unit means:

(a) A dwelling unit that is actually occupied by one or more persons on the date that the exemption is claimed; or

(b) 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.

3. For purposes of this chapter, occupied by at least one person fifty-five years of age or older means that on the date the exemption for housing designed for persons who are fifty-five years of age or older is claimed:

(a) At least one occupant of the dwelling unit is fifty-five years of age or older;

or

(b) If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was fifty-five years of age or older.

4. Newly constructed housing for first occupancy need not comply with the requirements of this section until at least twenty-five percent of the units are occupied. For purposes of this chapter, newly constructed housing includes a facility or community that has been wholly unoccupied for at least ninety days prior to re-occupancy due to renovation or rehabilitation.

5. Housing satisfies the requirements of this section even though:

(a) There are unoccupied units, provided that at least eighty percent of the occupied units are occupied by at least one person fifty-five years of age or older.

(b) 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 years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.

(c) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents and who are under the age of fifty-five.

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

(i) Has reserved all unoccupied units for occupancy by at least one person fifty-five years of age or older until at least eighty percent of the units are occupied by at least one person who is fifty-five years of age or older; and

(ii) Meets the requirements of §§ 46-05-01-03 and 46-05-01-04.

6. For purposes of the transition provision described in § 46-05-01-02(5)(d), 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 of the occupied units by at least one person fifty five years of age or older.

7. Where application of the eighty percent 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 person fifty-five years of age or older.

8. Each housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one person fifty-five years of age or older, so long as the housing facility or community complies with the provisions of § 46-05-01-03.

General Authority: N.D.C.C. § 14-02.5-11

Law Implemented: N.D.C.C. § 14-02.5-11; 24 CFR 100.305

46-05-01-03. Intent to operate as housing designed for persons who are fifty-five years of age or older.

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

- (a) The manner in which the housing facility or community is described to prospective residents;
 - (b) Any advertising designed to attract prospective residents;
 - (c) Lease provisions;
 - (d) Written rules, regulations, covenants, deed or other restrictions;
 - (e) The maintenance and consistent application of relevant procedures;
 - (f) Actual practices of the housing facility or community; and
 - (g) Public posting in common areas of statements describing the facility or community as housing for persons fifty-five years of age or older.
2. Phrases such as “adult living”, “adult community”, or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons fifty-five years of age or older.
3. If there is language in deed or other community or facility documents which is inconsistent with the intent to provide housing for persons who are fifty-five years of age or older housing, the commissioner 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.
4. A housing facility or community may allow occupancy by families with children as long as it meets the requirements of §§ 46-05-01-02 and 46-05-01-03(1).

General Authority: N.D.C.C. § 14-02.5-11

Law Implemented: N.D.C.C. § 14-02.5-11; 24 CFR 100.306

46-05-01-04. Verification of occupancy.

1. In order for a housing facility or community to qualify as housing for persons fifty-five years of age or older, it must be able to produce, in response to a complaint filed under this title, verification of compliance with § 46-05-01-02 through reliable surveys and affidavits.
2. A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is fifty-five years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.
3. The procedures described in subsection 2 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 years.
4. Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:
 - (a) Driver's license;
 - (b) Birth certificate;
 - (c) Passport;
 - (d) Immigration card;
 - (e) Military identification;
 - (f) Any other state, local, national, or international official documents containing a birth date of comparable reliability; or
 - (g) A certification in a lease, application, affidavit, or other document signed by any member of the household age 18 or older asserting that at least one person in the unit is fifty-five years of age or older.
5. A facility or community shall consider any one 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.
6. 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.
7. 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 person fifty-five years of age or older. Such evidence may include:
 - (a) Government records or documents, such as a local household census;

- (b) Prior forms or applications; or
- (c) 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.

8. Surveys and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.
9. A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

General Authority: N.D.C.C. § 14-02.5-11

Law Implemented: N.D.C.C. § 14-02.5-11; 24 CFR 100.307

46-05-01-05. Good faith defense.

1. 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 an exemption under this chapter.
2. (a) 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.
 - (b) 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 fifty-five years of age or older in order for such person to claim the defense.
 - (c) For purposes of this section, an 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 chapter.
 - (d) For purposes of this section, a person means a natural person.
 - (e) 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 fifty-five years of age or older. Such a person will be ineligible for the good faith defense regardless of whether the person received written assurance described in subsection 2.

General Authority: N.D.C.C. § 14-02.5-11

Law Implemented: N.D.C.C. § 14-02.5-11; 24 CFR 100.308