

Resolution No: 1

Date: April 30, 2004

City: Washington, D.C.

NAHB Resolution

Title: Age Restrictions For Rental Properties Insured by the  
Federal Housing Administration  
Original Sponsor: Senior Housing Council

WHEREAS, the U.S. Congress, through the enactment of the Fair Housing Amendments Act of 1988 (the Act), provides an exemption to the prohibition against discrimination based on familial status for certain housing in order to protect the rights of older persons to live in age-restricted housing; and

WHEREAS, the Act defines “housing for older persons” as housing: (a) provided under any state or federal program that the secretary determines is specifically designed and operated to assist older persons; (b) intended for, and solely occupied by, persons 62 years old or older; or (c) intended and operated for occupancy by persons 55 or older, and at least 80 percent of the occupied units are occupied by at least one person who is 55 or older; and

WHEREAS, the Housing for Older Persons Act of 1995 (HOPA) was passed by Congress to eliminate the requirement for significant facilities and services in order to establish a bright line rule for housing for older persons, thereby reconfirming that older persons have the right to live in age-restricted housing; and

WHEREAS, HOPA allows local and state jurisdictions to impose more stringent requirements for age-restricted housing for older persons through zoning ordinances, covenants or other measures, and, further, HOPA deliberately declined to dictate specific practices or deny flexibility to such jurisdictions; and

WHEREAS, in many areas, local zoning authorities choose to impose more stringent requirements for age-restricted housing that prohibit persons under the age of 62 or 55 to live in the housing, but comply with the provisions of the ACT, as clarified by HOPA; and

WHEREAS, many local jurisdictions provide financing in the form of “soft” loans or grants for elderly-only housing and/or charge lower sewer, water, tap and impact fees for elderly-only housing; and

WHEREAS, some state housing finance agencies award more points in the Low Income Housing Tax Credit (LIHTC) allocation process to projects for older persons only; and

WHEREAS, recently the U.S. Department of Housing and Urban Development (HUD) has begun to refuse to insure mortgages pursuant to Sections 221(d)(4), 221(d)(3) and 223(f) for properties with older persons-only designations; and

WHEREAS, HUD states that its policy, which is neither statutory nor regulatory, is to deny FHA insurance under these programs if the properties prohibit children, or others under the age of 62, even if the properties are designated only for older persons and meet all the requirements of the Act and HOPA; and

WHEREAS, HUD's policy rests on its concern that grandparents may have to care for minor grandchildren; and

WHEREAS, HUD therefore requires that, as a condition of mortgage insurance, children may reside permanently in the property; and

WHEREAS, HUD's policy to prohibit FHA insurance under the above-referenced programs for older-person households prevents many seniors from living in affordable properties for older persons only, impedes the production of affordable housing for seniors and, further, circumvents the Congress' intent to ensure that older persons have the right to live in age-restricted housing;

NOW, THEREFORE, BE IT RESOLVED that the National Association of Home Builders (NAHB) urge HUD to provide FHA mortgage insurance pursuant to the Sections 221(d)(3), 221(d)(4) and 223(f) programs for age-restricted housing intended solely for older persons in conformance with the spirit and intent of the Fair Housing Amendments Act of 1988 and Housing Older Persons Act (HOPA); and

BE IT FURTHER RESOLVED that if HUD fails to change its position, that NAHB urge Congress to require HUD to provide FHA mortgage insurance pursuant to the above-referenced programs to age-restricted housing intended solely for older persons, as provided for under the Fair Housing Amendments Act of 1988 and HOPA.

Board of Directors Action:

Executive Board Action:

Resolutions Committee Action:

Housing Finance Committee Action:

Federal Government Affairs Committee Action:

Multifamily Council Action:

Multifamily Finance Subcommittee Action:

Senior Housing Council Action:

**Approved**

Recommends Approval

Recommends Approval

Recommends Approval

Recommends Approval

Recommends Approval

Recommends Approval

Recommends Approval