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### **Restrictions on Use: Can an Association restrict use of a swimming pool/other amenities to “adults only” for part of the day?**

An Association in Washington probably cannot restrict use of an amenity (i.e. a swimming pool) to “adults only” for any part of the day, unless there are identical amenities available for use by children. Such a restriction would likely constitute discrimination based on age, which is prohibited by the federal Fair Housing Act.<sup>1 2</sup> But an Association can restrict certain activities in the amenity (such as splashing or roughhousing) or the types of use (such as “laps only”), so long as the restriction is uniformly enforced without regard to age.

No Washington court has considered whether Associations can restrict use of amenities to “adults only”, but the California Court of Appeals has held that restricting use of an amenity to “adults only” does not discriminate against children if the restriction is not a total exclusion and the restriction is not unreasonable.<sup>3</sup> Our experience with fair housing agencies in Washington is that they will find any restriction based on age or family status to be a violation of the Fair Housing Act.

An exception to this rule applies to Associations that qualify as “housing for older persons,” which are not subject to the Fair Housing Act age discrimination provisions.<sup>4</sup> An Association will qualify as “housing for older persons” if:

- (1) The Association’s housing is provided under any State or Federal program that the Secretary of State determines is specially designed and operated to assist elderly persons; or

- (2) The Association's housing is intended for, and solely occupied by, persons 62 years of age or older; or
- (3) The Association's housing is intended and operated for occupancy by persons 55 years of age or older, and
- at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older; and
  - the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and
  - the housing facility or community complies with rules issued by the Secretary of State for verification<sup>5</sup> of occupancy.<sup>6 7</sup>

Although Associations generally may not restrict all use of an amenity based on age, they can probably restrict certain activities (such as splashing or jumping around) if the restriction is uniformly enforced against children and adults. Associations can also probably limit swimming pools to "laps only" or to "quiet swim only" if the restriction is reasonable and does not amount to a total exclusion for children (i.e. the restriction is only for certain times of day, or the restriction is in effect at all times but there are other swimming pools available that do not have such a restriction that children can use).

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<sup>1</sup> 42 U.S.C. 3604 (Discrimination in sale or rental of housing and other prohibited practices). As made applicable by section 803 of this title and except as exempted by sections 803(b) and 807 of this title, it shall be unlawful—

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

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<sup>2</sup> **42 U.S.C. 3602** (Fair Housing Act) (Definitions) (k) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with—

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

<sup>3</sup> *Sunrise Country Club Ass'n v. Proud*, 190 Cal. App. 3d 377 (Cal. Ct. App. 1987) (an Association that made 10 swimming pools "adults only" did not discriminate against children because making 10 of 21 swimming pools "adults only" was not unreasonable, and it was not a total exclusion).

<sup>4</sup> 42 U.S.C. 3607(b)(1) (Religious organization or private club exemption) provides: "Nor does any provision in this title regarding familial status apply with respect to housing for older persons."

<sup>5</sup> Must include reliable surveys and affidavits, and examples of the types of policies and procedures relevant to a determination of compliance. 42 U.S.C. 3607(b)(2)(C)(iii).

<sup>6</sup> 42 U.S.C. 3607(b)(2) (Religious organization or private club exemption).

<sup>7</sup> 42 U.S.C. 3607(b)(3) (Religious organization or private club exemption) provides:

Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) persons residing in such housing as of the date of enactment of this Act who do not meet the age requirements of subsections (2)(B) or (C): Provided, That new occupants of such housing meet the age requirements of sections (2)(B) or (C); or  
(B) unoccupied units: Provided, That such units are reserved for occupancy by persons who meet the age requirements of subsections (2)(B) or (C).