

Kimball, Tirey & St. John LLP

Updated: Can Underage People Live in Senior Housing?

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This is one of the questions most frequently asked by clients who operate senior housing in California. As with so many questions, the answer is: it depends. The first question that needs to be asked is whether the property is a 55 and older property, or a 62 and older property.

In 62+ senior housing, the answer is simple. No one under the age of 62 is permitted to live there, with three exceptions: 1) a live-in caregiver who might need to live with the senior as a “reasonable accommodation” based on the disability of a resident; 2) an employee under 62 whose duties require that the person must live on the property; and 3) underage occupants residing at the property prior to 1/1/85 (California law) or 9/13/88 (Federal law) are allowed to continue their tenancy.

55+ senior housing is more complex. The California Unruh Civil Rights Act (which sets forth the rules for senior housing in California) was amended in 2000 to require that, for all tenancies beginning 1/1/01 or after, at least one member of the household must be 55 or older. There are no exceptions to this rule in non-subsidized housing, which means that underage, disabled residents may not move into a 55+ property by themselves – they would have to live with a “qualifying senior” (someone 55 or older) in order to legally reside in the community. There are some federal subsidy programs which are entitled “elderly/disabled.” In properties operated under those programs, an exception must be made in order to comply with the program requirements. *(Effective January 1, 2011, California law was amended to specifically provide that selection preferences based on age imposed in connection with federally approved housing programs do not constitute age discrimination in housing.)*

With respect to secondary residents (those living with the qualifying senior), the most restrictive rules allowed are to require secondary residents to be “Qualified Permanent Residents.” Qualified Permanent Residents must be 45 years of age or older, unless the person is: 1) a spouse or cohabitant of the qualifying senior; or 2) a person who provides primary economic or physical support for the senior; or 3) a disabled child or grandchild who needs to live with the senior or the Qualified Permanent Resident because of his or her disabling condition. Further exceptions would be persons under age 55 who resided in the complex prior to 1/1/85. Finally, if the number of units on the senior property exceeds the minimum requirement of 35 (or 21 in Riverside County) additional units may be occupied by under-age employees providing all other requirements of the Unruh Act are met.)

It is important for clients who operate 55+ senior housing to specify what age requirement they have set for the secondary residents. *The current interpretation of California law on this subject is that a housing provider may require that all secondary residents be Qualified Permanent Residents or they may require that all secondary residents be at least 18 years of age. However, if a housing provider were to require that secondary residents be some other age (for instance, at least 40 years old), that requirement would likely be interpreted to be arbitrary discrimination based on age.*

We recommend that you specify the age requirements in your rental criteria, on the application and in the lease. If you do not specify an age requirement for secondary residents, it could be presumed that you will allow persons of any age to live with the qualifying senior (including children).

Additionally, the Unruh Civil Rights Act has specific provisions for a live-in caregiver in 55+ senior housing (the Act refers to caregivers as “Permitted Health Care Workers.”) If a resident needs a live-in caregiver in a 55+ property, you may want to obtain legal advice to ensure you are in compliance with these provisions.

In any event, if you operate senior housing in California, it is important to comply with all of the laws governing senior housing so you don’t risk losing your property’s “senior” status. If your property was financed using tax credits, a violation of the senior housing laws (which could be a fair housing violation) could also result in a loss of those tax credits.

Please note that senior mobile home parks are not covered by the California Unruh Civil Rights Act, but rather are governed by federal senior housing laws. If you operate a 55+ senior mobile home park, it is recommended that you seek legal advice on the specific requirements of federal law.

The Fair Housing Department of KTS can provide written legal opinions and formal reviews of your company’s documentation to assist you in your efforts to comply with all applicable senior housing laws. KTS also has forms available for purchase, such as caregiver addenda for senior properties.

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