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PARK WATCH

A LEGAL DEVELOPMENTS NEWSLETTER

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SAN MARCOS ROCKED BY COURT JUDGMENT REVERSING DECISION TO DENY RENT INCREASE

By: Terry R. Dowdall, Esq.

▲ *Synopsis*

The Superior Court has reversed a decision of the San Marcos City Council, sitting as a rent commission, denying the rent increase application submitted by Vista Meadows Mobilehome Park represented by our firm, *Dowdall Law Offices, A.P.C.* The Commission erred by rejecting the expert evidence of the park owner, rejecting the park's gross income figures (groundlessly attacked by the residents), and deciding that the maintenance expense of the park was less than resident-owned parks (and therefore excessive!).

The Commission also erred in utilizing "just return" theories never considered until after the public hearing closed, and after the applicant could rebut such methods. No expert was employed by the city for use of any alternative formulas.

The Court held that the tactics and decision of the City denied a fair trial to the park owner and has ordered further proceedings without these unfair tactics against the park owner.

▲ *Facts*

Vista Meadows Mobilehome Park is regulated by the San Marcos rent control ordinance. The rent control ordinance requires that the City Council, sitting as a rent commission, hear park owners' rent increase applications. The city prepared a record of documents pertaining to the requested July 1, 1998 rent increase sought by Vista Meadows, consisting of 2242 pages.

Property manager Paul Krugman of Pointe Properties, Inc., conducted a study of the rental market. Petitioner sought $155 per space based on comparable rents, as well as a corroborating economic analysis conducted by a retained expert.

The Council conducted its public hearing on June 25, 1998. On July 28, 1998, a decision was made to allow $8 for 1998, and $5 per year for 1999 - 2002. The Council also ruled that unless the decision was challenged, any application through your 2002 would be waived.[1] The park owner contended that a waiver

In this publication:

[1] CITY ATTORNEY: "He would have a specified period of time to challenge and if he does not challenge it within the appropriate time period this year, he would essentially have waived it for the remainder of the years. He would not be able to bring this up say in the year 2000 when the additional rent increase was effected, if in fact that's how it went."

of administrative relief may not involuntarily saddled upon a park owner which prevents the ability to even seek a rent increase over the course of the installment plan imposed by the Respondent. The City conceded this issue.

Petitioner proffered unrefuted evidence of the appropriate rate of return on the investment. The analysis of the expert revealed that the rent revenue required a rent increase, for a conservative level of 10.33% rate of return, of $160.89 per month per space.

To avoid any claim that the expenses or income were inaccurate, Petitioner supported his income and expense statement with all invoices, checks and evidence of actual payment.

At the hearing, it was clearly established that the method of determining the rent increase of $60 - $155 (with a cap of $435) was customary and typical of the standard applied by a prudent investor.[2]

▲ *The Court reverses the Council*

The Court held that the Commission's statements were not supported by the evidence and that the tactics of the city deprived the park owner of a fair trial.

For example, the mayor declared that gross income was understated, based on an unproven resident opinion of gross rent. The Court held that use of "incompetent" objections was improper.

The Council also noted that resident-owned parks incurred less expense that the applicant's park, concluding that the expenses were simply "overcharged." There was no competent evidence of this objection.

One of the Council members looked to other methods of deriving rate of return, but she never provided notice of any expertise and gave no notice of a deviation from accepted rent formula or models used in San Marcos. The Court found all these tactics to violate the park owner's rights.

The Mayor further stated that park maintenance constituted a widespread resident complaint, but he never articulated any basis, analysis or calculation respecting the amount by which an appropriate rent increase should be reduced, or otherwise monetized as required. There was no evidence from which the Commission could have monetized a reduction of an appropriate rent increase.

At the time of the litigation, the City conceded that the park owner could not be barred from seeking a rent increase for the duration of any installment period of an allowed increase.

The Court's decision of 6 pages is very strong and almost embarrassing to the City, making it appear that the Council went well beyond lay comprehension of the evidence before it, rejected evidence when there was no grounds to do so, and engaged in dubious tactics after the close of the public hearing.

For San Marcos park owners and others more generally, the analysis and conclusions of the Court are very instructive and useful.

The Court has ordered that the Council rehear the case based on orders to be prepared by this office. If the Council violates these orders, it may be that the only effective remedy will be to have the entire council personally cited into court for contempt of the Court's orders.

▲ *Comment*

Property rights litigation is a risky business. To assail the content of an ordinance on the face at present, or to pursue a claim of regulatory taking, or challenge any regulation which threatens the operation of rent control affecting all residents within a city or county -- poses a specter of defeat in the state courts. Unless and until reversals of the recent defeats of California's property rights' efforts are forthcoming (which will be to the credit of the courageous efforts of the Pacific Legal Foundation), less ambitious and lofty battles should be carefully studied.

For the single park owner who needs a rent increase, the most productive use of the legal system remains in the challenge of applying for a rent increase, seeking an individual rent adjustment on a carefully planned evidentiary record, and pursuit of relief against an unfair hearing or result if denied.

Rent control is here to stay in many areas. It is my opinion that realizing a fair return in such areas will be most successfully achieved from laboring within the system to force rent control ordinances and administrators to provide a just return for the individual park owner, not in challenging the underlying legislation establishing the regulations. The Vista Meadows case is a model example of this approach.

In an earlier case, Client Lakeview Mobile Estates sued San Marcos and was ordered on consent

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[2]

MR. DOWDALL: "All right. Based on the research that you did, did you reach any conclusions or opinions with regard to the amount of a rent increase which would be appropriate in order to sustain a fair return on the investment on this park? ["Yes..."] And what would your opinion be?"

EXPERT: "My opinion is that the park should, at a 9.99% increase should have an increase of $153.31 and at 10.33% a $160.89. Basically, it's not scientific research so that's why I do a range. Somewhere in that range would be a fair return." * * *

MR. DOWDALL: "Now the analysis you performed, is it recognized in the investment community as a valid approach to determining a fair return?"

EXPERT: "Very much so. It's what all the investors who invest in multi-million dollar properties use when they do a detailed analysis of their investment risks and rewards."

decree to accept an installment increase of approximately $90.00 per month. In that instance, the calm reflection of prudent counsel for the City concluded that such an increase was appropriate and advisable to avoid a potentially abrupt change in rents to take account of just and reasonable return issues. That decree was ordered by the Court even before the official trial took place.

Starting an economical fight the owner can win is a wise battle choice in a much larger, generally unwieldy war to protect property rights.

FEDS RELEASE REGS FOR "55+" HOUSING - "ALL AGE" PARKS OFFERED A FRESH START TO CONVERT TO "55+" REG!!

By: Terry R. Dowdall, Esq.

▲ *Synopsis*

The Federal government (HUD) has released new guidelines for "Older Persons" communities. A significant provision is the ability of the "all age" owner, for a period of one year, to convert to "older persons" housing if desired! This dramatic concession for the benefit of many community owners who may desire to change to "older persons" age restrictions in light of the elimination of the requirement for "significant services and facilities" will be a welcome feature.

▲ *Background*

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. §§3601-3619) ("Act") exempts ``housing for older persons' (intended and operated for occupancy by persons 55 years of age or older) which satisfies certain criteria. HUD has adopted implementing regulations further defining the ``housing for older persons'' exemption in the Code of Federal Regulations.

The Housing for Older Persons Act of 1995 approved December 28, 1995 ("HOPA") revised the definition of the original exemption contained in the Act for housing designed and operated for occupancy by persons who are 55 years of age of older by eliminating the requirement of facilities and services for older persons. The law as amended provided that 55+ housing was required to be:

> *"Intended and operated for occupancy by persons 55 years of age or older, and--*
> *(I) At least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;*
> *(ii) The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and*
> *(iii) The housing facility or community complies with rules issued by the Secretary [of HUD] for verification of occupancy, which shall--*
> *(I) Provide for verification by reliable surveys and affidavits; and*
> *(II) Include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of clause (ii)."*

The real substantive change made by HOPA was the elimination of "significant facilities and services'' previously required by the Act to meet the 55-and-older exemption. Section 807(b)(2)(C) of the Act originally required that housing designed for persons who are 55 years of age or older provide "significant facilities and services specifically designed to meet the physical or social needs of older persons.''

HOPA also added the new requirement that a housing facility or community seeking the 55-and-older exemption comply with HUD regulations on verification of occupancy.

In addition, section 3 of HOPA added a new section 807(b)(5) to the Act. This new section established a good faith defense against civil money damages for a person who reasonably relies in good faith on the application of the housing for older persons exemption, even when, in fact, the housing facility or community does not qualify for the exemption.

▲ *The New Regulations*

The new regulations create a new § 100.305, which updates the 80 percent occupancy requirements, including "fresh start" regulations.

A new § 100.306 describes how a facility or community may establish its intent to operate as housing designed for persons at least 55 years of age or older.

New § 100.307 sets forth the necessary procedures for verification of the 80 percent occupancy requirements.

Finally, a new § 100.308 implements the good faith defense against civil money damages.

▲ *The Importance of Intent*

The regulations make it clear that use of park descriptions such as "adult living", "adult community", or similar statements are inconsistent with the intent to establish housing for older persons. Such phrases are not evidence that the facility or community intends to operate as housing for 'older persons' and are inconsistent with that intent.

HUD, in order to make an assessment of intent, will consider all of the measures taken by the facility or community to demonstrate the intent required by the Act. However, for park-owned rentals, the park may not terminate leases of families with children in order to achieve occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older.

AGE VERIFICATION: It is HUD's position that the test is whether 80% of the occupied units are, in fact, occupied by persons 55 years or older. This need only be documented through **reliable survey, census or affidavit,** or other documentation, a copy of which should be retained for record keeping purposes, and which confirms that the 80% threshold is being met.

A **self-certification** of his or her age by an individual will be adequate to meet this standard. An **affidavit** from someone who knows the age of the occupant(s) and states his/her basis for the knowledge is sufficiently reliable to satisfy the statute. HUD does not intend to require any particular documentation be provided as a condition of occupancy, including immigration documentation.

A summary of the information gathered in support of the occupancy verification should be retained for confirmation purposes. Copies of supporting information gathered in support of the occupancy verification may be retained in a separate file with limited access, created for the sole purpose of complying with HOPA, and not in general or resident files that may be widely accessible to employees or other residents. **The segregated documents may be considered confidential and not generally available for public inspection.** HUD, state or local fair housing enforcement agencies, or the Department of Justice may review this documentation during the course of an investigation.

The re-survey does not require that all supporting documents be collected again--only that the community confirm that those persons counted as occupying dwellings for purposes of meeting the 80% requirement are, in fact, still in occupancy. Only the overall survey summary is required to be available for review, not the supporting documentation.

Communities which are concerned about **misrepresentation of the age** of occupants are free to require that affidavits from occupants about the ages of persons in their households be signed under the **penalty of perjury,** just as they are free, consistent with state or local law, to require that applications, leases, and other admission documents be signed under oath, or under penalty of perjury. This is a provision included in residency applications prepared for park owners by this office.

Statements from third party individuals who have personal knowledge of the age of the occupants and setting forth the basis for such knowledge may be used when occupants decline to provide information verifying age, but such statements must be made under penalty of perjury.

HUD also states that although HOPA would allow **under-aged heirs, or minors under the age of 18** years of age to reside in, or visit, housing for persons who are 55 years of age or older, it does not require it. HUD philosophically supports a **"compassionate community"** which has provisions allowing some flexibility **where the exemption would not be destroyed** by that flexibility, but there is no direct legal authority under the Act to require it.

▲ *Fresh Start or "Transition Provision"*

The new regs provide in pertinent part:

(e) (5) For a period expiring one year from the effective date of this final regulation, there are insufficient units occupied by at least one person 55 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 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and

(ii) Meets the requirements of Secs. 100.304, 100.306, and 100.307.

▲ *Converting back to "older persons"*

The process of converting to "older persons" status may be attractive to many park owners. Even before the new regulations, some parks have taken this step based on the language in the former regulations.

This conversion would appear to stand the best chance of success **where the park is already more than 80% 55 years of age**. To accomplish the change to "older persons", a rule change under Civil Code §798.25 is required.

If a park owner is **less than 80% older persons at this time, the change may be a risky proposition** and likely ill-fated. Consider: the park

owner must institute a rule amendment, only effective after 6 months following the required resident meeting. See Civil Code section 798.25. If at the end of the year (or 6 months following the effective date of the rule change), the park is not yet at the 80% level, it must abandon the rule amendment and revert to all age status. This would again require institution of the amendment of the rules and regulations, again requiring 6 months notice (for the residents who did not agree and consent in writing to have the new rule become immediately effective). Thus, the older persons conversion for the **under 80% park** is not likely to result in a successful conversion.

The Northern California Fair Housing Coalition (NCFHC), a coalition of 18 fair housing groups considers §100.305(e)(5), the so called "transition provision," to be without legal authority and bad public policy because, they assert, it would allow communities with no senior residents to declare themselves housing for persons who are 55 years of age or older housing and discriminate against families with children until they reach the 80% senior occupancy minimum.

But a transition provision was first adopted in the August 18, 1995 final rule which was implemented prior to the passage of HOPA, but the entire final rule was withdrawn in April 1996 after Congress passed HOPA.

The intent of the original transition provision was to provide a mechanism to return to senior status for those former senior communities who had abandoned, or did not achieve, senior status for fear of law suits spawned by the pre-HOPA interpretations of the exemption, especially the requirement that significant facilities and services be provided, or for other reasons which Congress found were contrary to the original intent of the exemption.

However, HUD states that this may be the only way for a community which believed that it was ineligible for "housing for older persons" status, and which has therefore permitted occupancy by families, to qualify for the exemption.

HUD is concerned, however, that an overly broad transition provision may allow qualification for communities beyond those which *temporarily were unable to qualify for the exemption because of the significant facilities and services provision or other interpretations of the exemption, and which would otherwise have been eligible for the exemption*. For that reason, HUD has retained the transition provision, **but only for a period of one year** from the date on which this regulation becomes final, to allow communities which wish to qualify for the 55-and-older exemption to qualify.

At the end of the one year period, the transition period will expire. The one year limitation period will require that those communities seeking to meet the 80% requirement have at least 80% of their occupied units occupied by at least one person who is 55 years of age or older **by the expiration of the period in order to qualify for the exemption.**

A community or facility which attempts to meet the exemption during the transition period, unsuccessfully, must cease reserving vacant units for persons who are 55 years of age or older at the end of that period.

Vacant units reserved for occupancy by persons who are 55 of age or older may not be counted in achieving this standard.

The transition provision may not be facilitated by evicting or terminating the leases of resident households with minor children.

Even if a facility or community fails to meet the exemption during this transition period, it will **not be liable for discrimination** on the basis of familial status resulting from actions taken during the one year period if it complies with all of the transition requirements during that time.

▲ *The 80-20 Split and The Right to Allow Exceptions Within The 20%*

HUD states that there is no requirement that the remaining 20% of the occupied units be occupied by persons under the age of 55, nor is there a requirement that those units be used only for persons where at least one member of the household is 55 years of age or older.

Communities may decline to permit any persons under the age of 55, may require that 100% of the units have at least one occupant who is 55 years of age or older, may permit up to 20% of the occupied units to be occupied by persons who are younger than 55 years of age, or set whatever requirements they wish, as long as "at least 80%" of the occupied units are occupied by one person 55 years of age or older, and so long as such requirements are not inconsistent with the overall intent to be housing for older persons.

Although occupancy by a person under the age of 55 who inherits a unit or a surviving spouse who is younger than 55 years of age are the original examples cited by Congress in justifying the original 80/20 split, HUD does not consider these to be the only appropriate uses of the flexibility provided by the up to 20% allowed by the exemption, nor are protections for those groups required. HUD believes that the appropriate use of the 20%, if any, is at the discretion of the community or facility and does not intend to impose more specific requirements in this area. For example, a community could allow some percentage of its units, up to 20%, to be made available to persons over the age of 50, and, as long as the overall intent to be senior housing remained clear, HUD would not have an objection. However,

the remaining portion of units not counted for purposes of meeting the 80% requirement may not be segregated within a community or facility.

▲ *Disability Issues*

The final regulation retains the provision that a unit occupied by a person or persons as a reasonable accommodation to the disability of an occupant need not be counted in meeting the 80% requirements.

This provision ensures that a community or facility seeking to authorize the reasonable accommodation for a resident who, because of a disability, requires an attendant, including family members under the age of 18, residing in a unit in order for that person to benefit from the housing will not have its exemption adversely affected by permitting the accommodation. The authority for this provision arises under the Act's requirement that reasonable accommodations be provided to persons with disabilities.

▲ *The New Regs*

The new regulations include examples of the application of the regulations in certain circumstances. These examples are omitted here. *If you desire a full set of the regulations, please call to request a copy be either e-mailed, mailed, faxed or given a disk copy.*

Here are the official regulations as codified in the Code of Federal Regulations.

§ 100.304 HOUSING FOR PERSONS WHO ARE 55 YEARS OF AGE OF OLDER.

(a) The provisions regarding familial status in this part shall not apply to housing intended and operated for persons 55 years of age or older. Housing qualifies for this exemption if:

(1) The alleged violation occurred before December 28, 1995 and the housing community or facility complied with the HUD regulations in effect at the time of the alleged violation; or

(2) The alleged violation occurred on or after December 28, 1995 and the housing community or facility complies with:

(i) Section 807(b)(2)(C) (42 U.S.C. 3607(b)) of the Fair Housing Act as amended; and

(ii) 24 CFR 100.305, 100.306, and 100.307.

(b) For purposes of this subpart, 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, but are not limited to:

(1) A condominium association;

(2) A cooperative;

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

(4) A municipally zoned area;

(5) A leased property under common private ownership;

(6) A mobile home park; and

(7) A manufactured housing community.

(c) For purposes of this subpart, older person means a person 55 years of age or older.

§ 100.305 80 PERCENT OCCUPANCY.

(a) In order for a housing facility or community to qualify as housing for older persons under § 100.304, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.

(b) For purposes of this subpart, occupied unit means:

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

(2) 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.

(c) For purposes of this subpart, occupied by at least one person 55 years of age or older means that on the date the exemption for housing designed for persons who are 55 years of age or older is claimed:

(1) At least one occupant of the dwelling unit is 55 years of age or older; or

(2) 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 55 years of age or older.

(d) Newly constructed housing for first occupancy after March 12, 1989 need not comply with the requirements of this section until at least 25 percent of the units are occupied. For purposes of this section, newly constructed housing includes a facility or community that has been wholly unoccupied for at least 90 days prior to re- occupancy due to renovation or rehabilitation.

(e) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80 percent of the occupied units in the housing facility or community were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the units occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

(3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.

(4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by § 100.204 and who are under the age of 55.

(5) For a period expiring one year from the effective date of this final regulation, there are insufficient units occupied by at least one person 55 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 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and

(ii) Meets the requirements of Secs. 100.304, 100.306, and 100.307.

(f) For purposes of the transition provision described in § 100.305(e)(5), 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 80 percent of the occupied units by at least one person 55 years of age or older.

(g) Where application of the 80 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 55 years of age or older.

(h) Each housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one person 55 years of age or older, so long as the housing facility or community complies with the provisions of § 100.306.

§ 100.306 INTENT TO OPERATE AS HOUSING DESIGNED FOR PERSONS WHO ARE 55 YEARS OF AGE OR OLDER.

(a) In order for a housing facility or community to qualify as housing designed for persons who are 55 years of age or older, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 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:

(1) The manner in which the housing facility or community is described to prospective residents;

(2) Any advertising designed to attract prospective residents;

(3) Lease provisions;

(4) Written rules, regulations, covenants, deed or other restrictions;

(5) The maintenance and consistent application of relevant procedures;

(6) Actual practices of the housing facility or community; and

(7) Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.

(b) 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 55 years of age or older.

(c) 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 55 years of age or older housing, HUD 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.

(d) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of Secs. 100.305 and 100.306(a).

§ 100.307 VERIFICATION OF OCCUPANCY.

(a) In order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed under this title, verification of compliance with § 100.305 through reliable surveys and affidavits.

(b) 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 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

(c) The procedures described in paragraph (b) of this section 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. A survey may include information regarding whether any units are occupied by persons described in paragraphs (e)(1), (e)(3), and (e)(4) of § 100.305.

(d) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

(1) Driver's license;

(2) Birth certificate;

(3) Passport;

(4) Immigration card;

(5) Military identification;

(6) Any other state, local, national, or international official documents containing a birth date of comparable reliability; or

(7) 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 55 years of age or older.

(e) 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.

(f) 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.

(g) 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 55 years of age or older. Such evidence may include:

(1) Government records or documents, such as a local household census;

(2) Prior forms or applications; or

(3) 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.

(h) 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.

(i) A summary of occupancy surveys shall be

available for inspection upon reasonable notice and request by any person.

§ 100.308 GOOD FAITH DEFENSE AGAINST CIVIL MONEY DAMAGES.

(a) 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 a housing for older persons exemption under this subpart.

(b)(1) 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.

(2) 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 55 years of age or older in order for such person to claim the defense.

(3) 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 subpart.

(4) For purposes of this section, a person means a natural person.

(5) 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 55 years of age or older. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in paragraph (b) of this section.

PLEASE FEEL FREE TO CONTACT TERRY R. DOWDALL FOR ANY QUESTIONS OR COMMENTS RESPECTING THE FOREGOING ISSUES.