

## BONTERRA AT CROSS CREEK RANCH

### 55 YEAR AGE RESTRICTION POLICY

per

**The FAIR HOUSING AMENDMENTS ACT of 1988 (the "Act")  
HOUSING FOR OLDER PERSONS ACT 1995: FINAL RULE  
(Department of Housing and Urban Development "HUD": 24 CFR Part 100)**

#### I. INTRODUCTION

The Fair Housing Act (Title VIII of the Civil Rights Act) ("Act") exempts "housing for older persons" from the Act's prohibition against discrimination because of familial status. Section 807(b)(2)(C) of the Act exempts housing 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 at 24 CFR part 100, subpart E (Housing for Older Persons Act, hereinafter: "HOPA").

There are 4 factors required for a facility to claim the 55 and older exemption:

- (1) that the housing be intended and operated for persons age 55 and older; (24 CFR 100.304)
- (2) that at least 80 percent of the occupied units be occupied by at least one person who is 55 years of age or older; (24 CFR 100.305)
- (3) the housing facility or community must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. (24 CFR 100.306)
- (4) the housing facility or community must also comply with rules issued by HUD for the verification of occupancy. (24 CFR 100.307)

Bonterra at Cross Creek Ranch is qualified for the exemption as a community for 55 years or older persons. The intent is stated in the Bonterra at Cross Creek Ranch Dedicatory Instruments (as same is defined in the Texas Property Code) as well as by this 55 Year Age Restriction Policy (the "Policy") adopted and enforced by the Board of Directors (the "Board") of the Bonterra at Cross Creek Ranch Community Association, Inc. (the "Association").

The purpose of this Policy is to cumulate in one place for easy reference the age restriction rules adopted by the Board within the rules and broad discretion permitted under the Act and HOPA. The Board, in its sole discretion, may add, delete or change its policies within the scope permitted by the Act and HOPA, Texas State laws or local laws.

#### II. QUALIFICATION FOR EXEMPTION UNDER THE ACT AND HOPA

In accordance with the Act and HOPA, the Association has clearly indicated its intent to qualify as housing for older persons age 55 years or older in this Policy and additionally in the following Dedicatory Instruments:

##### Declaration of Covenants, Conditions and Restrictions – Purpose and Intent

Bonterra at Cross Creek Ranch is intended to provide housing primarily for persons 55 years of age or older. The Subdivision shall be operated as an age-restricted community in compliance with all applicable state and federal laws. No person under 19 years of age shall stay overnight in any Dwelling for more than 90 days in any 12-month period.

Each Dwelling, if occupied, shall be occupied by at least one person 55 years of age or older; provided however, that once a Dwelling is occupied by an Age Qualified Occupant, other Qualified Residents of that Dwelling may continue to occupy the Dwelling, regardless of the termination of the Age Qualified Occupant's occupancy. Notwithstanding the above, at all times, at least eighty percent (80%) of the occupied Dwellings within the Subdivision (as calculated pursuant to federal or state law and applicable regulations, including 24 Code of Federal Regulations §100.305, as same may be amended from time to time) shall be occupied by at least one person 55 years of age or older. The actual minimum percentage may be set higher by the Board of Directors of the Association in any duly approved Dedicatory Instrument.

#### Bylaws – Association Powers

The Board shall have the power to establish policies relating to collecting and maintaining the information and data from the Owners as required by the Fair Housing Act, the Declaration, or other Dedicatory Instrument or statute, and performing such other actions as the Board deems prudent or necessary to qualify and maintain the Subdivision's 55 year or older exemption.

### **III. BONTERRA AT CROSS CREEK RANCH AGE RESTRICTION POLICY**

#### **1. Occupancy Age Restrictions**

1.1 At least 80 percent of the occupied units must be occupied by at least one person who is 55 years of age or older (*24 CFR Section 100.305*)

1.2 Persons under the age of 19 may reside in Bonterra at Cross Creek Ranch as guests for a maximum period of 90 days in any 12 month period as long as there is an Age Qualified Occupant also occupying the dwelling unit.

1.3 Persons 19 years of age or older may reside in Bonterra at Cross Creek Ranch as long as there is an Age Qualified Occupant also residing in the dwelling unit.

1.4 These age restrictions apply to owners, renters and to house guests who occupy the dwelling unit in the absence of the Age Qualified Occupant.

#### **2. Occupancy Exception**

2.1 The policy of Bonterra at Cross Creek Ranch is not to permit under-age occupancy in any dwelling unit.

2.2 The only exception to the 55 age qualification is for the non-age qualified surviving spouse of an age-qualified decedent owner who had occupied the dwelling unit, until such time as the non-age qualified surviving spouse remarries at which time the exception expires.

2.3 Appeal for a temporary exception to the occupancy rules must be made in writing to the Board. The Board, in its sole discretion, may grant or refuse to grant such temporary exception in any particular case. The grant of a temporary exception in a particular case does not invalidate or waive the particular occupancy rule in subsequent cases. As used herein in Article II, Section 2.3, the term "**temporary**" is defined to mean a period of time not to exceed a maximum period of four (4) months in any twelve (12) month period, from the date of issuance of a temporary exception. The Board has the sole and absolute discretion to determine when a requested exception is temporary.

#### **3. "80/20 Rule" (24 CFR 100.305)**

3.1 HOPA requires that no less than 80% of the occupied dwelling units shall be occupied by at least one age qualified person. This does not mean that 20% must be occupied by non-age qualified persons. Conversely, this does not mean that such 20% must be occupied by non-age

qualified persons nor does it mean that the Board is obligated to utilize some or all of such maximum 20% threshold, except as expressly provided for herein. It means that as long as 80% of the dwelling units are occupied by at least one age-qualified person, Bonterra at Cross Creek Ranch maintains its exemption under HOPA as a 55 year age restricted community.

3.2 The policy of Bonterra at Cross Creek Ranch is to maintain the percentage of age qualified occupancy as close to 100% as possible without mandating a greater percentage than the minimum 80% required by HOPA.

3.3 One of the primary reasons for the 80/20 rule by Congress was to accommodate under age surviving spouses of age qualified decedents and to permit flexibility in specific situations at the sole discretion of the Board of Directors without endangering the HOPA exemption. Such exemption is permitted as long as the minimum 80% age qualified requirement under HOPA is not reduced. HOPA was enacted for the protection of the age restriction exemption and not to grant any rights to under age persons to occupy the 20% which is solely within the discretion of the Board of Directors.

#### 4. Verification of Age (24 CFR 100.307)

4.1 All residents, whether Owners, renters or house guests of absentee Owners or renters, must show evidence that at least one resident in the occupied dwelling unit is age qualified. Any of the following documents are considered reliable documentation of the age of the occupants of the dwelling unit:

- 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
- g) A certification in a lease application, affidavit or other document signed by any member of the household age 19 or older asserting that at least one person occupying the unit is 55 years of age or older.

4.2 The Board may 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.

4.3 Such evidence must be shown at the time such Owner purchases the dwelling unit with the intent to occupy, or at the time a renter occupies the property, and periodically, when confirmation may be requested by the Association.

4.4 If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the Association 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:

- a) Government records or documents such as a local household census; or
- b) Prior forms or applications; or
- c) A statement from an individual who has personal knowledge of the age of the occupants. The Statement must set forth the basis for such knowledge and be signed under penalty of perjury.

#### 5. Surveys for Compliance

5.1 The Board will conduct surveys at least every two years (or as required by law) and maintain a data base to verify age compliance as required by HOPA. All residents of Bonterra at Cross Creek Ranch are required to respond to the surveys. Proof of age of at least one age-qualified occupant in the dwelling unit as noted above must be provided in response to the survey unless already provided, in which case a reliable affidavit of current compliance is all that is required.

5.2 Copies of supporting information gathered in support of the occupancy verification will be segregated in a separate file and are considered confidential and not generally available for inspection by the public or members of the Association. They are created for the sole purpose of complying with HOPA and are to be kept separate from the general or resident files that may be accessible to Association members.

5.3 A summary of occupancy verification in the form of a survey shall be available for inspection upon reasonable notice and upon a written request by a member.

## **6. Disclosure of 55 Age Restriction Policy**

6.1 Any owner or realtor who sells or leases real property in Bonterra at Cross Creek Ranch shall disclose in the advertisements, purchase or lease documents that Bonterra at Cross Creek Ranch is a 55 year age-restricted community under HOPA. (24 CFR 100.306). In the case of a lease of real property in Bonterra at Cross Creek Ranch the lease agreement shall verify that at least one occupant is age qualified by specific current age or date of birth recorded in the lease agreement. (24 CFR 100.306 (a) 3).

6.2 A copy of this Age Restriction Policy shall be provided by every owner, seller, or lessor to any prospective buyer or lessee to read and acknowledge. This document is to be included as part of the purchase or lease documents.

6.3 Disclosure shall also be made to any persons permitted by the owner or renter to occupy the dwelling unit as house guests in the absence of the age-qualified occupant or renter. At least one house guest of such absentee owner or lessee must be age qualified. The under 19 years of age occupancy prohibition rule also applies to such house guests.

6.4 Non-disclosure by the owner, seller, or lessor shall not prevent the Association from enforcing this age restriction policy against any owner and renter for non-compliance.

6.5 All "For Sale" or "For Rent/Lease" signs in the Bonterra at Cross Creek Ranch, whether installed by owner or owner's designee, shall prominently display that this is a "55 YEAR AGE RESTRICTED COMMUNITY".

## **7. Enforcement**

7.1 The Association will vigorously seek any and all remedies available to it by law including, but not limited to, fines and lien affidavits against the offending owner's real property for non-compliance by the owner, occupant, renter, or house guests.

7.2 The reporting and enforcement procedures for non-compliance shall be through the Board of Directors of the Association.