

FACT SHEET: FAIR HOUSING & OCCUPANCY STANDARDS



Fair Housing Center
of West Michigan

20 Hall Street SE
Grand Rapids, MI 49507
616-451-2980 phone
616-451-2657 fax
866-389-FAIR
fhcwm.org

What is fair housing?

Fair housing is the right to choose housing free from unlawful discrimination. The federal Fair Housing Act and Michigan laws protect people from discrimination in housing based on race, color, religion, sex including sexual orientation and gender identity, national origin, familial status, disability, marital status, and age. Discrimination is illegal in housing transactions such as rentals, sales, lending, and insurance.

Occupancy Standards & Familial Status

Health, safety and capacity concerns influence landlords, property managers, and condominium associations to implement limits on the number of people that can live together; however, limits on the number of allowable occupants should be implemented with caution and in keeping with fair housing laws. Families with children under age 18, a protected class under fair housing laws, are often disproportionately impacted by overly restrictive occupancy policies. The Fair Housing Act's protections against discrimination on the basis of familial status prohibit restrictive occupancy standards that are used to exclude families with children or that unreasonably limit the ability of families with children to obtain housing.

Many housing providers may employ a general rule occupancy standard of "two people per bedroom", but there is no existing law or guidance that guarantees that such a standard complies with fair housing laws in all circumstances. In many circumstances, a 2-bedroom unit can accommodate more than 4 people based on its size and layout. The outdated "two people per bedroom" standard has come under heightened scrutiny and has been successfully challenged in an increasing number of cases. This is why it is important for housing providers to review policies and practices regarding occupancy standards for fair housing violations.

What is considered a reasonable occupancy standard? The Fair Housing Act specifically allows housing providers to adhere to reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling (42 U.S.C. 3607(b)(1)). Such restrictions may include property maintenance codes, zoning codes, minimum floor area requirements, or other similar provisions. These occupancy restrictions often take into account factors such as the number and size of sleeping areas or bedrooms, the overall size and/or configuration of the unit, and/or other physical limitations of the housing, such as sewer or septic capacity. If a housing provider allows fewer occupants than would be allowed under the applicable code, then it could be challenged as discrimination against families with children.

How do I evaluate or set a reasonable occupancy standard? Occupancy standards should be no more restrictive than local health and safety standards or other governmental restrictions that limit the maximum number of occupants within a dwelling. The allowable number of occupants is usually based on the size of the unit, with particular emphasis on the square footage (SF) of the bedrooms and living areas. These requirements can often be found in the "Property Maintenance Code" or other similar provision of the city or township where the property is located. Many cities and townships have adopted the International Property Maintenance Code (IPMC). The chart below details the relevant area requirements under the 2021 IPMC.

Minimum Area Requirements under the 2021 IPMC Section 404 "Occupancy Limitations"			
Space	1-2 occupants	3-5 occupants	6 or more occupants
Living Room	120 SF	120 SF	150 SF
Dining Room	No requirement	80 SF	100 SF
Bedrooms	50 SF per occupant (minimum of 70 SF for a bedroom for one occupant)		

What if there is no local occupancy restriction or guidance? If a property has no guidance from local or state code, a housing provider could defer to the most recent International Property Maintenance Code's "Occupancy Limitations", or the code of a comparable jurisdiction.

Continued on back...

| Please note that this fact sheet is not intended to be used as legal advice. |

What if a person is residing on the property and is not on the lease?

Refer to the property's lease provided to all tenants. If housing unregistered persons violates the lease agreement, lean on corrective actions laid out in the policies currently in place. If this person is a family member over the age of 18, they could be added to the lease and subjected to the existing financial and other legal criteria for the unit or property.

Best practice is to document the legitimate source and/or basis for your occupancy standard, as well as any steps taken to implement it.

Can a housing provider prohibit boys and girls from sharing a bedroom? No.

You cannot restrict occupancy based on a person's age or gender.

Can a housing provider tell a single parent that he/she can't share a bedroom with his/her child? No. A housing provider may inform the residents if any bedrooms can only legally be occupied by one person based on an existing local, State, or Federal restriction.

Can a housing provider limit the number of adults that can live together? Maybe. In general, a housing provider should not deny applicants based on the number of adults or children in the household. However, the definition of family in the zoning code that applies to the property might limit the number of **unrelated** adults that can live together in a single family unit. Check your local code.

Should a landlord immediately give a Notice to Quit to a family in a 2-bedroom unit just because they had a third child and now have 5 people in the home? No. The home may be able to accommodate 5 people. If the home can only legally accommodate 4 people, then it is usually reasonable to give the family at least through the end of their lease, and even up until the child's 2nd birthday, to vacate the premises.

Resources:

Fair Housing Enforcement Occupancy Standards; Statement of Policy (Keating Memo), www.fhcwm.org/publications

The Fair Housing Center acknowledges that this may be a complex area for housing providers; therefore, please feel free to contact us with any questions.

FAIR HOUSING BEST PRACTICES IN OCCUPANCY STANDARDS

- **Regularly review** rules, bylaws, policies or procedures, to ensure compliance with all applicable fair housing laws. Amend as necessary and **communicate** changes with all staff and residents.
- **Ensure that use and occupancy restrictions do not contain any unlawful preference or limitation**, and do not contain limits on the number of children or ages of children (unless otherwise exempt under Housing for Older Persons Act (HOPA)).
- Any **definition of family, or restriction on single family use, should be consistent with fair housing law**, specifically with the Fair Housing Act's definition of familial status and Michigan's Elliott Larsen Civil Rights Act's protections for marital status.
- **Limits on the number of allowable occupants should be implemented with caution.** Occupancy standards can be consistent with local health and safety standards or other reasonable governmental restrictions that limit the maximum number of occupants within a dwelling. If a property is not subject to a local or state code, a housing provider may adhere to the International Property Maintenance Code, or the code of a comparable jurisdiction. Document the basis for the standard.
- **The bylaws, policies and procedures should be applied equally** to all persons regardless of race, religion, sex, disability status, etc., and all persons should consistently receive the same quality of treatment.

The work that provided the basis for this publication was supported by funding under a grant with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Federal Government.

| Please note that this fact sheet is not intended to be used as legal advice. |