

FACT SHEET: FAIR HOUSING & OCCUPANCY STANDARDS

What is fair housing?

Fair housing means you can choose where you live free from illegal discrimination. Fair housing laws protect you when you are looking for a place to live. This includes renting or buying a home. Fair housing laws protect you after you have housing, too. Fair Housing laws protect people against unfair treatment because of a *protected class*. Protected classes under federal and/or Michigan fair housing laws include race, skin color, national origin, religion, gender, **familial status**, disability, marital status, age, sexual orientation, gender identity, and source of income (source of income in rental housing only).

Occupancy Standards & Familial Status

Landlords, property managers, and condo associations often set rules about how many people can live in a home to protect health, safety, and space; but they need to be careful when making these rules. Fair housing laws protect families with children under 18, and strict occupancy rules can unfairly affect them and illegally limit housing choice. The Fair Housing Act protects against occupancy rules and restrictions that unreasonably keep families with kids from finding a place to live.

Many landlords use the rule “two people per bedroom” or “two heartbeats per room”, but these rules may not always follow fair housing laws. Some 2-bedroom homes can safely fit more than 4 people, depending on their size and layout. The “two people per bedroom” rule has been successfully challenged in some fair housing cases. That’s housing providers should check their rules, policies and practices to make sure that they’re fair and legal.

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 consider the number and size of habitable rooms and/or the overall size and configuration of the unit. If a housing provider allows fewer occupants than would be allowed under the applicable code, then it may be challenged as discrimination against families with children.

How do I evaluate or set a reasonable occupancy standard?

Occupancy standards should not be more restrictive than local health and safety standards or other restrictions that limit the number of occupants in a dwelling. Occupancy limits are usually based on the size of the unit, focusing 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 code 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 2024 IPMC.



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

Best practice is to document the source and basis for your occupancy standard.

Minimum Area Requirements under the 2024 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	Every habitable room must be 70 SF minimum and every bedroom occupied by more than 1 person must have 50 SF of floor area for each occupant.		

What if there is no local occupancy restriction or guidance?

If you confirm with your municipality that there is no relevant local code, then a housing provider could consider the most recent International Property Maintenance Code's "Occupancy Limits".

Can a housing provider prohibit siblings of different genders from sharing a bedroom?

No. Under fair housing laws, a housing provider cannot restrict a family based on someone's gender.

Can a housing provider tell a single parent that they can't share a bedroom with their child?

No. A housing provider cannot restrict families based on age or gender, but they may inform the family if any bedrooms can only legally hold 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, a definition of family in an applicable zoning code 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.

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 based on marital status and sexual orientation.
- **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.

Resources

Visit <https://fhcwm.org/resources> for more resources on occupancy standards including the *Fair Housing Enforcement Occupancy Standards; Statement of Policy (Keating Memo)*, FHCWM's *Guide for Determining Occupancy Limits Based on Local Restrictions*, Floor Plan Square Footage Calculator, and more.

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