



Occupancy Standards May Violate Fair Housing Laws

By the Jo Becker, Education/Outreach Specialist, Fair Housing Council of Oregon

The US Department of Housing and Urban Development (HUD) charged a Chicago property owner with violating the Fair Housing Act by refusing to rent an apartment to a family¹. The owners/managers of the apartment building and their staff told the plaintiffs that they would not rent to them because the presence of the family's infant child would exceed their occupancy limit.

The Fair Housing Act makes it unlawful for a housing provider to discriminate because there are children in the household, which includes placing unreasonable limitations on occupancy. In this particular case, the plaintiffs had rented from the owners previously but were subsequently denied housing when, after the birth of their first child, they applied to live in the same apartment complex again. In refusing to rent to the family, the owners and their site staff referred to their occupancy limit. Further investigation found that the owners enforced their occupancy policy without regard to the size of the dwelling unit, the size of the bedrooms, or the age of the residents.

A standard industry minimum occupancy limit is two people per bedroom, regardless of the age or sex of the occupants. However, if a complaint was filed with HUD, as occurred in Chicago, HUD would visit the property and consider several factors specific to the property such as: size of the unit, size of the bedrooms or other rooms that might be used for sleeping, water/sewer and other utilities' capacity, etc.

At the Fair Housing Council, we have so far not heard of a fair housing complaint prevailing when a housing provider uses a 2+1 rule—that is, two people per bedroom plus one additional body for the dwelling unit. We encourage housing providers to adopt standards that are not too restrictive. We suggest that housing providers think about the individual size of the dwelling and not adopt a blanket standard for all units. If the unit or the bedrooms are particularly large, you should consider even more liberal occupancy standards than you would otherwise.

Also it is not a landlord's responsibility to govern or monitor where residents sleep within the unit. In other words, if any one or more family members decides that the den, family room, etc. works better for them for sleeping quarters—fine. If everyone sleeps in one bedroom and they use the spare bedroom for a TV room—fine. Nor is it the housing provider's role to prevent children of different genders from sharing a bedroom, regardless of their age. There has been a long held idea in housing circles that boys and girls over the age of seven must sleep in separate rooms. This is not true! If you have such a policy, you are in jeopardy of a fair housing complaint.

If you have questions about occupancy as it relates to fair housing or are concerned about your own policies, please contact us—that's what we're here for!

¹ Federally protected classes under the Fair Housing Act include: race, color, national origin, religion, sex, familial status (children) and disability. Oregon law also protects marital status and source of income. Washington law covers marital status. Additional protected classes have been added in particular geographic areas.

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