



EVERYONE WELCOME

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Frequently Asked Questions Regarding: **Occupancy Policy Standards**

What is an occupancy policy?

- The occupancy policy is a guideline for determining the use of rooms within a dwelling (home, rental unit, etc.).

What are the guidelines when determining an occupancy policy?

- The U.S. Department of Housing and Urban Development (HUD) has provided guidance when evaluating the use of occupancy policies in relation to familial status cases in the Frank Keating Memorandum.

Where can I find the Frank Keating Memo on occupancy standards?

- <http://www.hud.gov/offices/fheo/library/occupancystds.pdf>

What is familial status?

- Under the Fair Housing Act, 42 U.S.C. Section 3602(k) familial status means one or more individuals (who have not attained the age of 18 years) being domiciled (living) with
 - A parent or another person having legal custody of such individual or individuals; or
 - The designee of such parent or other person having such custody, with written permission of such parent or other person.
 - Examples: grandparents raising grandkids, women who are pregnant, adoptive parents, foster parents, group homes for kids, etc.

What is the reasonable occupancy policy under the Fair Housing Act?

- HUD believes that an occupancy policy of two persons per bedroom, as a general rule, is reasonable.

What will HUD consider when reviewing occupancy cases?

- The size and number of bedrooms and other special circumstances.
 - If a family of five applies for a spacious two-bedroom apartment with two large bedrooms, the “two people per bedroom” policy may not be warranted.
 - If a family of five applies for a small two-bedroom mobile home, the “two people per bedroom” policy would be reasonably warranted.
- Age of children
 - If a family of two adults and one infant applies for a spacious one-bedroom apartment, the “two people per bedroom” policy may not be warranted.
 - If a family of two adults and one teenager applies for a one-bedroom apartment, the “two people per bedroom” policy may be reasonably warranted.
- Configuration of unit
 - If a family of two adults and three children applies for a two-bedroom with a den or study, the “two people per bedroom” policy may not be warranted.
 - If a family of two adults and three children applies for a two-bedroom without a den or study, the “two people per bedroom” policy may be reasonably warranted.
- Other physical limitations of housing
 - In addition to the size and configuration of the dwelling and the size of the bedrooms, HUD will also consider limiting factors identified by the housing providers.
 - Capacity of the septic, sewer, or other building systems.
- State and local Law
 - Some dwellings are governed by State or local governmental occupancy requirements. If the housing provider’s occupancy policies reflect governmental requirements, HUD will consider the policies reasonable.
- Other factors
 - Housing providers may not do the following to enforce occupancy policies:
 - Make discriminatory statements;
 - Adopt discriminatory rules for the use of common facilities;
 - Take steps to discourage families with children from applying;
 - Enforce occupancy policies only against families with children;
 - or
 - Limits the number of units occupied by families with children.

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What guide should I use to determine the number of people per unit?

- Many housing providers and some case law use two people per bedroom plus one as guide.

What are other considerations?

Because of litigation and or complaints and shortage of units for large families, some housing providers do not count children under 5 years old when determining whether a family meets their occupancy limits. For example, if you have a three-bedroom unit available and a family of eight would like to rent it, you might say your policy is two people per bedroom plus one, so seven people could rent it. But then you discover that one of the eight persons is under five years old. Then as a housing provider, you do not count that person so it's as if there are only seven in the family.

General tip:

“An occupancy policy which limits the number of children per unit is less likely to be reasonable than one which limits the number of people per unit.”



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