

FAIR HOUSING REVIEW FAMILIES WITH CHILDREN

Discrimination Against Families Is Illegal!

Familial status is a protected class under the Fair Housing Act. It is illegal to discriminate against individuals and families who have children under the age of 18 in their household, or because a member of the household is pregnant or will be adopting or securing legal custody of a child.

Occupancy Policies and Per Capita Charges

Overly restrictive occupancy policies may violate the Fair Housing Act. Each rental unit needs to be considered individually, taking into consideration its layout, square footage, and code requirements, such as existing means of egress (required exits for living and sleeping areas). Most municipalities follow the International Property Maintenance Code (IPMC1). Section 404.4.1 of the 2021 IPMC establishes that every bedroom must contain at least 70 square feet of floor area, and every bedroom occupied by more than one person must contain at least 50 square feet for each occupant. Following the guidelines of the 2021 IPMC, a “2 person per bedroom” limitation may or may not be reasonable depending on the size of the bedroom.

Housing providers are not permitted to prohibit boys and girls from sharing a bedroom or parents from sharing a sleeping area with their children. Limiting occupancy beyond that which is required by law may prove to have a disparate impact on families with children.

Infants are generally not considered additional occupants. It is unlawful to refuse to rent to a family or individual because a member of the household is pregnant or because they will be adopting or securing legal custody of a baby or child. There is no set rule on what age a baby or young child is to be considered an occupant. Refusing to rent or forcing tenants to move into a larger bedroom apartment due to a new baby can result in a housing discrimination complaint.

Lead-Based Paint

Housing providers cannot discriminate against families with children, even if there is lead-based paint on the rental property. Housing providers have a legal obligation to disclose the presence of lead-based paint to any tenants. An owner or landlord who fails to give proper information and is found liable

Examples of illegal discrimination against families with children include:

- “No children” policies
- Refusing families due to the ages of their children (for example, not allowing children under the age of 7)
- Segregating housing so that children are only allowed on certain floors or in certain buildings
- Stating that parents and children or boys and girls cannot share a bedroom
- Evicting or not renewing the lease of a family or individual because a member of the household is pregnant or because they will be adopting or securing legal custody of a child
- Refusing to rent to a family with young children because of allegedly unsafe conditions, including “steep steps,” a “busy roadway” nearby or the presence of lead-based paint
- Restricting all children under the age of 18 access to housing facilities

for damages can be sued for triple the amount of damages that the tenant suffered. The owner may also be subject to criminal penalties and civil penalties for each violation. Housing providers cannot refuse to rent to families with children under a certain age because a local ordinance will require them to remediate lead.

Advertising Guidelines

Advertisements stating “no children” or “adults only” are discriminatory and therefore illegal under the Fair Housing Act. Ads containing language such as “perfect for professional single or couple” or “mature individual preferred” are considered to express a preference for households without children. If it is found that an advertisement is indeed discriminatory, both the landlord and the publisher can be held liable.

Safety Rules for Children in the Use of Housing Facilities

Although the Fair Housing Act does not prohibit a housing professional from creating rules that ensure the health and safety of all residents, it does prohibit rules and regulations that apply only to children when it comes to the use of housing facilities.

Families with children are protected from discrimination in the use of housing facilities, including swimming pools, courtyards, or other outdoor areas. Rules and regulations meant to uphold the health and safety of children in housing facilities should not completely exclude all children under 18 from access to the housing facilities. Community rules should be directed toward residents of all ages, not just children. When adult supervision is required to ensure the health and safety of children in a pool area, fitness center, hot tub, laundry room, etc., the regulation should be age-appropriate and/or developmentally appropriate.

Housing for Older Persons

Housing that is specifically designed and maintained as housing for older persons is exempt from the prohibition on familial status discrimination and is permitted to exclude families with children. In order to qualify for this exemption, housing for older persons must either be solely occupied by persons who are 62 or older or at least 80 percent of the units must be occupied by at least one person who is 55 or older. The housing provider must also adhere to a policy that demonstrates an intent to house persons who are 55 or older.

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.



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Visit online:
equalhousing.org

For information and
assistance, contact:
info@equalhousing.org
(267) 419-8918
(866) 540-FAIR



(267) 419-8918
equalhousing.org