

Occupants in a Household

The U.S. Department of Housing & Urban Development (HUD) issued a statement of policy describing the guidelines it will use in evaluating occupancy limits to determine whether they comply with the Fair Housing Act's prohibition on familial status discrimination. The guidelines effective date was December 18, 1998 and places as standard a March 29, 1991 memo that is referred to as "The Keating Memo."

This memo states that HUD believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act. However, the memo also states that the reasonableness of any occupancy policy is rebuttable, and should not imply that they will evaluate compliance solely on the number of people permitted in each bedroom. Rather, it believes that in appropriate circumstances, owners and managers may develop and implement reasonable occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit.

The following example is used in the memo. Consider two theoretical situations in which a housing provider refused to permit a family of five to rent a two-bedroom dwelling based on a "two people per bedroom" policy. In the first, the complainants are a family of five who applied to rent an apartment with two large bedrooms and spacious living areas. In the second, the complainants are a family of five who applied to rent a mobile home space on which they planned to live in a small two bedroom mobile home. Depending on the other facts, issuance of a charge of discrimination might be warranted in the first situation, but not in the second.

Another example involves the age of the children. The following hypotheticals involve two housing providers who refused to permit three people to share a bedroom . In the first, the complainants are two adult parents who applied to rent a one-bedroom apartment with their infant child, and both the bedroom and the apartment were large. In the second, the complainants are a family of two adult parents and one teenager who applied to rent a one-bedroom apartment. Depending on the other facts, issuance of a charge might be warranted in the first, but not in the second instance.

Other factors HUD will consider include the size of the bedrooms, the configuration of the unit (for example the presence of a den or small extra room), the overall size of the dwelling, capacity of septic, sewer or other building systems, existence of state or local laws, and any pretextual evidence of discrimination by the housing provider. It also states that an occupancy policy that limits the number of children in a unit is less reasonable than one which limits the number of people in a unit