

Occupancy Standards & Fair Housing

FAIR HOUSING HIGHLIGHT #7

What are occupancy standards?

Occupancy standards determine the maximum number of persons, either related or not related, legally allowed to live in a single dwelling. Occupancy standards are used in order to prevent overcrowding.

Is there a federal occupancy standard?

No. The Fair Housing Act allows housing providers to create “any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling”. 42 U.S.C. sec.3607 (b)(1). HUD has yet to define what is a “reasonable” occupancy limit, but has provided guidance which generally allows that two-person-per-bedroom standard is reasonable unless the size of the bedrooms or other circumstances indicate that the standard is unreasonable. HUD looks at each case individually to determine if an occupancy standard violates the law.

Is there a uniform occupancy standard in Montgomery County?

No. To date, Pennsylvania has left it to the discretion of each municipality to create occupancy standards. In Montgomery County, each township or borough has its own occupancy standards. Many localities in Montgomery County have adopted the **B**uilding **O**fficials and **C**ode **A**dministrators or **BOCA** code. **BOCA** uses square footage and sleeping areas to determine occupancy standards.

Definitions of “family” in zoning ordinances also vary throughout the county. Many municipalities define the number of related and unrelated persons who may legally reside in a unit. In response to concerns from people with disabilities, some municipalities have amended their definition of “family” to relax family composition restrictions to include non related persons, such as unrelated residents of group homes. The “reasonable accommodation” provisions of the Fair Housing Act have also been used to modify zoning laws to allow for housing people with disabilities.

Occupancy standards that consider the gender or age of children in a household in determining overcrowding are in violation of fair housing laws.

Is it a fair housing violation for a housing provider to permit overcrowding?

Generally, overcrowding is a code violation, not a fair housing violation, although there has been a recent case that found a municipality violated the Fair Housing Act by enforcing occupancy standards more strictly on people of different national origins and ethnic backgrounds.

Questions? Call the Fair Housing Rights Center in Southeastern Pennsylvania at 215 576-7711 or visit us online at www.fairhousingrights.org.