

OCCUPANCY STANDARDS

ISSUE: When is a property owner or property manager's limit on the number of occupants permitted in a dwelling a violation of the Fair Housing Act? The Fair Housing Act prohibits discrimination on the basis of familial status, the presence or expected presence of children in a household. The Fair Housing Act exempts from its coverage the application of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. HUD regulations indicate that non-governmental occupancy standards which

Reasonable limited family access to housing is permissible under the Fair Housing Act. HUD's so called "Keating Memo" outlines a number of factors considered when determining whether an occupancy standard is unreasonable. The memo assumes that a two person per bedroom standard is generally reasonable and outlines that a greater number maybe appropriate with larger or additional rooms. A number of Fair Housing Organizations have challenged the "Keating Memo," pushing for a standard based on square footage. Housing industry groups have advocated a strict presumption that two persons per bedroom is a reasonable policy. A number of states have proposed that Congress defer to the States for the determination of what is reasonable under the Fair housing Act. In a number of high profile cases, HUD had argued that occupancy standards often had a discriminatory impact on families with children and therefore could only be justified with a showing that there was legitimate business necessity for the standard that could not be addressed in any other manner.

NARPM POSITION: NARPM supports the right of property owners and property managers to reasonably restrict occupancy and believes that an occupancy limit of two persons per bedroom is reasonable under the Fair Housing Act.

IMPACT ON PROPERTY MANAGERS: Uncertainty in the application of the Fair Housing Act increases the likelihood that property managers will find themselves defending a discrimination charge. Occupancy standards are designed to protect the safety and health of residents and to protect the building and its facilities. Property managers find themselves caught between the need to limit the maximum number of occupants in a unit, and their commitment not to discriminate on the basis of familial status. Most standards based on square footage are designed to protect the health and safety of the residents and allow greater density that is reasonable, considering wear and tear on the property and the ability to service the residents. In some jurisdictions, local governments have enacted strict occupancy limits which are based on a one or two people per bedroom standard. These standards limit the property owner and manager's ability to allow more people in a unit when the market conditions warrant a higher occupancy level.

STATUS/OUTLOOK: HUD has abandoned efforts to use the Building Officials and Code Administrators International (BOCA) square footage analysis. Several courts have scaled back the business necessity requirements when justifying occupancy standards. HUD is considering initiating a negotiated rule making or drafting a proposed rule on occupancy standards. HUD has indicated that it will seek ways to codify the "Keating Memo." There are several bills introduced in Congress presently that address occupancy standards such as HB 2 and HB1108 and SB458.

OTHER ASSOCIATION POSITIONS: NARPM's position on occupancy standards is very similar to those of the National Association of Realtors and the Institute of Real Estate Management.

CONTACT PERSON: