

FACT SHEET: FAIR HOUSING FOR CONDOMINIUM ASSOCIATIONS



Fair Housing Center
of West Michigan

20 Hall Street SE
Grand Rapids, MI 49507
616-451-2980 phone
616-451-2657 fax
866-389-FAIR

fhcwm.org

For more resources, visit
fhcwm.org/publications

The Fair Housing Center of West Michigan (FHCWM) recognizes that condominium associations, particularly their boards of directors, play an important role in fair housing. While some associations hire professional management companies, others rely on residents who often have little or no experience with fair housing to govern the association and its bylaws. An association's board may be in a position to review purchase agreements or rental applications, make decisions regarding reasonable accommodation or modification requests, or institute or enforce bylaws or rules. Although board members may have limited knowledge of fair housing, their position within the board may subject them to the same liability under fair housing laws as a professional management company, real estate agent, or landlord. As these boards are often on the front line of decision-making regarding someone else's access to housing, it is imperative that they exercise their authority in a manner that ensures equal housing opportunity. To that end, the FHCWM furthers fair housing by outlining rights and responsibilities of condominium associations.

WHAT IS FAIR HOUSING?

Fair housing is the right to choose housing free from unlawful discrimination. Federal, state, and local fair housing laws protect people from discrimination in housing transactions such as rentals, sales, lending, and insurance. Specifically, the federal Fair Housing Act and Michigan's Elliott-Larsen Civil Rights Act (ELCRA) protect against housing discrimination based on the following "protected classes": **race, color, religion, sex, national origin, familial status, disability, marital status, or age**. Some local communities further prohibit discrimination based on source of income, sexual orientation, gender identity, or other protected classes.

What does "familial status" mean?

Familial status, as defined by the Fair Housing Act, means one or more individuals (who have not attained the age of 18 years) living with (1) a parent or another person having legal custody; or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

How do fair housing laws apply to condominium associations?

Condominium associations, their bylaws, officers, and management companies are subject to fair housing laws. A condominium association cannot take race, color, religion, gender, disability, national origin, or marital status into account when exercising the right of first refusal or considering an individual for residency; this includes making assumptions based on a person's name or address. Age and familial status should also never be taken into account and **there should not be limits on the number of children or ages of children**, except as allowable within an association that has been legally established under federal guidelines for "housing for older persons" exempt from age and familial status provisions of fair housing law.

Condominium associations must make *reasonable accommodations* (i.e. changes in rules or policies) and allow *reasonable modifications* (i.e. installation of grab bars, ramps, handrails, etc.) for individuals with disabilities. This includes making a reasonable accommodation to allow a service or support animal where there may be a policy prohibiting certain or all animals. Also, an individual with a service or support animal should not be required to pay any "pet fees" or any other fees or deposits as a condition of having the assistance animal.

Condominium associations must ensure that their bylaws are written and enforced in a manner compliant with fair housing laws. The "Use and Occupancy" restrictions within the bylaws cannot contain an unlawful preference, limitation, or restriction on the basis of any protected class, including marital status and familial status. This includes any definition of family or single family use, and also covers occupancy limits. Further, families with children and other protected groups should not be specifically targeted with rules or restrictions.

OCCUPANCY STANDARDS AND LIMITS

The Fair Housing Act's protections against discrimination on the basis of familial status prohibit occupancy standards that are used to exclude families with children or that unreasonably limit the ability of families with children to obtain housing. ***In most circumstances, occupancy should never be limited to less than the average of 2 persons per bedroom***, and in many circumstances allowable occupancy may exceed that ratio.

What is considered a "reasonable" occupancy standard? Some housing providers employ a "general rule" occupancy standard of "two persons per bedroom", but there is no existing law or guidance that guarantees that such a standard complies with fair housing laws in *all* circumstances. The Fair Housing Act specifically allows housing providers to adhere to reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling (42 U.S.C. 3607(b)(1)). Such governmental restrictions may include health and safety standards, building codes, property maintenance codes, minimum floor area requirements, or other similar governmental provisions.

What if there is no local occupancy restriction? If a property is not subject to a local or state code, a housing provider may adhere to the International Property Maintenance Code, or the code of a comparable jurisdiction.

EXAMPLES OF DISCRIMINATORY USE AND OCCUPANCY POLICIES

- ***A family shall mean one (1) person or a group of two (2) or more persons related by bonds of consanguinity, marriage, or legal adoption***
 - This definition contains a direct limitation on the basis of marital status, and also restricts on the basis of familial status by excluding families who have legal custody or are obtaining legal custody of a minor.
- ***No more than three (3) persons shall permanently occupy or reside in any Unit***
 - Most two bedroom condominium units are large enough to accommodate at least 4 people, thereby making this provision potentially overly restrictive and discriminatory on the basis of familial status.
- ***Use of any recreational facilities in the Condominium by children may be limited to such times and in such manner as the Association shall determine by duly adopted regulations***
 - This provision specifically targets families with children, and may constitute unlawful restrictions.
- ***Units shall be used exclusively for the residence of adult single persons or married couples without children below the age of thirteen (13) years***
 - This places direct, discriminatory restrictions on the bases of marital status, familial status and age.

FAIR HOUSING BEST PRACTICES FOR CONDOMINIUM ASSOCIATIONS

- **Regularly review the bylaws**, as well as any other rules, policies or procedures, to ensure compliance with all applicable fair housing laws. Amend bylaws as necessary and **record amendments** with Register of Deeds.
- Arrange for **fair housing training** for association Board members and decision makers.
- **Use and occupancy restrictions should not contain any unlawful preference or limitation**, and may not have limits on the number or ages of children (unless otherwise exempt under Housing for Older Persons Act)
- Any **definition of family, or restriction on single family use, should be consistent with fair housing law**, specifically with the Fair Housing Act's definition of familial status and ELCRA's protections for marital status
- **Limits on the number of allowable occupants should be implemented with caution**. Occupancy standards can be consistent with local health and safety standards or other reasonable governmental restrictions that limit the maximum number of occupants within a dwelling. If a property is not subject to a local or state code, a housing provider may adhere to the International Building Code, or the code of a comparable jurisdiction.
- Understand reasonable accommodations and modifications, and **develop appropriate procedures to allow reasonable accommodations and modifications** for persons with disabilities.
- **The bylaws, policies and procedures should be applied equally** to all persons regardless of race, religion, sex, disability status, etc., and all persons should consistently receive the same quality of treatment.
- **Any exercise of the right of first refusal or review of a prospective occupant or resident should not request, document, or take into account any protected class**, including making assumptions based on a person's name.