



OCCUPANCY POLICY

Adopted August 1, 2023

Affordable Housing Developers maintains an occupancy policy in accordance with equal housing opportunity and non-discrimination laws and regulations as determined and set forth in Title VI of the Civil Rights Act, the Fair Housing Act, Section 504, the Americans with Disabilities Act, and the affirmative fair housing marketing requirements set forth for each property. No applicant or tenant will be denied housing or access to services on the basis of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity.

Occupancy limits will be set on a project-by-project basis dependent on a variety of factors. The occupancy policy established at each rental dwelling will be no more restrictive than the following:

- The Keating II Memo, 63 Fed. Reg. 70982 (December 22, 1998) (Keating II Memo)
- HUD Handbook 4350.3 § 3-23 (D) “Prohibition of occupancy standards that exclude children”:
 - The Fair Housing Act prohibits housing providers from discriminating on the basis of familial status, making it illegal to discriminate against families because of the presence of children
 - Owners may neither exclude families with children from their properties, nor may they develop policies or procedures that have the purpose of effect of prohibiting children (e.g. policies in tenant selection plans, occupancy standards and house rules).
 - Owners may not exclude otherwise eligible elderly families with children from elderly properties or elderly/disabled properties covered by HUD Handbook 4350.3.
- HUD Handbook 4350.3 § 3-23 (F) “Assigning a Smaller Unit Than Required”
 - An Owner may assign a family to a smaller unit size than suggested by the owners’ occupancy policies if the family requests the smaller unit and if all of the following apply:
 - The family is eligible for the smaller unit based upon the number of family members, and occupancy of the smaller unit will not cause serious overcrowding.
 - Assigning a smaller unit results in a lower rent payment for the occupant in a Section 236 or BMIR property.
 - The assignment will not conflict with local codes.

- HUD Handbook 4350.3 § 3-23 (H)(1)(a) “Change in Family Size After Initial Occupancy: Rental Properties”
 - The owner may require the family to move to a unit of appropriate size. If a unit of appropriate size is not available, the owner must not evict the family and must not increase the family’s rent to the market rent. If a family refuses to move to the correct size unit, the family may stay in the current unit and pay the market rent. The owner must not evict the tenant for refusing to move but may evict the family if it fails to pay the market rent in accordance with the lease.

In addition, when setting the occupancy limit at a property, Affordable Housing Developers will consider the following when applicable:

- City and County Codes and Ordinances regarding occupancy standards, limits and overcrowding
- Local, state and federal laws
- Property land use restrictive agreements and covenants
- USDA Rural Development Regulations outlined in 7 CFR 3560 and including HB 2-3560
- HUD HOME Investment Partnership Program Regulations codified under 24 CFR Part 92
- Local, state and federal compliance manuals associated with any funding sources provided to the property
- Size and number of bedrooms
- Configuration of the unit
- Physical limitations of the building including utility availability, septic and sewer capacity, building systems capabilities, parking availability etc.

When one or more regulatory requirements apply to a property, all conditions will be adhered to ensuring compliance with applicable programs and in accordance with federal and state fair housing laws.

The occupancy limits of each property will be available on the Exhibit A supplement to the property application and noted in each tenant’s lease.

Failure to abide by the occupancy policies and limits, may result in a lease violation or termination of occupancy.

This Occupancy Policy serves as an addendum to the Tenant Handbook and Occupancy Rules.