



Washington State

Human Rights Commission

"It's not Justice if it's not Equal!"

Fair Housing Occupancy Standards

GUIDANCE MEMORANDUM

SUBJECT:

Occupancy Standards and Surcharges in Housing Discrimination
Protection from discrimination against families with children

On February 20, 1998, the Commission issued this Guidance Memorandum with the intention of ensuring equitable application of the Washington State Law Against Discrimination in the area of protection against discrimination toward families with children.

With passage of amendments to RCW 49.60 in 1993, landlords can no longer have a blanket prohibition to renting to families with children. The era of "adults only" housing is over. The Washington State Legislature provided an exemption for apartments or communities that qualify as "housing for older persons" in 1997. However, the great majority of housing opportunities remain open for families with children.

Since 1993 families have found that other landlord policies have in effect barred them from renting certain apartments or houses. Those policies are frequently called occupancy standards (limiting the number of people who can occupy a unit) and surcharges (fee in addition to an amount of rent based on the number of people who occupy a unit).

Currently, landlords can set reasonable occupancy standards that are based on business needs. If a complaint is filed, the Commission will look at many factors to determine if the occupancy standard violates RCW 49.60. The following is a list of some of the factors the Commission may consider. This list is not exhaustive, nor would an investigator necessarily consider each of these factors in every case. Rather, investigators review the specific circumstances of each complaint and the specific housing in question.

1. Is the occupancy standard or surcharge applied to the number of people occupying a unit or is it applied to the number of children occupying a unit?
2. Is there a history of "adults only" rules, segregation or prohibitions by the landlord?
3. Are there families with children in the apartment complex, community or other rental property under the control of the respondent?
4. Is there evidence of rules directed at children that are not otherwise allowable due to safety concerns?
5. Is there any other information that supports or refutes the allegation that the occupancy standard or surcharge is being used in order to bar children from occupancy?
6. What business related factors has the landlord used to come to the occupancy standard or surcharge?
7. What are the local zoning or building occupancy limitations on the particular unit, house, apartment complex or community?
8. What is the size and configuration of the house or unit?
9. What is the size and configuration of the apartment complex or community?
10. Are there other structural or configuration elements which were considered?
11. Are utilities separately metered to each unit and the responsibility of the tenant?
12. Are utilities metered and paid by the landlord?
13. If so, how does the landlord recoup the cost of the utilities?
14. Does the landlord have evidence of actual increased use of utilities?
15. What is the percentage of families with children (and families with one, two, three, etc. children) in the local population

(assuming that the local population comprises the pool of prospective tenants)?

16. What is the age and condition of the structure and its accompanying systems (electric, water, and sewer)?

17. Is on-street or off-street parking space a consideration? If so, how?

After gathering all the relevant information, the Commission must then determine whether the occupancy standard or surcharge violates RCW 49.60. Occupancy standards that are less than 2 persons per bedroom generally will raise a question of lawfulness. The justification for the limit will need to show that it is reasonable in light of one or more of the factors noted above.

Surcharges that are not related to increased costs generally will raise a question of lawfulness. The justification for the surcharge will need to show that it is reasonable in light of one or more of the factors noted above.

It is the intent of the Commission to protect the civil rights of families with children and also the intent of the Commission to assist landlords to make reasonable business decisions which are not in violation of the law. Each case presents a unique set of facts and the parties need the opportunity to present evidence that assists the Commission to administer the law.

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