

# Families with Children (Familial Status)

If you have children or you plan to have children living with you in your apartment someday, you should be aware of how the law protects families with children against illegal discrimination.

Some landlords don't want children living in their building, and so they refuse to rent to families with children. But what many of these landlords don't know is that the Fair Housing Act (FHA) bans discrimination based on "Familial Status" which means they're violating federal law.

If a landlord, leasing agent, or other housing professional attempts to limit your housing choices because you have children, you can pursue a fair housing complaint against them – just as if you were discriminated against based on another protected class or characteristic, such as race, religion, or disability.

Remember, if you don't report housing discrimination it can't be stopped. Retaliation, harassment, intimidation or interfering with a person who is exercising their rights to equal housing is against the law.

## **THE LAW PROTECTS:**

- Established families with children
- Persons planning on having a family
- Pregnant women
- Traditional and non-traditional families, such as single parent families
- Persons in the process of securing legal custody of children through foster care, adoption, or divorce
- Unique or unexpected circumstances which may change the composition of a family, such as the death of the parents, temporary or permanent court ordered custody, or written permission from a parent or legal guardian.

## **QUALIFYING FOR FAMILIAL STATUS PROTECTION**

To qualify for familial status protection under the FHA, you must be:

- The child's parent,
- The legal custodian of the child, or
- The "designee" of the child's parent or legal custodian, with that person's written permission.

As you can see, the Fair Housing Act's (FHA) ban on familial status discrimination broadly protects families with children without regard to whether the adults in the household are the child's biological parents.

Plus, if you're the parent or legal guardian and you formally designate someone (for example, the child's grandparent) to live with and care for your child, that household is covered by the FHA's protections. Also, your marital status is irrelevant, which means you can be married, single, divorced, or widowed without it affecting your familial status protection.

In addition to the above, your child must be:

- Under eighteen years old,
- Biological or adopted, and
- Already a household member or expected to be one.

As long as there is at least one child under eighteen living in the household, familial status protections apply. So, if you're currently covered under the FHA, you'll enjoy this protection until the youngest child in your household turns eighteen.

1. **NOTE:** Simply living with your children doesn't get you familial status protection. If the children living with you are 18 or over, they're adults and so your household doesn't qualify as a family with children.

The definition of familial status is broad, and as mentioned above, the FHA doesn't distinguish between biological or adopted children. The key is that you have legal custody of the children who live with you (or you've at least been designated by the children's parent or legal guardian to live with and care for them).

You're even covered if you don't yet have children under 18 living with you but you expect this to change soon. The FHA's familial status protections apply to tenants who are pregnant as well as tenants who are in the process of adopting a child. This is a particularly important protection for prospective tenants because it means landlords can't turn them away or require them to rent a larger apartment that's larger than they can afford simply because they're expecting a child.

### **FAMILIAL STATUS AND THE SENIOR HOUSING EXEMPTION**

Take note that the FHA's ban on familial status discrimination is lifted for certain types of senior housing. Owners of qualifying senior communities across the United States may legally discriminate against children. If you plan on conducting an apartment search that will include senior communities, find out the circumstances when children may live there, so you know what to expect.

### **APARTMENT RULES AFFECTING CHILDREN**

Familial status discrimination is a little different than other types of discrimination. There is never a legal justification for singling out people based on their race, national origin, or sex, for example. But it is okay for a landlord to single out children – if the landlord's rules are aimed at protecting children's health and safety, and if they're reasonable.

This should come as no surprise, given that no one wants to see children hurt, and landlords who don't take steps to protect their tenants open themselves up to serious liability.

So, how can you tell if a rule at your apartment building is legal? Just ask yourselves these two questions:

1. **Is the rule aimed at protecting children's health and safety?**

- Rules that should really apply to everyone don't pass this test. For example, a lease clause banning children from acting rowdy in common areas unfairly singles out children. The ideas of banning rowdy behavior in the common

areas is fine, but why not ban rowdy behavior altogether, regardless of whether it comes from children or adults?

- Also, be wary of rules that may appear to be aimed at protecting children because they're lumped in with other rules that are. For example, chances are if your building has a pool, it also has a set of pool rules, many of which protect children (for example, by requiring adult supervision below a certain age). But a rule banning children from the pool during certain hours is probably aimed at giving adults a chance to enjoy the pool alone – not at protecting children from harm.

## **2. Is the rule reasonable?**

- If you've answered "yes" to the first question, the rule is probably legal. But it's possible that a rule aimed at protecting children goes a bit too far. For example, requiring all children under eighteen – including high school students – to have adult supervision when using the pool is a bit far-reaching in its attempt to keep children safe.
- If you're renting an apartment with children, you might wonder if a lease clause or house rule saying children can't run, make loud noises, or act rowdy in the hallways is legal. Depending on how the rule is worded, it may very well violate the Fair Housing Act's ban on familial status discrimination rules that unnecessarily single out children run afoul of this law. So, the key is whether the rule applies to everyone or just attempts to single out children – both on paper and in practice.
- There's nothing wrong with a landlord trying to enforce safe behavior in the hallways or other common areas, since it benefits all tenants. If running is allowed, people can trip or hit others, leading to injuries. If yelling and other loud noises are permitted, tenants may complain that the sounds interfere with their "quiet enjoyment" of their apartment.
- While it's fine for landlords to attempt to curb rowdy behavior, they need to write their rules in a way that doesn't ban the behavior only in children, and they must enforce the rules against children and adults alike.
- Making such rules apply to everyone doesn't just avoid fair housing problems for landlords – it also makes sense. Adults sometimes like to run and yell, too, and the effects can be at least as, if not more, disruptive.
- If you have children living with you in your apartment, you've got rights and responsibilities.
- You have the same right to housing as tenants who don't have children, and landlords who believe otherwise are violating federal law.
- You're also responsible for keeping children safe while under your care. Although an apartment building isn't an inherently dangerous place for kids, hazards may lurk. If you help children identify and avoid common safety

hazards, you can protect them from serious injury and perhaps even save lives.

- Learn about your rights and responsibilities when living with children in your apartment.
- Many people who want to live in a senior community seek a place where children won't be their neighbors. Other seniors, by contrast, want the opposite, particularly if they are the legal guardians of the children. Children may live in senior housing, but only under certain circumstances. So, if you think you qualify for senior housing and it's important to you to find an apartment with – or without – children, don't make assumptions.

Instead, review this summary of what you should expect when you start your apartment search:

### **CHILDREN IN 62-AND-OLDER COMMUNITIES**

Children cannot live in 62-and-older housing under any circumstances. The rules for the 62-and-older senior housing exemptions are stringent, requiring every occupant in every apartment to be at least 62 years old. So, by definition, children (and adults through age 61, for that matter) cannot be occupants in such communities.

### **CHILDREN IN 55-AND-OLDER COMMUNITIES**

Children may be allowed to live in a 55-and-older apartment community. By qualifying for this exemption, a landlord is legally free to discriminate based on familial status. But landlords aren't required to do so, and a difficult market or other factors may lead a landlord to decide to rent to families with children.

So, if the owner of a 55-and-older community chooses to rent to families with children, here are your general options if your household includes at least one child:

- 1. Live in the 80% of apartments that must have at least one occupant who is 55 or older.**
  - This should work as long as you or someone else in your household is at least 55 years old.
- 2. Live in the 20% of apartments that don't have age restrictions.**
  - **NOTE:** A landlord may choose to adopt stricter rules than what federal law requires for a 55-and-older community.
- 3. Also, be aware that a landlord who chooses to rent to families with children in a 55-and-older community may still legally discriminate based on familial status when it comes to the terms and conditions of the rental. As long as a landlord's actions don't violate other laws, a landlord may treat households with children differently, such as by restricting them from benefits of the apartment community. (A landlord may not take action that would discriminate against prospects and tenants on the basis of other protected classes, such as race, color, religion, national origin, sex, or disability).**

### **FAMILIAL STATUS AS A PROTECTED CLASS**

Federal and state laws forbid discrimination in housing transactions because of "familial status."

## **FAIR HOUSING – FREQUENTLY ASKED QUESTIONS (FAQ)**

### **1. What does the phrase “familial status” mean?**

- “Familial status” means having a child under age 18 in the household, whether living with a parent, a legal custodian, or their designee. It also covers a woman who is pregnant, and people in the process of adopting or gaining custody of child/children.

### **2. What actions does the law prohibit?**

- No one may deny housing, limit access to housing, discourage home seekers, or create different rules, fees, or standards because the family has or is expecting (a) children. This includes rentals, purchases, lending, advertising, and any other transaction within the housing industry.

### **3. Does this mean that a housing provider cannot deny or treat any household with children differently?**

- No, a housing provider has the right to refuse tenants based on objective criteria, such as a credit history or bad tenant history. However, housing providers should set criteria and apply them equally to each household whether it has children or not.

### **4. Can a housing provider say “Families Welcome” in their advertising?**

- Yes, it is okay to market to families with children. Indicating that families are welcome in a community does not deny any other protected class the opportunity to apply for housing.
- When discussing or advertising a unit, do not point out that there is no on-site play area or that the community is on a busy street, unless this information is given to all applicants. Avoid words or phrases such as “adult community” or “perfect for mature professionals,” which reflect a preference for tenants without children.

### **5. Can a housing provider make rules about how children should behave?**

- Reasonable rules are appropriate, but not everyone agrees what is “reasonable.” Here are some guidelines. In general, rules should apply to all tenants, and not just children. Rules that set limits may be reasonable if they are based on realistic not exaggerated health and safety concerns. Rules should address behavior, not status and should not be so restrictive that families with children do not get equal use and benefit of the housing.

## **TEENAGERS AND SCREENING**

### **6. We’ve had problems with teenagers causing property damage. Can we refuse families with teens or charge them a higher damage deposit?**

- No, familial status protections apply to all children under the age of eighteen. A landlord may not single out a certain age group of children, such as teenagers. Under some local fair housing laws, this would be age discrimination as well. Making a generalization based on the actions of some tenants (in this case teenagers) and creating a blanket rule based on that generalization will likely violate fair housing laws.

**7. We run criminal background checks on our adult applicants. Can we run them on teenagers too?**

- Fair housing laws may be violated if a rule is applied that only affects families with children, or when a neutral policy that is applied to all tenants adversely impacts families with children. (i.e., requiring screenings for children could subject a family to additional fees, which would make the application process more burdensome for them.) If a housing provider has a policy of screening juveniles only in certain properties and/or neighborhoods, an issue of race or national origin discrimination might be raised. If the housing is in a jurisdiction where age is a protected class, such screening may constitute age discrimination.

**8. Can a housing provider decide which units are better for families with children?**

- No, designating specific units for families with children is called “steering” and is illegal. Housing providers should give all potential tenants objective information about what is available and let applicants decide what unit is suitable for their household.
- Safety concerns are not a valid reason to deny housing to families with children. If an unsafe condition exists on the property, consider making it safe for all tenants to avoid general liability for injuries. If that is not feasible, point out safety concerns to every applicant, not just families with children.
- Also, HUD guidance states that it violates the Fair Housing Act for a housing provider to deny a family the opportunity to live in a dwelling that has not undergone lead hazard controls.

**9. Is it okay to refer families with kids to a building near a playground and to have another quiet building for residents without children?**

- No, this is another example of “steering” and it is illegal. If a housing provider were to designate certain buildings as “non-family” housing, a family might be denied a place to live until a rental became available in the “family” building. All applicants should be shown any available units at the community. Let them decide where they would like to live. If an existing resident asks that a nearby unit not be rented to a household with children because they might be too noisy, explain that housing decisions are not made based on protected class, such as familial status.

**10. Can a housing provider set limits on the number of occupants?**

- Overly restrictive occupancy standards can have a disproportionate effect on families with children and are, therefore, illegal. According to HUD, any occupancy standards in housing should not be more restrictive than two individual’s per bedroom, assuming average sized bedrooms.

**11. We told a couple with a teenage son and daughter they must take a three-bedroom apartment, so their kids don’t share the same bedroom. Is that okay?**

- No, denying a two-bedroom rental to a family because they have children (of any age) of opposite sexes, or requiring them to choose a larger unit, is a direct violation of fair housing laws based on both familial status and gender.

## **12. May I charge per person?**

- No, fees or surcharges for extra occupants have a greater negative effect on families with children than on households without children.
- If an extra amount is charged, it must be based on *actual* (not assumed) increased utilities use or other legitimate business costs. Many communities have installed individual utility meters to monitor costs directly.

## **HOW TO RECOGNIZE HOUSING DISCRIMINATION**

Landlords, property managers, or real estate agents generally will not directly state, “we don’t accept children” or “there are no kids allowed.” Discrimination against families with children is subtle. The agent may simply refuse to rent to families or tell them the housing is not available when it is. They may refuse to sell, rent or even deal with a person because they have children or they may advertise or indicate the housing is available for only certain people (adults only).

## **WHAT ARE FREQUENTLY USED DISCRIMINATION METHODS USED ON FAMILIES WITH CHILDREN?**

There may be attempts to discourage families by changing the terms, conditions, services and facilities. For example, different rules, charging additional fees, or applying more burdensome rental criteria, larger deposits, increased water charges, or higher rent based on the number of people or children in a family.

There may be attempts to impose occupancy standards that prevent children from residing in a development or steer families with children away from adult only areas. All of these practices are illegal. These practices promote segregation and disrupt the housing market.

## **YOU SHOULD SUSPECT UNLAWFUL HOUSING DISCRIMINATION, IF YOU HEAR STATEMENTS LIKE:**

- The building is not safe for children
- We take younger children, but teenagers will disturb the other tenants
- Sure, we rent to families with kids, but we’ll need an extra security deposit
- Yes, we allow children but we’ll need to charge more rent for each kid
- Only three people are allowed in a two-bedroom unit
- Children are only allowed in the basement and first floor units
- My insurance company won’t let me rent second and third floor units to anyone with small children; your children are just too young
- Our kids building (or family section) are full
- This complex isn’t suitable for children; there is no playground or open space for them to play
- There are no children here; your children won’t have anyone to play with
- Sorry a parent and child cannot share a bedroom