

## ***Fair Housing Laws and the Provisions Prohibiting Discrimination Based on Familial Status***

Discrimination against households with children occurs when a housing provider makes decisions about the household BECAUSE OF the presence of children. The Federal Fair Housing Act as Amended in 1988, defines familial status as "one or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or individuals; or 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 shall 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."

Housing providers can evict a household during winter months for nondiscriminatory reasons, including households with children. For example, if a household is unable to pay rent during the month of January, Fair Housing Laws do not prevent the housing provider from evicting that household, even if the household includes children.

Federal guidance allows housing providers to establish occupancy standards. This guidance, found in the Keating Memo, states that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act<sup>1</sup>.

If a couple has a baby, a housing provider should not deny that household a one-bedroom unit based on a two-person per bedroom occupancy limit. A housing provider should not deny a household with opposite sex children because the children would be sharing a bedroom, or deny a unit to a household when a child would share a bedroom with an adult.

A studio apartment is deemed a one-bedroom dwelling unit. When describing considerations attributed to unit configuration, the Keating Memo infers that rooms, like a den or a study, can be used as a bedroom. Local health and safety codes may require sleeping rooms comply with other standards.

Housing providers often deny households with children from living in upper story units or other areas they feel may be dangerous to children. This is a potential violation of federal and state laws. If an area is dangerous, protections should be put in place for all households.

Federal and State fair housing laws make it illegal to discriminate against someone because of Race, Color, National Origin, Religion, Sex, Familial Status, Disability, Marital Status, Age, and Creed. In Missoula, it is illegal to discriminate based on Gender Identity or Sexual Orientation.

***Information Provided by Montana Fair Housing:*** Montana Fair Housing is a private, non-profit, fair housing organization providing education, outreach, and enforcement activities throughout the state of Montana. Information contained in this article should not be construed as legal advice and does not provide a legal opinion. For information about Fair Housing laws, contact Montana Fair Housing at 406-782-2573.

**If you feel you have been discriminated against,  
please call HUD's Office of Fair Housing & Equal Opportunity!**

**1-800-877-7353 General Intake  
(303) 672-5248 TDD \* Montana Relay 711**



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<sup>1</sup> Memorandum of HUD General Counsel Frank Keating dated March 20, 1991.