

# Delaware Valley Fair Housing News

Newsletter of the Fair Housing Council of Suburban Philadelphia  
Serving Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties

Fall 2005

The *Delaware Valley Fair Housing News* is a publication of the Fair Housing Council of Suburban Philadelphia. Funding for this newsletter was made possible by grants from the Delaware County Office of Housing & Community Development and The Philadelphia Foundation. For questions or comments regarding the information contained in this newsletter contact the FHCSF at (610) 604-4411 or at [information@fhcsp.com](mailto:information@fhcsp.com).

## IN THIS ISSUE

- ◆ FHCSF Files Lawsuit Against PMMC for Familial Status Discrimination
- ◆ Occupancy Limits Under the Fair Housing Act
- ◆ Keating Memo
- ◆ Lutheran Children and Family Service
- ◆ Self Determination Housing Project
- ◆ FHCSF's New Website!

## FHCSF Files Complaint Against PMMC for Familial Status Discrimination

On October 4, 2005 the Fair Housing Council of Suburban Philadelphia (FHCSF) and Timothy and Christen Moroney filed suit in federal district court against Audubon Manor Apartments and PMMC Management Company for violating the familial status provision of the federal Fair Housing Act. FHCSF has also filed the complaint with the Department of Housing and Urban Development, consistent with funding requirements.

In July of 2005, FHCSF received a complaint from Tim Moroney. Tim had been living at Audubon Manor Apartments in West Chester in a two bedroom apartment with his wife and 14 month old son since October of 2004. When he first contacted FHCSF, his wife was pregnant and expecting in early August. The family received notice in July from Audubon Manor Apartments that their lease would not be renewed when it expired at the end of October and that they would have to move out of the complex. When Tim contacted the leasing office he was told that his lease was not being renewed because his wife was having another child and the complex did not allow four people in a two bedroom unit. The agent stated that this occupancy limit was a company policy and that she had contacted the corporate office to confirm.

The management company for Audubon Manor Apartments, PMMC, owns nine apartment complexes consisting of over 1,735 rental units in Chester, Montgomery, Lancaster, and Centre counties in PA. FHCSF immediately began investigating the complaint and set up tests to determine whether the apartment complexes were discriminating. Of the complexes owned by PMMC, only one complex offered a two bedroom apartment to a family consisting of two adults and two children. The other complexes tested all told the testers with children that they would not be able to rent two bedroom units. In each test apartments were available to the testers without children. In conjunction with the testing, FHCSF researched the occupancy codes for the counties and municipalities where the management company owns and operates apartment complexes. FHCSF spoke with numerous officials confirming that the occupancy codes adopted by the counties and municipalities would allow a family of four to live in the apartment

*(Continued on page 2)*

(Continued from page 1)

in question.

In addition to enforcement activities, FHCSF set up an advertising campaign which targeted publications circulated in Chester, Montgomery, and Lancaster Counties. The ad was developed by the National Fair Housing Alliance and consists of a picture of a various toys with the main caption "When it comes to housing – little things shouldn't make a difference".

Tim and Christen had been planning on renewing the lease at the end of their current term because they have a network of family and friends within a short distance of their current residence who are integral to providing support to their children. They also worry about not being able to find another affordable two bedroom apartment as nice as the one they are currently living in and in their preferred location. The fear of losing their apartment due to the discriminatory occupancy policies used by PMMC has had quite an emotional toll on this young family.

## Occupancy Limits Under the Fair Housing Act

In December of 1988 the U.S. Department of Housing & Urban Development (HUD) issued a statement of policy describing the guidelines it will use in evaluating occupancy limits to determine whether they comply with the Fair Housing Act's prohibition on familial status discrimination. The guidelines effective date was December 18, 1998 and placed as standard a March 29, 1991 memo that is referred to as "The Keating Memo."

From the December 18, 1998 notice:

*"The Fair Housing Act prohibits discrimination in any aspect of the sale, rental, financing or advertising of dwellings on the basis of race, color, religion, national origin, sex or familial status (the presence of children in the family). The Fair Housing Act also provides that nothing in the Act "limits the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." The Fair Housing Act gave HUD responsibility for implementation and enforcement of the Act's requirements. The Fair Housing Act authorizes HUD to receive complaints alleging discrimination in violation of the Act, to investigate these complaints, and to engage in efforts to resolve informally matters raised in the complaint. In cases where the complaint is not resolved, the Fair Housing Act authorizes HUD to make a determination of whether or not there is reasonable cause to believe that discrimination has occurred. HUD's regulations, implementing the Fair Housing Act (42 U.S.C. 3614) are found in 24 CFR part 100.*

*In 1991, HUD's General Counsel, Frank Keating, determined that some confusion existed because of the absence of more detailed guidance regarding what occupancy restrictions are reasonable under the Act. To address this confusion, General Counsel Keating issued internal guidance to HUD Regional Counsel on factors that they should consider when examining complaints filed with HUD under the Fair Housing Act, to determine whether or not there is reasonable cause to believe discrimination has occurred."*

The Keating memo states that HUD believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act. However, the memo also states that the reasonableness of any occupancy policy is rebuttable, and should not imply that they will evaluate compliance solely on the number of people permitted in each bedroom. Rather, it believes that in appropriate circumstances, owners and managers may develop and implement reasonable occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit.

*The entire text of the Keating Memo may be found on page 3 of this newsletter.*

# Keating Memo

March 20, 1991.

MEMORANDUM FOR: All Regional Counsel

FROM: Frank Keating, G

SUBJECT: Fair Housing Enforcement Policy: Occupancy Cases

On February 21, 1991, I issued a memorandum designed to facilitate your review of cases involving occupancy policies under the Fair Housing Act. The memorandum was based on my review of a significant number of such cases and was intended to constitute internal guidance to be used by Regional Counsel in reviewing cases involving occupancy restrictions. It was not intended to create a definitive test for whether a landlord or manager would be liable in a particular case, nor was it intended to establish occupancy policies or requirements for any particular type of housing.

However, in discussions within the Department, and with the Department of Justice and the public, it is clear that the February 21 memorandum has resulted in a significant misunderstanding of the Department's position on the question of occupancy policies which would be reasonable under the Fair Housing Act. In this respect, many people mistakenly viewed the February 21 memorandum as indicating that the Department was establishing an occupancy policy which it would consider reasonable in any fair housing case, rather than providing guidance to Regional Counsel on the evaluation of evidence in familial status cases which involve the use of an occupancy policy adopted by a housing provider.

For example, there is a HUD Handbook provision regarding the size of the unit needed for public housing tenants. See Handbook 7465.1 REV-2, Public Housing Occupancy Handbook: Admission, revised section 5-1 (issued February 12, 1991). While that Handbook provision states that HUD does not specify the number of persons who may live in public housing units of various sizes, it provides guidance about the factors public housing agencies may consider in establishing reasonable occupancy policies. Neither this memorandum nor the memorandum of February 21, 1991 overrides the guidance that Handbook provides about program requirements.

As you know, assuring Fair Housing for all is one of Secretary Kemp's top priorities. Prompt and vigorous enforcement of all the provisions of the Fair Housing Act, including the protections in the Act for families with children, is a critical responsibility of mine and every person in the Office of General Counsel. I expect Headquarters and Regional Office staff to continue their vigilant efforts to proceed to formal enforcement in all cases in which there is reasonable cause to believe that a discriminatory housing practice under the Act has occurred or is about to occur. This is particularly important in cases where occupancy restrictions are used to exclude families with children or to unreasonably limit the ability of families with children to obtain housing.

In order to assure that the Department's position in the area of occupancy policies is fully understood, I believe that it is imperative to articulate more fully the Department's position on reasonable occupancy policies and to describe the approach that the Department takes in its review of occupancy cases.

Specifically, the Department believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act. The Department of Justice has advised us that this is the general policy it has incorporated in consent decrees and proposed orders, and such a general policy also is consistent with the guidance provided to housing providers in the HUD handbook referenced

*(Continued on page 4)*

*(Continued from page 3)*

above. However, the reasonableness of any occupancy policy is rebuttable, and neither the February 21 memorandum nor this memorandum implies that the Department will determine compliance with the Fair Housing Act based solely on the number of people permitted in each bedroom. Indeed, as we stated in the final rule implementing the Fair Housing Amendments Act of 1988, the Department's position is as follows:

[T]here is nothing in the legislative history which indicates any intent on the part of Congress to provide for the development of a national occupancy code. \* \* \*

On the other hand, there is no basis to conclude that Congress intended that an owner or manager of dwellings would be unable to restrict the number of occupants who could reside in a dwelling. Thus, the Department believes that in appropriate circumstances, owners and managers may develop and implement reasonable occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit. In this regard, it must be noted that, in connection with a complaint alleging discrimination on the basis of familial status, the Department will carefully examine any such nongovernmental restriction to determine whether it operates unreasonably to limit or exclude families with children.

24 C.F.R. Chapter I, Subchapter A. Appendix I at 566-67 (1990).

Thus, in reviewing occupancy cases, HUD will consider the size and number of bedrooms and other special circumstances. The following principles and hypothetical examples should assist you in determining whether the size of the bedrooms or special circumstances would make an occupancy policy unreasonable.

#### Size of bedrooms and unit

Consider two theoretical situations in which a housing provider refused to permit a family of five to rent a two-bedroom dwelling based on a "two people per bedroom" policy. In the first, the complainants are a family of five who applied to rent an apartment with two large bedrooms and spacious living areas. In the second, the complainants are a family of five who applied to rent a mobile home space on which they planned to live in a small two-bedroom mobile home. Depending on the other facts, issuance of a charge might be warranted in the first situation, but not in the second.

The size of the bedrooms also can be a factor suggesting that a determination of no reasonable cause is appropriate. For example, if a mobile home is advertised as a "two-bedroom" home, but one bedroom is extremely small, depending on all the facts, it could be reasonable for the park manager to limit occupancy of the home of two people.

#### Age of children

The following hypotheticals involving two housing providers who refused to permit three people to share a bedroom illustrate this principle. In the first, the complainants are two adult parents who applied to rent a one-bedroom apartment with their infant child, and both the bedroom and the apartment were large. In the second, the complainants are a family of two adult parents and one teenager who applied to rent a one-bedroom apartment. Depending on the other facts, issuance of a charge might be warranted in the first hypothetical, but not in the second.

#### Configuration of unit

*(Continued on page 5)*

*(Continued from page 4)*

The following imaginary situations illustrate special circumstances involving unit configuration. Two condominium associations each reject a purchase by a family of two adults and three children based on a rule limiting sales to buyers who satisfy a "two people per bedroom" occupancy policy. The first association manages a building in which the family of the five sought to purchase a unit consisting of two bedrooms plus a den or study. The second manages a building in which the family of five sought to purchase a two-bedroom unit which did not have a study or den. Depending on the other facts, a charge might be warranted in the first situation, but not in the second.

#### Other physical limitations of housing

In addition to physical considerations such as the size of each bedroom and the overall size and configuration of the dwelling, the Department will consider limiting factors identified by housing providers, such as the capacity of the septic, sewer, or other building systems.

#### State and local law

If a dwelling is governed by State or local governmental occupancy requirements, and the housing provider's occupancy policies reflect those requirements, HUD would consider the governmental requirements as a special circumstance tending to indicate that the housing provider's occupancy policies are reasonable.

#### Other relevant factors

Other relevant factors supporting a reasonable cause recommendation based on the conclusion that the occupancy policies are pretextual would include evidence that the housing provider has: (1) made discriminatory statements; (2) adopted discriminatory rules governing the use of common facilities; (3) taken other steps to discourage families with children from living in its housing; or (4) enforced its occupancy policies only against families with children. For example, the fact that a development was previously marketed as an "adults only" development would militate in favor of issuing a charge. This is an especially strong factor if there is other evidence suggesting that the occupancy policies are a pretext for excluding families with children.

An occupancy policy which limits the number of children per unit is less likely to be reasonable than one which limits the number of people per unit.

Special circumstances also may be found where the housing provider limits the total number of dwellings he or she is willing to rent to families with children. For example, assume a landlord owns a building of two-bedroom units, in which a policy of four people per unit is reasonable. If the landlord adopts a four person per unit policy, but refuses to rent to a family of two adults and two children because twenty of the thirty units already are occupied by families with children, a reasonable cause recommendation would be warranted.

If your review of the evidence indicates that these or other special circumstances are present, making application of a "two people per bedroom" policy unreasonably restrictive, you should prepare a reasonable cause determination. The Executive Summary should explain the special circumstances which support your recommendation.

## FHCSP's Community Partners

The Fair Housing Council has been collaborating for several years with a number of community and faith-based organizations to educate their clients about fair housing. Two of these organizations are Lutheran Children and Family Service of Southeastern Pennsylvania (LCFS) and Self Determination Housing Project (SDHP). LCFS has been working to inform recent refugees and asylees about their rights and responsibilities under the Fair Housing Act. More information about LCFS and its programs can be found at [www.lcfsinpa.org](http://www.lcfsinpa.org) or by calling 215-276-5500. SDHP conducts educational activities to inform persons with disabilities, and the agencies serving them, of their rights under the Fair Housing Act. More information about SDHP and its programs can be found at [www.sdhp.org](http://www.sdhp.org) or by calling 215-884-2091.

### Lutheran Children and Family Service

**L**utheran Children and Family Service of Eastern Pennsylvania (LCFS) is a non-profit human service agency which has been dedicated to protecting and empowering vulnerable children and families since its founding in 1922. LCFS programs are expressly designed to serve indigent and low-income individuals and families throughout Southeastern Pennsylvania. Working in close partnership with public institutions and faith-based and non-sectarian community organizations throughout the region, LCFS serves over 4,500 clients region-wide without regard to race, religion, national origin, ancestry, gender, disability, age, or sexual orientation.

As the Commonwealth of Pennsylvania's largest provider of resettlement and support services to African-born immigrants, LCFS has long been at the forefront of linguistically and culturally appropriate program development for this community, including the federally-funded Liberty Center for Survivor of Torture and the Statewide Positive Youth Development and Empowerment Program for Sudanese Refugees, and the West African Teen Outreach program, funded by the City of Philadelphia.

The LCFS Adult Education Program currently serves approximately 170 students in six locations. Classes include beginning and intermediate English as a Second Language, GED and literacy. Clients include persons who arrive in this country as refugees, persons who gain asylum in this country, and other immigrants. In the last few years refugees have primarily been West African, fleeing war-torn Liberia and Sierra Leone. This past year LCFS had started to assist the first Meskhetian Turk families to arrive in the region.

In 2004, LCFS entered into a partnership with the Fair Housing Council of Suburban Pennsylvania, to assist as a subcontractor to provide Fair Housing information to newcomers through adult education classes. Through funding from the Fair Housing Council, LCFS has developed a "fair housing" curriculum designed to teach recent immigrants and refugees about their rights and responsibilities under the law. In addition, LCFS has been able to spread the word through various newcomer communities about where to go for help in the face of discrimination.

LCFS has been pleased to add this component to the services that we provide to our clients, many of whom have fled discrimination and persecution in their own countries. We are privileged to participate in this program that attempts to level the housing "playing field" for persons of many backgrounds, religions, and ethnicities.

# Self Determination Housing Project

The mission of Self-Determination Housing Project of Pennsylvania, Inc. (SDHP), a statewide 501(c)(3) non-profit organization, is to promote self-determination and control in housing for persons with disabilities in the Commonwealth of Pennsylvania.. SDHP accomplishes this mission by bridging the housing and disability communities through the provision of education, information, training and technical assistance to individuals with disabilities, families, advocates, government officials, service providers, and housing professionals. SDHP also encourages and initiates state and local partnerships and coalitions that help people with disabilities realize housing of their choice and preference.

SDHP works to expand housing choices for all people with disabilities, including those with mental illness, developmental disabilities and physical disabilities. Since its inception, SDHP has embraced the philosophy that people with disabilities should have knowledge of, and access to mainstream housing programs and resources rather than operating in separate “disability systems”. SDHP has established roles as an educator, advocate, technical assistance provider, and developer of innovative projects in order to accomplish its goal in the self-determination housing movement in Pennsylvania. Within each role SDHP develops activities that ensure that the housing needs and rights of people with disabilities are being met. This has led to two initiatives that address fair housing issues for people with disabilities throughout Pennsylvania.

## Partnership between SDHP and FHCSF

Since 2002, SDHP has had a formalized partnership with the Fair Housing Council of Suburban Philadelphia as part of their Private Enforcement Initiative Grant. This partnership has given SDHP an opportunity to conduct educational activities to inform persons with disabilities, as well as the agencies serving them, of their rights under the Fair Housing Act. SDHP staff travels throughout Pennsylvania and presents information to local advocacy groups for people with disabilities about fair housing. SDHP also explains how people, who feel like they have been discriminated against, can file complaints with HUD as well as how to avoid predatory lenders.

## Housing Advocacy Coordination Project

A new initiative, the Housing Advocacy Coordination Project, which began in April 2005 and is funded through a two year grant from the Pennsylvania Developmental Disabilities Council, is a statewide effort to provide assistance to local self-advocacy groups and provide information that people need to be able to advocate for safe, accessible, affordable and integrated housing. Fair Housing, a major component of this project, is addressed through the following activities:

- ◆ Advocacy for enforcement of special accommodations
- ◆ Partnerships with Fair Housing Councils and advocacy agencies about housing issues important to people with disabilities
- ◆ Training seminars for people with disabilities that provide information on how to testify at Consolidated Plan Hearings, rights and responsibilities in public and subsidized housing, and how to file HUD complaints

A pamphlet published and recently reprinted by SDHP, *When The Law Says It's Okay To Bend The Rules: Reasonable Accommodations*, helps to further clarify the regulations related to fair housing for people with disabilities in the Commonwealth of Pennsylvania. Anyone interested in receiving a copy of this pamphlet can call 215-884-2091 or toll-free at 1-800-669-9777.



Fair Housing Council  
of Suburban Philadelphia  
225 South Chester Road, Suite 1  
Swarthmore, PA 19081-1919

ADDRESS SERVICE REQUESTED

NONPROFIT  
ORG.  
U.S Postage  
PAID  
Swarthmore, PA  
Permit No. 14

*The Nation's Oldest Fair Housing Council*



Please Visit FHCSP's New Website at  
**[www.fhcsp.com](http://www.fhcsp.com)**

Our website has been completely redesigned and updated by Yikes, Inc. Please stop by for information about FHCSP's history, our programs, fair housing laws and other resources, past newsletters and articles, and our publications for consumers and industry professionals.