



Homes and Community Renewal

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Date: October 12, 2023

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To: Developers, Owners and Managers of Projects Funded by NYS Homes & Community Renewal

From: New York States Homes and Community Renewal

Re. Occupancy Guidelines for NYS HCR-Funded Housing Units

Dear Developers, Owners and Managers-

Effective November 6, 2023, NYS HCR is standardizing and increasing the permissible occupancy standards for all affordable housing units funded by New York State Homes and Community Renewal as the following:

April 4, 2025 Note: Updates as of this date are reflected by underlined text.

A.	B.	C.*	D.
Bedroom Number	Required Minimum Number of Occupants	Required Maximum Number of Occupants	Optional Maximum Number of Occupants
0	1	2	2
1	1	2	3
2	2	4	5
3	3	6	7
4	5	8	9
5	7	10	11

**All New Construction must be designed and constructed to accommodate at least the number of people in Column C and up to the number of people in Column D (subject to exceptions outlined below). For occupancy standards beyond Column D, a waiver must be procured as outlined below.*

The Minimum Number of Occupants (Column A) lists the minimum number of household members that must be housed in the unit (subject to any reasonable accommodations that must be made). The Required Maximum Number of Occupants (Column C) lists the number of individuals that the unit must be designed and constructed to accommodate. The Optional Maximum Number of Occupants (Column D) column lists how many individuals can be housed in a certain sized unit subject to the exceptions below. *Owner/Managing Agents can choose the maximum occupancy according to either columns C or D, or a combination of both, subject to the exceptions below.*

It is important that in determining occupancy for certain units, owners and managing agents should avoid making social judgement on the family’s sleeping arrangements. For example, it is not for the owner to determine whether a young child can sleep in the same room as a parent. *If a family qualifies by both income and number of persons for more than one unit size, the family should choose the unit size that meets their needs.* As such, each project should give applicants the option to apply for, and be on, waiting lists for unit sizes for which their family is eligible. Furthermore, any family offered one unit size that they reject should still be on the waitlist for the other unit size for which they are eligible.

Exceptions to Implementing Maximum Permissible Number of Occupants Listed in Column D

Although NYS HCR has determined that an occupancy standard of 2 persons per bedroom plus 1 additional person is reasonable, there are instances where this increased standard must not be implemented. These exceptions are when increasing permissible occupancy would conflict with:

- (1) Certain housing programs and government policies that may have legally required occupancy policies (such as federal Section 8 programs and foster care placement, 18 NYCRR 442.6); or
- (2) Local fire, housing maintenance and/or other governmental occupancy laws or codes.

Reasonable Accommodations

In order to meet the needs of disabled residents, reasonable accommodations to the occupancy standards may be granted as long as they do not conflict with local fire, housing maintenance code or other governmental occupancy laws or codes.

An Owner/Managing Agent should seek a waiver from their relevant NYS HCR representative if a request is made for a unit to deviate from NYS HCR's occupancy standards in order to grant a reasonable accommodation.

Reasonableness Standard to Increase Occupancy for a Unit

A project may go above the maximum limit for the household size for a specific unit if it is reasonable to do so. The United States Department of Housing and Urban Development has issued guidance on what this standard of "reasonable" constitutes. Several factors have to be taken into consideration such as: the size of the bedrooms and the unit, configuration and physical limitations of the unit, age of the children, state and local laws on occupancy limits and fire codes, and other relevant factors (e.g., if the house provider has made discriminatory comments, or only enforced their occupancy policy on families with children).¹

An Owner/Managing Agent should seek a waiver from their relevant NYS HCR representative if a request is made for a unit to deviate from NYS HCR's occupancy standards.

Requirements for Waiver Requests

All requests for deviations from the occupancy standards must be in writing, and further must include documentation or a statement of observation from the housing provider that substantiates the need for the waiver and a certification that such deviation from the occupancy standard is in compliance with applicable fire, housing maintenance and/or other governmental occupancy laws or codes.

Existing Projects

If an existing project has a regulatory agreement that conflicts with these increased permitted occupancy standards, the project may allow increases in the permitted occupancy in line with this policy memorandum. These projects should submit an updated occupancy policy for the project in their tenant selection plan and/or management plan to their HCR representative along with a certification by the project and a representative from the local municipality (such as the fire department or code enforcement) that these updated occupancy policies are not subject to the exceptions listed above.

Please reach out to the HCR Asset Management representative for your project if you are having difficulty obtaining this certification. A certification form that meets these requirements can be found here: www.hcr.ny.gov/OwnerOccupancyCert

¹ Keating Memorandum, 63 Fed. Reg. 70982 (Dec. 22, 1998) available at: https://www.hud.gov/sites/documents/DOC_7780.PDF