

11-0762



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October 2011

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Revitalizing Application of the Federal Fair
Housing Act to Private Residential Occupancy
Standards

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Moving Beyond Two-Person-Per-Bedroom: Revitalizing Application of the Federal Fair Housing Act to Private Residential Occupancy Standards

Tim Iglesias*

Georgia State University Law Review (forthcoming)

*What is crowded to some is exactly what is comfortable to others;
what is comfortable to some is exactly what is lonely to others.¹*

Abstract

New empirical evidence demonstrates that the two-person-per-bedroom standard (a common residential occupancy policy) substantially limits the housing choices of many thousands of families, especially Latinos, Asians, and extended families nationwide. The federal Fair Housing Act makes overly restrictive policies illegal, but promotion of the standard by housing providers, confusion in the courts and the enforcement practices of the U.S. Department of Housing and Urban Development (HUD) have enabled the two-person-per-bedroom standard to become dominant with a false veneer of legality. This article urges HUD to use its regulatory authority to remedy the situation and offers several solutions. And, if HUD fails to act, it encourages private plaintiffs to challenge the two-person-per-bedroom standard and provides guidance to courts in deciding these cases.

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* Professor of Law, University of San Francisco School of Law. The following people provided helpful comments on earlier drafts of this article for which I am very grateful: Michael Allen, Chris Brancart, Anne Houghtaling, Richard Marcantonio, Rigel C. Oliveri, Mike Rawson, Robert Schwemm, Jodi Short and members of the USF School of Law faculty, especially Tristin Green and Josh Davis. Also special thanks to Rick Sander, Rich Hertz, Don Dixon, Sara Pratt and numerous practitioners including Mike Hanley and Matthew Dietz. I owe a great debt to the following USF law students who provided excellent research and other assistance for this article: Brandy Hillman-Azevedo, Kate Chatfield, Gwendolyn Harre, Christie Moore, and Peter O'Hare. Of course, any errors in this article are solely the responsibility of the author.

¹ Ellen Pader, *Housing Occupancy Standards: Inscribing Ethnicity and Family Relations on the Land*, 19 J. ARCHITECTURAL PLAN. RES. 300, 305 (2002).

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