

FAIR HOUSING OF THE DAKOTAS
FREQUENTLY ASKED FAMILIAL STATUS DISCRIMINATION QUESTIONS

1. **Can a Landlord Refuse to Rent to Families with Children?** The Federal Fair Housing Act prohibits discrimination against families with children in the sale, rental and financing of all housing. “Adults Only” limitations are illegal unless the housing qualifies under the exemption for senior citizen housing. Qualified housing needs to be advertised as “housing for older persons.” Furthermore, advertising which indicates a preference for “single professional” or “adults” is unlawful.
2. **What is the Definition of Familial Status?** Familial Status is defined as a household with children under the age of 18. The term covers households in which a minor lives with a parent, any person who has legal custody of the minor, or any adult who has written permission for the child to live in the household. Discrimination against pregnant women or any person in the process of adopting or securing legal custody of a minor is also specifically prohibited.
3. **Can a Landlord have rules restricting the age or sex of children in rental units?** Landlords may not have rules which limit the age, sex or number of children in a unit in a manner which is different than limitations placed on adult tenants. For example, landlords may not specify: a) only children under the age of five are permitted; b) opposite sex children or a parent/child may not share a bedroom; or c) no more than one child may reside in a bedroom, etc. A landlord may set reasonable occupancy limits on the maximum number of “persons” who can live in a unit.
4. **Can the landlord limit the number of children per apartment?** No. A landlord may limit the total number of “persons” per unit, but not target the total number of “children”. A landlord may set reasonable occupancy limits on the maximum number of persons who can live in a unit as long as the limits are not unreasonably restrictive. For instance, a limit of one person per bedroom in an apartment complex that has only two bedroom units would have the effect of screening out most families with children. This type of policy would be considered discriminatory even if the landlord did not “intend” to discriminate against families with children.
5. **Can a landlord charge families with children higher security deposits?** No. A landlord may charge tenants a reasonable security deposit. The amount may vary depending upon the size of the unit, tenant’s credit or rental references, limits established in a state’s landlord/tenant law or other valid business criteria. For example, a landlord may charge a family with very poor credit a higher security deposit than a family with excellent credit but a family could not be charged a higher deposit just because they have children (may be limited due to state landlord/tenant law).
6. **May the landlord raise the rent when another child is added to the household?** No. A landlord may not base the amount of rent a tenant pays on the number of children in the home. The FHD recommends a per bedroom charge rather than a per occupant/person charge. Some landlords charge “per person” rather than a fixed rental rate. This “additional” rent must be based on actual costs to the owner which can be verified. If an owner pays the utilities on a unit and additional persons are added to the home, then the utility costs may increase as long as it is applied to all occupants and can be verified. This policy would be unlawful if a landlord only charged for additional children and not for additional adults in the unit, for example.
7. **May a landlord have special rules restricting children of complex facilities?** No. A landlord may have reasonable rules and regulations which are applied uniformly to all tenants. Further, if the common public areas of an apartment complex or mobile home park are available for adults to converse, picnic, sunbathe, etc., then they must be available to children as well. Rules need to apply to everyone, not just children.
8. **Can a landlord have rules governing the behavior of children?** No. The landlord may have rules and regulations governing the behavior of “all” tenants. For instance, a landlord may have rules prohibiting the use of bicycles, skateboards, and skates on the sidewalks and in other common areas. The same rules, if applied or selectively enforced only against children would be unlawful. Specific regulations which limit tenant activities such as walking in flower gardens, turning on sprinklers, or playing “basketball” would adequately protect the landlord’s property and comply with fair housing laws, as long as they apply to everyone, and not just to children.
9. **Can a landlord set a curfew for children under 18 years of age?** No. Landlords may have rules “closing” common facilities to all residents at a certain hour. Rules that would close the club house or the pool to all tenants at set hours could be enforced without violating fair housing laws. A landlord can also have rules against vandalism and other problem behaviors as long as the rules apply to all tenants.

This information is not legal advice, for legal advice about a particular situation, please contact an attorney.