

# Appeals Court Rules On Occupancy Case

The Ninth Circuit Court of Appeals, which includes Arizona, recently ruled on a case involving occupancy restrictions in rental housing.

In *Pfaff v. Department of Housing and Urban Development (HUD)*, the appeals court found HUD acted arbitrarily and capriciously when it brought a familial discrimination enforcement action against a group of senior citizens who rented homes to supplement their income.

The landlords maintained a policy of limiting the number of occupants in each house based on the dwelling's size, number of bedrooms and amenities. The landlords always rented to families with children.

In the rental that was the basis of the lawsuit, the owners determined the appropriate family size for the house was four people. The landlords refused to allow a couple with three small children to move in, even though the family of five earlier completed the rental applications and were approved for move-in.

The family filed a complaint with HUD, alleging violation of the Fair Housing Act based on "familial status" discrimination.

An administrative law judge (ALJ) ruled for the family, citing a case of "disparate impact" discrimination. HUD determined that in the county where the family lived, households of five generally involved families with children.

The ALJ also rejected the landlords' argument that their occupancy standards were necessary to maintain the economic value of their properties.

The judge awarded the family approximately \$4,000 in compensatory damages and \$20,000 for emotional distress. Additionally, the ALJ fined the landlords \$8,000 for violating the statute.

The landlords appealed to the appellate court, which found HUD's actions "appalling."

The high court criticized HUD's initial interpretation of the Fair Housing Amendments Act, which allows owners to develop and implement reasonable occupancy requirements based on such factors as the number and size of sleeping areas or bedrooms and the unit's total size.

The justices said HUD's decision that the landlords had to establish a "compelling business necessity" was different from the "reasonableness" standard the federal agency originally adopted after passage of the fair housing act.

In fact, continued the appellate court, the landlords' rental policy was sufficient under the "reasonableness" standard. The four-person limit for the small rental house in question sought to preserve the dwelling's property value, and a numerical limitation on occupancy advanced that legitimate business purpose.

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The court's decision in this case, however, does not establish a precedent for a similar situation. But it does indicate that HUD will not be able to take action in circumstances that do not warrant an allegation of familial discrimination.

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