

Affordable Housing and Grandparents Raising Grandchildren

Below is a summary of some of the barriers or issues facing Grandparents or relatives raising their grandchildren today in affordable housing. Unfortunately, this is exacerbated by the lack of affordable housing in the country which makes the issues even more profound and the lack of understanding by some in the industry who believe “Elderly Housing” excludes children, which is incorrect. Most of the focus below is on Federal programs with developments in MA and relates to Massachusetts General Laws and may not necessarily be transferred to other states. See the link on the HUD web site for Grand families State Laws and Policy Resource Center <http://www.grandfamilies.org/>

The following link also identifies resources identified by HUD in support of Inter-generational Families. https://www.hud.gov/program_offices/housing/mfh/eldfam/eldfamhome

1. Timeframe:

Usually when a grandparent takes over long term caregiving it is without notice and they have no time to plan or put themselves in a situation to prepare. A parent maybe missing due to various reasons that could include but not be limited to arrest, addictions, child abuse, mental health issues, divorce or possibly results in death without notice. The lease agreement for affordable housing in most instances allows for a guest for up to fourteen days in a calendar year; longer periods than that must be reported to the management company or the local PHA offices so it is clear you are not violating your lease and program guidance.

If the household needs to add a member for long term period they should contact the owner/agent/public housing office to report the change to start the process for approval.

2. Program/Project Eligibility

a. Restrictions to “Elderly Only” Occupancy

HUD Guidelines governing the Section 202, Section 221(d)(3), Section 236 and certain Project Based Section 8 assisted programs specifically prohibits the exclusion of children from these programs and some owner/agents think Elderly Only does not allow children to be added to a lease. Even if a development is designed specifically for the elderly these programs do not exclude children but they might not have the amenities available to fully serve both families and the elderly members

- HUD Handbook 4350.3 Chapter 3, paragraph 3-23 states that owners may not exclude otherwise eligible elderly families with children from elderly properties.
- The HUD Public Housing Occupancy Guidebook, June 2003, Section 2.2, page 25 has similar wording but not as clearly defined. “There is nothing in the definition of elderly family that excludes children. Many elderly families today consist of grandparents with custody of grandchildren. This is an elderly family.”

- 760 CMR 5.00: Mass General Laws on State Aided Public Housing states that an Elderly Household is one that contains at least one elderly person, it does not restrict children
- b. Moving Grandparent in with Child when Parent becomes deceased.

Under the HUD Program Guidance, 4350.3 when some resident dies, the manager needs to determine if there is a remaining household member with succession rights to the subsidized unit. According to HUD, a remaining household member is one in which the individual is of legal contract age under state law *and* was a party to the lease at the time the tenant died [HUD Handbook, par. 3-16(B) (1-2)]. Section 202 and 811 sites have additional succession requirements; for these sites, managers should refer to HUD Handbook 4350.3, paragraph 3-16(B) (3).

The remaining household member must report the death of the resident to management and an interim recertification must be processed in accordance with HUD requirements and your internal procedures. The effective date of the interim recertification will depend on several factors, including the time frame in which the resident's death was reported and the effect the removal of the household member will have on tenant rent [HUD Handbook 4350.3, par. 7-13]. The tenant rent and HUD assistance payment will be adjusted accordingly.

But in 2010 the PIH Notice 2010-9 https://www.hud.gov/sites/documents/DOC_9011.PDF issued by HUD to all Section 8 Program Administrators and Owners, Vouchers, etc. "If children are the only remaining household members, HUD suggests the housing authority should allow a temporary guardian to reside in the unit until the courts appoint a permanent guardian. Furthermore, the housing authority may add the new guardian as the new head of household, each state and housing authority may differ on this matter and are not required to adopt such a policy. The housing authority will require proof of death."

Section 221(d) (3), 236, 202 are silent on this guidance but if combined with Section 8 should be considered in accordance with this guidance.

3. **Physical Barriers**

a. Size of Units

Federal Section 8, 202, 236 and 221 (d) (3) -Most elderly housing developments are either efficiencies or have only one bedrooms and may not have the space to serve families with young children by transferring them to the appropriate size unit and adding household members to the lease. The question to ask, is the Grandparent in an apartment that is large enough for them to have the child join them without violating state sanitary code. HUD guidance states the 2 people per bedroom is a recommendation but not requirement and defers to state sanitary code and regulations relevant to appropriate size occupancy in order to avoid the potential for creating a disparate impact by not following the state code and regulations

A single person in a studio or efficiency depending on size could pose an issue based on state sanitary code but the sex of the individual household members sharing space is not a consideration in the HUD guidance nor is the use of the living room area for sleeping excluded.

Massachusetts State Sanitary Code on minimum square footage can be found in summary below:

“Every dwelling unit shall contain at least 150 square feet of floor space for its first occupant, and at least 100 square feet of floor space for each additional occupant, the floor space to be calculated on the basis of total habitable room area.

“In a dwelling unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space; every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor space for each occupant. “

Mass. State Aided Public Housing: The enlarged household shall meet all applicable eligibility requirements for a household initially applying for housing, except income shall be within the limit for continued occupancy and the leased unit shall be of appropriate unit size for the enlarged household. The only issue with State Aided Unit Size is that only Bedrooms may be used for sleeping purposes not living rooms. So the bedroom size must be adequate in order to add the child to the household and be shared with them if the Grandparent is willing to.

MGL. 760, Definition 5.03 - Appropriate Unit Size - the size of a unit is appropriate for a household if the unit meets all the following criteria:

(a) Household members of the opposite sex, excepting husband and wife (or those in a similar living arrangement), do not have to share a bedroom, provided that children of the opposite sex under the age of eight shall share a bedroom and provided that other household members of the opposite sex may elect to share a bedroom.

(b) Persons of the same sex shall share a bedroom, provided that a household member, age 21 or over, may elect not to share a bedroom with his or her child, grandchild, or legal ward and provided that a household member does not have to share a bedroom if a consequence of sharing is or would be a severe adverse impact on his or her mental or physical health and if the LHA receives reliable medical documentation as to such impact of sharing.

(c) Each bedroom shall contain at least 50 square feet of floor space for each occupant and a minimum of 70 square feet and shall meet all other applicable requirements of the State Sanitary Code (105 CMR 410.000) for a room occupied for sleeping purposes. No bedroom shall be shared by more persons than the number permissible under 760 CMR 5.03. (d) Only bedrooms may be used for sleeping purposes by household members; the living room, kitchen, bathroom and hallways shall not be used for sleeping purposes by any household member.

- b. Unit Transfers- if it is determined that the current unit size is adequate for adding household member minor child and there is adequate size unit in development for requesting transfer the family can request being added to the waiting list as an existing household transfer to an appropriate sized unit. If there are no appropriately sized units to off the resident and the addition of a household member you cannot approve the change if it violates the state sanitary code and occupancy regulations.
- c. Lead Paint –if the property was built prior to 1978, the unit will need to be inspected and certified as lead free.

4. Legal Custody, Rent Calculations and Deductions for Verification

The lack of legal custody is a significant barrier for many Grandparents suddenly asked or required to raise their grandchildren. HUD’s Public Housing Guidebook also defines “kinship care”: an arrangement in which a relative or non-relative becomes the primary caregiver for a child or children but is not the biological parent of the child or children. The primary caregiver need not have legal custody. Documentation to prove that children in a “kinship care” relationship are actually residing in the unit can be child’s medical records or school records that establish the place of residence.

Some Housing authorities, Low Income Housing Tax Credit monitoring agents are unlawfully requiring relatives to have legal custody or guardianship of the children to qualify as a family for assisted housing. Families don’t often have legal custody for various reasons such as financial cost of legal proceedings, parent only wants them to watch for a little while so they can get their life back in order and not have child placed in the system or in foster care. Fair Housing Administration also provides protections and does not require legal custody in order for the primary caregiver to add the minor to the household. A notarized statement from the legal guardian that the grandparent is the primary caregiver for the child for a long-term basis or in the absence of the parent(s) signature, medical or school records should be adequate.

State Aide Public Housing states that before any person not named in the lease may be added as a household member (excepting a new-born), tenant and the person involved shall have applied in writing to the LHA for approval of a household including such person and the LHA shall have screened the person, **ten years of age or older, as an applicant and found him or her to be qualified.**

Once the household is determined eligible to add the minor child to the lease; the verification process for determining income and expense deductions for the program would be completed, the rent would be recalculated and determined for the household and as long as the income received for the minor does not place the household over the eligibility for continued eligibility there is no issue and most often is not the case. Eligible deductions for a dependent would include a dependent deduction of \$480 for each family member (*except foster children and foster adults) * who is 1.) under 18 years of age; 2.) a person with disabilities or 3.) a full t-time student of any age. HUD handbook 4350.3 page 5-41, paragraph 5-10 states “it is not necessary for a member of the family to have legal custody of a dependent to receive the dependent deduction.”

A Child Care Deduction for children under the age of 13(including Foster Children) may be deducted from annual income if specific criteria are met (See Page 5-42 of the HUD Handbook 4350.3 Rev. 1