

## New Families Need New Regulation

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**T**he composition of American households has changed dramatically in the last decades but plans and regulations haven't. What do you need to know about these changes and how should you alter plans and regulations to fit the households of today . . . and tomorrow?

### The Old Days Are Gone

Baby boomers grew up in households profoundly different from those today. Period television shows portrayed the imagined "typical" household, but families have changed greatly in the last 50 years. The challenge is to accommodate these new families without destroying the character of single-family neighborhoods.

### Show Me the Numbers

The predominant household type today is a single person or unmarried people. A mere one out of seven families had a father working with the mother at home with children. Household size shrank 10 percent in the last 50 years down to 2.59 persons. Men and women are much older at the time of marriage. The bottom line? Families today are more often single-person households and couples, many unmarried, without children at home.

### Tell It to the Judge

More than three decades ago, the U.S. Supreme Court in *Belle Terre v. Boraas* upheld a restrictive definition of family:

One or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons but not exceeding two (2) living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage shall be deemed to constitute a family.

The *Belle Terre* decision is still good law. But it interprets the U.S. Constitution only, not the state constitutions. Remember, what might be perfectly constitutional under the federal constitution may be perfectly unconstitutional under a state constitution.

### Recent Cases—The Difference of Being in State Court

A few state courts have interpreted their state constitutions as not permitting this type of restrictive definition because it is not reasonably related to the permissible governmental objectives under the zoning enabling statutes.

### The Interplay of the Fair Housing Amendments Act and State Law

The Fair Housing Amendments Act allows protected classes of people—physically disabled or developmentally challenged, for example—to live most places where any single family might. About half of the federal circuits support a "rule of eight" limiting such homes to eight people. The FHAA trumps local zoning and is used most often to permit the location of sober houses for recovering alcoholics and substance abusers. State statutes often mimic the federal law and provide their own level of protection. When considering the definition of family, you should address how you will handle group homes.

### The 'Functional Family'

There is a definitional and procedural tool that can serve to protect the single-family residential district while allowing greater numbers of people who are unrelated yet share common bonds, i.e., a "functional family," to live in single-family zoning districts.

Ames, Iowa, provides for functional families. Go to [www.cityofames.org](http://www.cityofames.org) and search "functional family" and you will see rental occupancy guidelines and the application for a special exception. Basically, a functional family is an unrelated group of up to five people who are living as a family: sharing a single household budget, preparing food and eating together, working together to maintain the home, and legally sharing in the ownership or possession of the home. There are provisions to exclude a group of college students from fitting within the definition. The board may impose conditions.

The Court of Appeals of Michigan in *Stegeman v. City of Ann Arbor* upheld a functional family definition pursuant to special use permit criteria.

### An Action Plan for Commissioners

1. Read your definition of "family" and research how it has been interpreted under state law. Perhaps hold an educational workshop to improve recognition of the issues. Be ready for plain talk about sensitive social issues, including gay and lesbian families, unmarried couples with children, and group homes.

2. Take a hard look at your current and future demographics. What are families really like in your community?

3. Identify all types of group homes that may be located in your jurisdiction now or in the future. Consider how to regulate without stigmatizing them.

4. Do you have special needs populations, like college students? Consider creating generous opportunities to locate such housing close to campus that can help reduce the problem with cars and parking. Zone them in, not out.

5. For all those households that don't neat fit neatly in any category—extended gay and lesbian households, or a group of five nuns—consider the functional family approach. Functional family definitions can open the door to greater diversity while preserving family values and legalizing the housing choices of alternative families. Your zoning enforcement officer may complain about the difficulty of enforcing codes related to temporary signs, but think how much more difficult it is to put your ZEO in the position of deciding some family must move out.

You can preserve single-family values as they have evolved, integrate special needs populations, and achieve community diversity beneficial to all.