



# Building Standards and Codes

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TB-1001-RCNYS

## TECHNICAL BULLETIN

Rev. 2

**Code Effective Date:** October 31, 2017<sup>1</sup>

**Source Document:** 19 NYCRR Part 1220 – RESIDENTIAL CONSTRUCTION  
19 NYCRR Part 1221 – BUILDING CONSTRUCTION  
19 NYCRR Part 1226 – PROPERTY MAINTENANCE<sup>2</sup>

**Topic:** Occupancy Classification of an existing One-Family Dwelling Used as a  
Vacation Home Rental and for Home Sharing Purposes

This document is intended to assist code users in making a determination about the occupancy classification of a one-family *dwelling* that is either leased/rented for a finite period to one interconnected group of individuals connected by reason of a pre-established or discoverable relation, or the leasing/renting of a portion of a one-family dwelling to separate individuals or groups.

The information provided in this Technical Bulletin is not intended to cover all scenarios or uses that may occur in relation to the renting or leasing of one-family *dwelling*s. There is rarely one scenario that fits all building uses. The frequency of use, permanency of occupants, number of occupants, relationship among the occupants, and whether compensation is involved, among other factors, all affect the determination of use and occupancy classification of each individual building. Code users need to look at each building and its intended use individually, and then compare it to the use and occupancy classifications of the 2015 International Building Code (2015 IBC) and 2015 International Residential Code (2015 IRC) to make a determination.

The 2015 IRC, as modified by the 2017 Uniform Code Supplement (the Supplement), regulates:

*the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of:*

- 1. detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with a separate means of egress and their accessory structures not more than three stories above grade plane in height,*
- 2. one-family dwellings converted to owner occupied bed and breakfast dwellings with five or fewer guest rooms and their accessory structures not more than three stories above grade plane in height, and*
- 3. plumbing, mechanical, and fuel gas systems and appliances servicing these structures.*

Additionally, per exception 3 to Section 101.2.1 of the 2015 IRC, as modified by the Supplement:

*Owner-occupied lodging houses with five or fewer guestrooms shall be permitted to be constructed in accordance with the 2015 IRC where equipped with a fire sprinkler system in accordance with Section P2904 of the 2015 IRC.*

In determining the use of a building and whether it is regulated by the 2015 IRC or 2015 IBC, code users should consider the frequency of the primary use and/or alternate uses and whether compensation is involved. While this is not

<sup>1</sup> The "Code Effective Date" for this Technical Bulletin is October 31, 2017, which is the effective date of the current version of the New York State Uniform Fire Prevention and Building Code (the Uniform Code).

<sup>2</sup> The 2015 International Residential Code (2015 IRC) is a publication incorporated by reference in 19 NYCRR Part 1220, the 2015 International Building Code (2015 IBC) is a publication incorporated by reference in 19 NYCRR Part 1221, and the 2015 International Property Maintenance Code (2015 IPMC) is a publication incorporated by reference in 19 NYCRR Part 1226. The 2017 Uniform Code Supplement is a publication incorporated by reference in 19 NYCRR Parts 1219 through 1228. The 2015 IRC, the 2015 IBC, and the 2015 IPMC, as amended by the 2017 Uniform Code Supplement, are all part of the Uniform Code.

specifically defined in the code, this example will assist code users in determining if a building has undergone a change of use or occupancy: in a detached one-family *dwelling* constructed in accordance with the Residential Code in effect at the time of construction, the owner can have an event in which 50 or more friends and family members gather socially and consume food or drink (such as a birthday party, graduation party, etc.). This type of use would be typically defined in the 2015 IBC as an assembly Group A occupancy. However, this occasional use of the detached one-family home does not necessarily mean it has undergone a change of occupancy to a Group A regulated by the 2015 IBC. Take the same scenario, but the house is frequently rented to host social events for individuals who are not guests of the owner or tenant. Now the use of the building may have changed to include both a Group R-3 one-family *dwelling* and a Group A assembly occupancy, in which the most stringent Uniform Code requirements for each Group would apply.

Below is a list of scenarios indicating when a leased or rented one-family *dwelling* regulated by the 2015 IRC may, or may not, change in occupancy classification. Definitions of the occupancies described in these examples are provided at the end of this document for convenience.

### **No Change**

By definition (see below), a *dwelling* can be “*rented, leased, let, or hired out to be occupied,*” regardless of the duration of the tenancy. The same applies, by definition, to one- and two-family *dwelling*s and townhouses.

Also, the act of leasing or renting the *dwelling unit*, by itself, does not affect the sprinkler system requirements outlined in Section R313.1 of the 2015 IRC as modified by the Supplement, which reads as follows:

*An automatic residential fire sprinkler system designed and installed in accordance with Section P2904 or NFPA 13D shall be provided throughout all one- and two-family dwellings and townhouses when such dwelling or townhouse has a height of:*

- 1. three stories above grade plane, or*
- 2. two stories above grade plane and a habitable attic...*

### **Bed and Breakfast**

Renting of up to 5 individual rooms in a converted one-family *dwelling*, to not more than 10 transient lodgers, may result in a change of use to a *bed and breakfast*. These can still be regulated under the 2015 IRC and must, by definition (see below), remain owner-occupied and serve a morning meal to guests. Additional code requirements apply to these occupancies which are generally found in Appendix J of the Supplement, including possible sprinkler requirements in Section AJ704.4.

### **Lodging House**

A single-family *dwelling* permanently occupied (either by the owner or a tenant), and where individual rooms are rented to transient lodgers, may result in a change of use to a lodging house. These could still be governed by the 2015 IRC, as long as they are owner-occupied, with no more than five guestrooms, and are “*equipped with a fire sprinkler system in accordance with Section P2904 of the 2015 IRC*”, per Section 101.2.1 of the Supplement.

### **Two-family Dwelling**

If part of the building is leased/rented to a second group of one or more individuals with separate provisions meeting the definition of *Dwelling Unit* below, it may constitute a two-family *dwelling* regulated by the 2015 IRC. Provisions for the separation wall or floor/ceiling assembly may apply.

### **Group R Occupancy**

The following uses of a one-family *dwelling* may result in the potential conversion of that *dwelling* to a Group R occupancy regulated by the 2015 IBC:

1. If the building is neither occupied by the owner, nor leased/rented “*providing complete independent living facilities*” to a permanent resident tenant, the building use constitutes neither a *bed and breakfast*, nor a *lodging house*, nor a one/two-family *dwelling*, and therefore, might be regulated by the 2015 IBC as a Group R occupancy rather than the 2015 IRC.
2. If the building remains owner-occupied, is leased/rented in part to a group of one or more individuals, and does not meet the definition of a *bed and breakfast*, a two-family *dwelling*, or a *lodging house*, the building is regulated

by the 2015 IBC as a Group R occupancy rather than the 2015 IRC.

3. If the building includes 6 or more guestrooms for compensation, to individuals “*primarily permanent in nature,*” the building is regulated by the 2015 IBC as a Group R occupancy rather than the 2015 IRC.

One such example of this conversion would be a *Boarding house*. In *boarding houses*, individual rooms are “*used for lodging for compensation,*” on a temporary basis, and are not occupied in a manner consistent with the definition of a dwelling unit. New *boarding houses* with more than 10 transient lodgers are classified in Section 310.3 of the 2015 IBC as Group R1 occupancies. *Boarding houses* with 10 or fewer transient occupants are classified as Group R3 occupancies. In the case of an existing building undergoing a change of occupancy, sprinkler and other requirements may apply depending on the compliance path selected in the 2015 International Existing Building Code.

### **Additional Information**

Within the 2015 IRC and 2015 International Property Maintenance Code (2015 IPMC), as modified by the Supplement, are exceptions applicable to owner-occupied *dwelling*s. These exceptions can be found in the following sections of the Supplement: R303 and R306; and IPMC 502, 505, 506, 602, and 604. It is important to note that the change in use of a one-family home from a building that is owner-occupied to one that is not, may result in the need to alter the building based on no longer being eligible for these exceptions.

As a reminder, the provisions of the 2015 IPMC are applicable to all existing structures and all existing premises. Section 404 of the 2015 IPMC dictates minimum required areas for living rooms, bedrooms, and dining rooms. The CEO may request a drawing indicating the size of the spaces, and then calculate the maximum number of persons that can legally occupy a building or a guestroom.

The following definitions are found in Chapter 2 “*Definitions*” of the 2015 IRC and/or 2015 IBC as modified by the Supplement:

*Bed and Breakfast.* An owner-occupied residence resulting from a conversion of a one-family dwelling, used for providing overnight accommodations and a morning meal to not more than ten transient lodgers, and containing not more than five bedrooms for such lodgers.

*Boarding House.* A building arranged or used for lodging for compensation, with or without meals, and not occupied as a single-family unit.

*Dwelling.* Any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

*Dwelling Unit.* A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation...

*Lodging House.* A one-family dwelling where one or more occupants are primarily permanent in nature, and rent is paid for guestrooms.

The Uniform Code does not define the word “family.” The word is used as part of the phrase one- or two-family dwelling. The definition for the term “*dwelling unit*”, given above, references “*independent living facilities for one or more persons*” without regard to the nature of the relationship between or among the persons occupying the unit.<sup>3</sup> If a municipality, as part of their zoning law or other ordinance, wishes to define the character of a neighborhood with regard to the relationship among a building’s occupants, a definition of “family” may be developed with assistance from the municipality’s legal counsel.

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<sup>3</sup> Legal Memorandum LU05 titled ‘Definition of “Family” in Zoning Law and Building Codes’ may be found at: [www.dos.ny.gov/cnsl/lu05.htm](http://www.dos.ny.gov/cnsl/lu05.htm)