



# NEW YORK STATE DEPARTMENT OF STATE

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## TECHNICAL BULLETIN

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**Code Effective Date:** January 1, 2008

**Source Document:** 19NYCRR 1226 - *Property Maintenance Code of New York State ( PMCNYS)*

**Topic:** Overcrowding ( Occupancy Standards)

This document is a guideline to assist code enforcement officials in their efforts to secure compliance with Section 404, Occupancy Standards, of the PMCNYS.

List of Abbreviations

PMCNYS; Property Maintenance Code of New York State

CEO; Code Enforcement Official

UC; Uniform Fire Prevention and Building Code (Uniform Code)

Code Section 404, Occupancy Standards, is frequently a topic for CEO's seeking clarification of how many persons can occupy a house or apartment.

Background: The PMCNYS is a part of the International Codes, adopted in reference in the Uniform Code. The PMCNYS became effective January 1, 2003 for all municipalities outside New York City.

CEO's frequently inquire the number of persons that can occupy a house or apartment. Absent a local (zoning) law or ordinance to the contrary, the PMCNYS regulates overcrowding and sets limitations on the number of persons allowed in dwelling units.

The PMCNYS does not define the term "temporary residents" (as in short- term home rentals), nor "student rental- housing", nor "family members" (related to / married / same-different sex ). Under Occupancy Limitations, there is only reference to **occupant**, which is defined as an individual living or sleeping in a building (chapter 2, definitions).

Overcrowding is often a problem in rental properties and in small dwelling units (houses). The PMCNYS requires all types of dwelling units to comply with occupancy - area requirements; there is no exception for owner-occupied houses. Overcrowding should be avoided because disease spreads more easily, privacy is lost, mental health is affected, and buildings are subjected to more abuse and wear.

Determining compliance with occupancy limitations is a two-step process: First, determine the minimum square footage required per person for bedrooms as specified in PMCNYS section 404.4.1, which requires that every bedroom occupied by one person shall contain 70 square feet. Keep in mind that the smallest bedroom allowed for one person (70 sq.ft) is barely enough space for a regular-sized

bed and dresser. Every bedroom occupied by occupied by more than one person, shall contain 50 square feet for each occupant. Second, consult Table 404.5 to determine the total number of persons that can be accommodated with the space available in living rooms, dining rooms, and kitchens. When there is a conflict between these two categories, the lower number of occupants governs.

There may also be other limiting factors in PMCNYS section 404, such as: a bedroom may not constitute the only means of access to other bedrooms or habitable space and can not serve as the only means of egress; bedroom shall have access to a water closet and lavatory without passing through another bedroom; and bedrooms shall comply with requirements for light, ventilation, room area, ceiling height and room widths, plumbing, water-heating, electrical receptacles, smoke detectors, and emergency escape requirements.

While not an easy process, it is possible to petition the Code Council for the Incorporation of More Restrictive Local Standards (MRLS) if the local municipality could set forth special conditions prevailing within the municipality which warrant imposing more restrictive local standards. More information on MRLS can be obtained on the Department of State website at <http://www.dos.state.ny.us/code/lr-codes.html> .

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