
FIRE PREVENTION AND BUILDING SAFETY COMMISSION
Department of Homeland Security

Written Interpretation of the State Building Commissioner

Interpretation #: CEB-2021-12-IC 22-12-1-5

Building or Fire Safety Law Interpreted
Indiana Code § 22-12-1-5 "Class 2 structure"

Sec. 5. (a) "Class 2 structure" means any part of the following:

- (1) A townhouse or a building or structure that is intended to contain or contains only one (1) dwelling unit or two (2) dwelling units unless any part of the building or structure is regularly used as a Class 1 structure.

[Remainder of definition omitted for lack of relevance to request.]

Indiana Code § 22-12-1-4 "Class 1 structure" [Included in interpretation for reference]

Sec. 4 (a) "Class 1 structure" means any part of the following:

- (1) A building or structure that is intended to be or is occupied or otherwise used in any part by any of the following:
 - (A) The public.
 - (B) Three (3) or more tenants.
 - (C) One (1) or more persons who act as the employees of another.

(b) [Omitted for lack of relevance to request.]

(c) [Omitted for lack of relevance to request.]

(d) Subsection (a)(1) does not include a Class 2 structure.

[Remainder of definition omitted for lack of relevance to request.]

Issue

Whether, under [IC 22-12-1-5](#), a one- or two-dwelling unit structure is considered a Class 2 structure when it is occupied on a membership basis by three (3) or more individuals.

Interpretation of the State Building Commissioner

Occupation of a one- or two-dwelling-unit structure for permanent residential occupancy on a membership basis constitutes regular use as a Class 1 structure if occupied, or intended to be occupied, by three or more members, thus disqualifying the structure from Class 2 status.

Rationale

In determining whether a residential structure is considered Class 2, the first step is to examine whether it meets the criteria provided in the statutory definition of the term "Class 2 structure." As we see, that definition consists of two key components. The first is that the structure must contain no fewer than 1 dwelling unit, and no more than 2 dwelling units. The second component of the definition is that no structure that is regularly used as a Class 1 structure may be considered a Class 2 structure. This latter component applies regardless of the number of dwelling units the structure contains.

If regular Class 1 use eliminates a structure from consideration as Class 2, then it is necessary to be able to recognize Class 1 use. That requires an examine *[sic]* of the definition of "Class 1 structure." For the purposes of this interpretation request, there are two portions of the Class 1 structure definition that are relevant. The first is the listing in [IC 22-1-4\(a\)\(1\)](#) of occupancy characteristics which drive Class 1 status: occupation (or intended occupation) by the public, by three or more tenants, or by any person who is there in the role of an employee. The second relevant portion of the definition is the statement in [IC 22-1-4\(d\)](#) that prohibits Class 2 structures from being considered among those structures defined as Class 1 in [IC 22-1-4\(a\)\(1\)](#).

While this second part of the definition may seem circular, or perhaps even contradictory, a closer examination of the wording of the Class 2 definition reveals that a Class 2 structure loses its Class 2 status only if it is *regularly* used as a Class 1 structure. In losing its Class 2 status, it no longer has the protection against Class 1 status provided under [IC 22-12-1-4\(d\)](#), and it becomes Class 1. (Short of *regular* Class 1 use, a Class 2 structure may be occupied by the public, three or more tenants, or employees, and remain a Class 2 structure.)

If we now look at the permanent residential nature of the structure at the center of the interpretation request, and at the three Class 1 occupancy characteristics, we may stipulate that the structure is not likely to be occupied by the public, nor by employees, leaving only the question of occupation by three or more tenants.

If we further stipulate that the structure in question contains the requisite number of dwelling units for Class 2 consideration, and that any such dwelling unit is intended to be occupied by three or more individual members, this leaves us with two critical issues to consider for this structure: how the number and nature of members influences the quantity of "tenants;" and, if that tenant quantity is three or more, the regularity of that tenant occupation or intended tenant occupation.

On the first of those two issues, we must examine the meaning of "tenant." The term is not defined in either rule or statute, and therefore its definition must be construed. When consulting statutory language, the goal is to determine, give effect to, and implement the intent of the legislature, and if a term is undefined, the statute must be examined as a whole, and the undefined term must be attributed its common and ordinary meaning, unless doing so would deprive the statute of its purpose and effect.

Merriam-Webster's online dictionary defines "tenant" as "one who has the occupation or temporary possession of lands or tenements of another; specifically: one who rents or leases a dwelling (such as a house) from a landlord" or, more generally, an "occupant, dweller" (Merriam-Webster, <https://www.merriam-webster.com/dictionary/tenant> last viewed January 2, 2020). When applying this definition of "tenant," the meaning of "one" or "occupant" must be carefully tailored to achieve the legislature's intent of exempting single- and two-unit residences from compliance with the heightened construction standards applicable to Class 1 structures. These terms cannot be read to apply to each individual person who occupies a dwelling, as this reading would do the following:

- (1) When taken to the extreme, make any single-family residence housing three or more persons a Class 1 structure, which would conflict with the intent of the statute to exempt individual dwelling units from Class 1 status;
- (2) Reverse the practice of treating dwelling units occupied by three or more unrelated individuals as Class 2 structures if each dwelling unit is shared by the group of individuals as a whole or as a single unit; and
- (3) Create a sliding scale for structures to go back and forth between classifications as Class 1 or Class 2 structures, depending on the number of occupants in a structure at any given time.

Therefore, the definition of tenant must be read to encompass each group of individuals that will be occupying a space as a single unit, or each space that is intended to be occupied by a separate individual or group of individuals as a single unit. The distinctions being made by the legislature were not intended to distinguish between the amount of people that can occupy a house as a single family or a single tenant. If the legislature had been concerned about the number of individuals, they could have used the term "individuals" or "persons" instead of "tenants." The primary distinction being made by the legislature can be thought of in simpler terms to be focused on the number of separate tenant spaces being occupied or distinct groups occupying a structure. Therefore, in keeping with the intent of the legislature, the term "tenant" is construed here as someone, or some group, that either (1) has possession of a unique portion of a structure; or (2) occupies a structure on unique or independent terms from other occupants. The overarching concern is whether the persons occupying, or intending to occupy, the structure or portion of the structure, are doing so independently or as a single occupant.

To illustrate how this applies in practice, if individual rooms are rented out, the structure has as many tenants as rooms intended to be rented out. This is true even if common areas are shared between occupants because unique portions are being possessed and individual arrangements for the possession are being entered into with the landlord. Conversely, if an entire structure is rented out to a group living as one, sharing the use and enjoyment of the entire structure, then the structure has one tenant because it is occupied as a whole on the same terms.

Speaking to the precise issue at hand, if the occupancy of a structure is made available on a membership basis, whereby the use and enjoyment is afforded to individual members to occupy a whole structure, then the structure will have as many tenants as distinct members who intend to occupy the structure. This arrangement is not considered possession of a structure by one group, since each member would be occupying the structure on independent terms distinct from the other occupants, who all have individual, independent membership agreements to occupy the structure. This arrangement, in which the structure is rented out on an individual room basis, is reflected in the lease agreement provided to us for the project at the center of this interpretation request. In such cases, there are as many tenants as there are individual rooms intended to be rented. This satisfies the second issue by demonstrating the intent to be *regularly* occupied by individual tenants in numbers of three or more. The obverse would be a structure in which a group of individuals enter into a single membership tenant agreement, in which case the group would be considered one tenant, with multiple individuals included in that membership or tenant classification.

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