

**THE FAIR
HOUSING ACT**

Background-

Prohibitions against disability-based discrimination were added to the 1965 Fair Housing Act (the Act) in 1988. At that time Congress, amended the Act because it realized that persons with disabilities “have been denied housing because of misrepresentations, ignorance, and outright prejudice.” *House Report*, 100th Cong., 2nd Sess., note 21, (1988). The decision to add disability discrimination to the Act was seen as a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with disabilities from the American mainstream.

Background-

Moreover, Congress realized that the right to be free from housing discrimination was considered essential to the goal of independent living. Therefore, the Act repudiates the use of stereotypes and ignorance, and mandates that persons with disabilities be considered as individuals. This presentation will look at how local governmental entities, neighborhood groups, and individuals use various claims including health and safety concerns, community homes are business, and unrelated persons violate the premise that single family homes are for those who are actually related by family.

The Fair Housing Act Makes It Unlawful –

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. For example an ordinance or deed restriction that would prohibit persons with mental illness or intellectual disability from living in an area zoned for single families while at the same time allowing unrelated persons without a disability to live together could be a violation.

The Fair Housing Act Makes It Unlawful –

- To take action against, or deny a permit, for a home because of the disability of the individuals living there or who would live there. Examples include denying an existing permit to expand or improve a home for persons with intellectual or mental disabilities or to deny a building permit in the first place if the proposed home is intended to provide housing for persons with disabilities.

The Fair Housing Act Makes It Unlawful –

- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

A Reasonable Accommodation and the Fair Housing Act –

- What constitutes a reasonable accommodation is a case-by-case determination.

A Reasonable Accommodation and the Fair Housing Act –

- Not all requested modifications of rules, policies, or restrictions are reasonable. That is, if a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use or zoning scheme, or if it fundamentally alters the terms and conditions contained in a deed restriction – it is not a reasonable accommodation.

A Reasonable Accommodation and the Fair Housing Act –

- As a general rule, it is unlawful to refuse to make “reasonable accommodations” (modifications or exceptions) to rules, policies, practices or services, when a reasonable accommodation may be necessary to afford persons with disabilities an equal opportunity to use of enjoy a dwelling.

A Reasonable Accommodation and the Fair Housing Act –

- But a zoning ordinance that imposes the same restrictions on a group home that it imposes on other groups of unrelated persons, may nonetheless require local government – or a neighborhood association in the case of deed restrictions – grant a reasonable accommodation to a group home for persons with intellectual or mental disabilities when doing so would be reasonable. For example, it may be a reasonable accommodation to waive a setback requirement so that a paved path of travel can be provided to residents who have mobility impairments. A similar waiver might not be required for a different type of group home where residents do not have difficulty negotiating steps and do not need a setback in order to have an equal opportunity to use and enjoy a dwelling.

A Reasonable Accommodation and the Fair Housing Act –

- What is “reasonable” in one circumstance may not be “reasonable” in another. For instance, suppose a local government’s zoning policy (or deed restriction) does not allow groups of seven or more unrelated individuals to live together in a single-family neighborhood. If a group home for four adults with intellectual disabilities were able to show that its presence will have no more impact on parking, traffic, noise, utility use, and other typical concerns of zoning than an “ordinary family” then there would be no undue burden or expense for local government nor would the single-family character of the neighborhood be fundamentally altered. Therefore, granting an exception or waiver to the group home in this circumstance does not invalidate the ordinance (or deed restriction). However, local government would still be able to keep unrelated persons without disabilities from living in single family neighborhoods.

A Reasonable Accommodation and the Fair Housing Act –

- To request a reasonable accommodation follow those procedures specified by the local governmental entity. If no procedure is specified, persons with disabilities may, nevertheless, request a reasonable accommodation in some other way, and a local government is obligated to grant that request. For example, a letter to the city or county requesting a reasonable accommodation would be appropriate. But local governments are encouraged to provide a mechanism for requesting reasonable accommodations that operate promptly and efficiently, without imposing significant costs or delays. Moreover, local government should ensure that requesting a reasonable accommodation is uncomplicated and easily discernable.

A Person with a Disability and the Fair Housing Act –

- The Fair Housing Act prohibits discrimination on the basis of disability. Persons with disabilities are individuals with mental or physical impairments which substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking or working. The Fair Housing Act also protects persons who have a record of such impairment, or are regarded as having such impairment.

A Person with a Disability and the Fair Housing Act –

- But current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status.

A Person with a Disability and the Fair Housing Act –

- Also the Fair Housing Act does not protect individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability.

A Group Home and the Fair Housing Act –

- While the Fair Housing Act does not have a specific legal meaning, for purposes of this discussion, the term “group home” refers to housing occupied by groups of unrelated individuals with disabilities. Sometimes, but not always, housing is provided by organizations that also offer various services for individuals with disabilities living in the group homes. Accordingly sometimes a group home operator, rather than the individuals who live in the home, will interact with local government in requesting permits and making requests for reasonable accommodations on behalf of those individuals. Very often such a home is located in single family zoned areas.

A Group Home and the Fair Housing Act –

- However, Texas law does specifically protect individuals with disabilities. The Community Homes for Disabled Persons Location Act (Community Homes Act) limits both the enforceability of city zoning regulations and the enforceability of private covenants.

A Group Home and the Fair Housing Act –

- More specifically, the Community Homes Act allows property zoned as residential to be used as a community home for persons with intellectual and mental disabilities and neither zoning regulations nor restrictive covenants are enforceable against such homes.

A Group Home and the Fair Housing Act –

- In terms of group homes, local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to six unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission. If that ordinance also disallows a group home for six or fewer people with disabilities in a certain district or requires this home to seek a use permit, such requirements would conflict with the Fair Housing Act. The ordinance treats persons with disabilities worse than persons without disabilities.

A Group Home and the Fair Housing Act –

- To be clear, local government may impose restrictions on the ability of groups of unrelated persons to live together provided the restrictions are imposed on all such groups. Therefore, in a case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Fair Housing Act if a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed. However, as discussed above, because persons with disabilities are also entitled to request reasonable accommodations in rules and policies, the group home for seven persons with disabilities would have the opportunity to request an exception or waiver. If the criteria for reasonable accommodation are met, the permit would have to be given in that instance, but the ordinance would not be invalid in all circumstances.

A Group Home and the Fair Housing Act –

- In addition to government imposed restrictions limiting the number of persons with disabilities who may live in a home, state and local governments, in some cases, impose minimum distance requirements. These laws require that group homes be a certain minimum distance from one another. The United States Department of Justice and the United States Department of Housing and Urban Development take the position that density or distance restrictions are generally inconsistent with the Fair Housing Act. (Note: In Texas, the Community Home Act has a half mile rule which requires each community home to be no less than a half mile apart.)

A Group Home and the Fair Housing Act –

- Regulations and licensing requirements for group homes are themselves subject to scrutiny under the Fair Housing Act. Such requirements based on health and safety concerns can be discriminatory themselves or may be cited sometimes to disguise discriminatory motives behind attempts to exclude group homes from a community. Moreover, regulators must recognize that not all individuals with disabilities living in group home settings need or desire the same level of protections. For instance, it may be appropriate to require heightened fire safety measures (e.g. sprinkler system) in a group home for people unable to move without assistance; however, for persons with disabilities who do not desire or need such assistance, it would be inappropriate to require fire safety measures (sprinkler system) beyond those normally imposed on the size and type of residential setting involved.

A Group Home and the Fair Housing Act –

- Regulations and licensing requirements for group homes and neighborhood opposition. Just as local government may not reject low-income housing in a community because neighbors fear that such housing will be occupied by racial minorities, local government may be in violation of the Fair Housing Act if it blocks a group home or denies a requested reasonable accommodation because of stereotypical fears or prejudices about persons with disabilities. Accordingly, if the evidence shows that local governmental decision makers were responding to unfounded concerns (not by the facts) there may be a violation. For example, it may not violate the Fair Housing Act for neighbors or local officials to raise concerns about the increased demand (beyond a typical family) for on-street parking. However, if a group of individuals with disabilities or a group home operator shows by credible and unrebutted evidence that the home will not create a need for more parking spaces, or submits a plan to address the parking issue, then denying the home a permit could violate the Fair Housing Act. (Note: In Texas the Community Homes Act would typically preempt such an argument.)