



*Presents:*

# **Fair Housing Laws . . .**

## **Is Your Association Being Fair?**

*Speakers:*

Stuart A. Fullett and Lara A. Anderson  
of



**Fullett Rosenlund Anderson PC**  

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*Attorneys at Law*

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Community Associations Institute (CAI) is the only national organization dedicated to fostering vibrant, responsive, competent community associations. Our mission is to assist community associations in promoting harmony, community, and responsible leadership. We believe that by giving board members, managers, and homeowners the knowledge to better run their associations, they can turn "owners" into "neighbors," increasing harmony, and leading to more prosperous, safer communities

The Illinois Chapter of Community Associations Institute serves the educational, business, and networking needs of community associations in the Chicagoland Area. Members include condominium, cooperative, and homeowner associations as well as those who provide services and products to associations. The Illinois Chapter has over 1100 members including 250 businesses, and over 500 community associations Board members and unit owners representing over 100,000 homeowners. The Illinois Chapter is one of 60 Community Associations Institute chapters in the nation.

For more information, please contact us at:

### **CAI-Illinois**

1821 Walden Office Square, Suite 100

Schaumburg, Illinois 60173

Phone (847) 301-7505

CAI@CAI-Illinois.org

[www.CAI-Illinois.org](http://www.CAI-Illinois.org)

Mark your calendar! Our 32<sup>nd</sup> Annual Conference & Exposition is Friday, January 31, 2014 and Saturday, February 1, 2014 at the Donald E. Stephens Convention Center in Rosemont, Illinois.

## About the Speakers

**Stuart A. Fullett** is an attorney and the managing shareholder of the law firm of Fullett Rosenlund Anderson PC. Stuart's practice is primarily concentrated in the representation of condominium, townhome and homeowners associations. A former municipal prosecutor who also handled numerous types of civil and criminal cases before joining the firm, Stuart heads the firm's litigation practice, which includes community association construction cases, developer disputes, fair housing claims and covenant and rule enforcement issues. Stuart also directly oversees all community association assessment collection matters handled by the firm and counsels community associations regarding governance issues and transactional matters. Stuart's previous experience working in the building trades affords him valuable insight in approaching construction issues encountered by the firm's clients. Stuart received his B.A. in Political Science from Loyola University Chicago in 1985 and received his J.D. from The John Marshall Law School in 1988. Stuart is a member of the Illinois State Bar Association, the Northwest Suburban Bar Association (including its Debtor/Creditor Committee), the Community Associations Institute (CAI), the Association of Condominium, Townhouse and Homeowners Associations (ACTHA) and ACA (American Collectors Association) International and is actively involved with the Village of Lake Zurich Industrial Zoning Working Group. Stuart frequently authors and is quoted in articles relating to community association law and gives lectures at community association seminars and trade shows and before professional property management firms and other community association industry professionals. Stuart has served as an instructor for accredited continuing education courses for community association managers.

**Lara A. Anderson** is an attorney and a shareholder in the law firm of Fullett Rosenlund Anderson PC. Lara's practice is concentrated in all aspects of the representation of condominium, townhome and homeowners associations. Lara started her career representing federal, state and local governmental entities and not-for-profit organizations, including community associations, in complex civil rights and constitutional law matters. She transitioned her practice to focus solely upon the representation of community associations. Lara received a B.S. in Accounting with honors from Northern Illinois University in 1989, passed the CPA exam and then received her J.D. from Northern Illinois University's College of Law in 1992. Lara has extensive litigation experience representing associations and has had the privilege to argue before the United States Court of Appeals for the Seventh Circuit and the Indiana Supreme Court. Due to her reputation in the industry, Lara was asked to join a homeowners association's litigation team when it appealed a case to the Indiana Supreme Court. In that case, *Villas West II v. McGlothin*, 885 N.E.2d 1274 (2008), Lara was instrumental in convincing the Indiana Supreme Court to reverse the lower court and hold that the association's rental restriction did not violate the Fair Housing Act. Lara is currently a board member of the Illinois Chapter of the Community Associations Institute (CAI), a member of the Association of Condominium, Townhouse and Homeowners Associations (ACTHA) and a member of several bar associations and other professional organizations. Lara has served as an instructor for accredited continuing legal education courses relating to community association law and has authored numerous articles discussing community association legal issues. Lara is frequently asked to speak before various groups and has been a presenter at numerous events, including CAI's National Law Seminar, the CAI-Illinois Annual Conference and Trade Show and ACTHA's Trade Shows and Expos.

## About Fullett Rosenlund Anderson PC

Fullett Rosenlund Anderson PC (FRA) is dedicated to providing the highest caliber of legal services to condominium associations, townhome associations, homeowner associations, cooperatives and other community associations throughout Northern Illinois. FRA represents hundreds of residential and commercial community associations and offers a full range of transactional, assessment collection, litigation and corporate counseling services

FRA's work in both transactional and litigation matters is tailored to the individual needs of each association client. While FRA remains on the cutting edge of technology with state-of-the-art data management systems and Internet portal capabilities, its attorneys and staff also provide personalized service to each association. FRA's attorneys strive to develop close business relationships with their association clients and become trusted counselors to each association.

FRA takes a great deal of pride in the exceptional reputation of its assessment collection department. FRA's assessment collection practice is one of the largest in Northern Illinois. FRA understands that the timely collection of assessments is essential to the effective operation of any association. It therefore maintains an innovative, aggressive and highly responsive approach to assessment collections and quickly adapts to changing laws and economic conditions.

The principals of FRA include Stuart A. Fullett, Scott A. Rosenlund, Lara A. Anderson and Paul Fosco. All four principals are veterans in the field with many years of experience and have extensive knowledge of community association law. They have authored numerous articles regarding community association law and are frequently asked to speak before various organizations and give presentations to professional property managers and other community association professionals. They are members of CAI and ACTHA, as well as a number of bar associations. In addition to the four principals, FRA currently has four experienced and skilled associate attorneys and a support staff consisting of approximately twenty well-trained employees. The practice of the entire firm is concentrated in the representation of community associations.

FRA's main office is in Lake Zurich; however, it also maintains offices in downtown Chicago and Homewood to further serve the needs of its clients. For more information about how FRA can serve your association, please contact one of FRA's principals:

**Stuart A. Fullett**  
847-259-5100 ext. 2000  
s.fullett@frapc.com

**Scott A. Rosenlund**  
847-259-5100 ext. 2001  
s.rosenlund@frapc.com

**Lara A. Anderson**  
847-259-5100 ext. 2002  
l.anderson@frapc.com



**Paul Fosco**  
847-259-5100 ext. 2003  
p.fosco@frapc.com

**Fullett Rosenlund Anderson PC**  
430-440 Telser Road  
Lake Zurich, Illinois 60047  
Phone 847-259-5100

[www.frapc.com](http://www.frapc.com)

## Fair Housing Laws . . .

### Is Your Association Being Fair?

Community associations, individual board members and property managers are all subject to federal, state and local fair housing laws. It is important that the boards of community associations and property managers are aware of these laws and the obligations and restrictions that they impose on community associations. These laws are in addition to and supersede the community association's declaration, by-laws, and rules and regulations. This presentation will focus on the Fair Housing Act as the courts use the same analyses in interpreting the fair housing provisions of the Illinois Human Rights Act and local fair housing laws as they do interpreting provisions of the Fair Housing Act.

#### Overview of Fair Housing Laws

- A. Title VIII of the Civil Rights Act of 1968** also known as the **Fair Housing Act (FHA)**, 42 U.S.C. §3601, et seq., prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing related transactions, based on race, color, national origin, religion and sex, familial status and disability.
- B. Title II of the Americans with Disabilities Act of 1990 (ADA)**, 42 U.S.C. §12101, prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities. The application of the ADA to community associations is generally limited to those portions of the property that qualify as public accommodations. Public accommodations are those that are open to the public, such as a community association pool which the community association rents to the public for swim meets and other functions. The ADA was amended by the ADA Amendments Act of 2008 (ADAAA). The ADAAA broadened the definition of "disability" and extended the protections of the ADA to more individuals. In particular, the ADAAA eliminated consideration of mitigating measures (except ordinary eyeglasses and contact lenses) when determining whether someone qualified as disabled under the ADA.
- C. The Illinois Human Rights Act (IHRA)**, 775 ILCS 5/3-101, et seq. prohibits discrimination in the sale or lease of a dwelling based on race, color, national origin, religion, sex, familial status, disability, ancestry, age, marital status, military status, unfavorable discharge from the military, sexual orientation and order of protection status.
- D. The Cook County Human Rights Ordinance**, 93-0-13, prohibits discrimination based on race, color, national origin, religion, sex, disability, parental status, ancestry, age, marital status, sexual orientation, source of income (but not Section 8), military discharge status (other than "dishonorable discharge"), gender identity or housing status. Complaints may be filed with the Cook County Commission on Human Rights within 180 days from the date of the alleged violation of the Ordinance. A copy the Cook County Human Rights Ordinance and the Procedural Rules governing the Cook County Human Rights Ordinance may be obtained at the following website:

[www.cookcountygov.com/portal/server.pt/community/human\\_rights,\\_commission\\_on/301/ordinances\\_\\_\\_regulations](http://www.cookcountygov.com/portal/server.pt/community/human_rights,_commission_on/301/ordinances___regulations)

- E. The Chicago Fair Housing Ordinance**, Chicago Muni. Code §5-8-030, prohibits discrimination based on race, color, national origin, religion, sex, disability, parental status, ancestry, age, marital status, sexual orientation, source of income, and military discharge status. A copy of the Chicago Fair Housing Ordinance and the Regulations implementing the Chicago Fair Housing Ordinance may be obtained at the following website:  
[www.cityofchicago.org/city/en/depts/cchr/supp\\_info/ordinances\\_and\\_regulations.html](http://www.cityofchicago.org/city/en/depts/cchr/supp_info/ordinances_and_regulations.html)
- F. HUD Fair Housing Regulations.** Congress granted the U.S. Department of Housing and Urban Development (HUD) the authority to promulgate regulations to implement the FHA. The Code of Federal Regulations may be accessed at: [www.ecfr.gov/](http://www.ecfr.gov/).
- G. Local Fair Housing Laws:** In addition to Chicago, many other Illinois municipalities have enacted fair housing ordinances. A community association should determine if it is subject to any local fair housing laws because they may protect additional classes of individuals and/or cover additional types of conduct. Municipal codes can be accessed at [www.municode.com](http://www.municode.com) and at [www.sterlingcodifiers.com](http://www.sterlingcodifiers.com). Please check with your local municipality to verify whether it has a fair housing ordinance.

### Summary of the Protected Classes Under the Fair Housing Laws

Fair Housing Act	Illinois Human Rights Act	Cook County Human Rights Ordinance	Chicago Fair Housing Ordinance
Race	Race	Race	Race
Color	Color	Color	Color
Religion	Religion	Religion	Religion
Sex (including sexual harassment)	Sex (including sexual harassment)	Sex (including sexual harassment)	Sex (including sexual harassment)
National Origin	National Origin	National Origin	National Origin
Disability	Disability	Disability	Disability
Familial Status	Familial Status	Parental Status	Parental Status
	Ancestry	Ancestry	Ancestry
	Age (40+)	Age (40+)	Age (40+)
	Marital Status	Marital Status	Marital Status
	Military Status	Military Discharge	Military Discharge
	Unfavorable Military Discharge		
	Sexual Orientation	Sexual Orientation	Sexual Orientation
	Order of Protection Status		
		Source of Income (but not Section 8)	Source of Income (including Section 8)
		Housing Status	

## Definitions of Protected Classes

**Disability** is defined under the FHA and the Cook County Human Rights Ordinance to include an individual with a physical or mental impairment which substantially limits one or more of such person's major life activities, a person with a record of such an impairment, or a person being regarded as having such an impairment. Disability is defined under the IHRA and the Chicago Fair Housing Ordinance to mean a determinable physical or mental characteristic of a person, including, but not limited to, a determinable physical characteristic which necessitates the person's use of a guide, hearing or support dog, the history of such characteristic, or the perception of such characteristic by the person complained against, which may result from disease, injury, congenital condition of birth or functional disorder and which characteristic is unrelated to the person's ability to acquire, rent or maintain a housing accommodation.

**Familial status** includes one or more individuals under the age of 18 being domiciled with a parent or other individual with legal custody, a person who is pregnant, or a person in the process of security legal custody of an individual under the age of 18.

**Gender Identity** is defined as actual or perceived gender-related characteristics and is defined under the Cook County Human Rights Ordinance and the Chicago Fair Housing Ordinance as the actual or perceived appearance, expression, identity, or behavior of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally association with the person's designated sex at birth.

**Marital Status** is defined under the Cook County Human Rights Ordinance and the Chicago Fair Housing Ordinance as the status of being single, married, divorced, separated or widowed.

**Military status** means a person's status on active duty in or status as a veteran of the armed forces of the United States, status as a current member or veteran of any reserve component of the armed forces of the United States, including the United States Army Reserve, United States Marine Corps Reserve, United States Navy Reserve, United States Air Force Reserve, and United States Coast Guard Reserve, or status as a current member or veteran of the Illinois Army National Guard or Illinois Air National Guard. The Cook County Human Rights Ordinance defines military discharge status as the fact of having been discharged from the Armed Forces of the United States, their Reserve components or any National Guard or Naval Militia other than by a dishonorable discharge. The Chicago Fair Housing Ordinance defines military status as the fact of discharge from military status and the reasons for such discharge.

**National Origin** is defined by the IHRA as the place in which a person or one of his or her ancestors was born.

**Order of protection status** is defined by the IHRA as a person's status as being a person protected under an order of protection issued pursuant to the Illinois Domestic Violence Act of 1986 or an order of protection issued by a court of another state.

**Parental Status** is defined by the Cook County Human Rights Ordinance and the Chicago Fair Housing Ordinance as the status of living with one or more dependent minors or disabled children.

**Religion** is defined by the IHRA and the Chicago Fair Housing Ordinance to include all aspects of religious observance and practice, as well as belief. Religion is defined by the Cook County Human Rights Ordinance as all aspects of religious observance and practice, as well as belief, or the actual identification with or perceived identification with a religion.

**Sex** is defined by the IHRA to mean the status of being male or female.

**Sexual harassment** is defined by the Cook County Human Rights Ordinance as any unwelcome sexual advance, requires for sexual favors, or conduct of a sexual nature when (1) submission to such conduct is an explicit or implicit term or condition of an individual's real estate transaction; or (2) submission to or rejection of such conduct of an individual is used as the basis for any decision affecting the individual's real estate transaction; or (3) such conduct has the purpose or effect of substantially interfering with an individual's real estate transaction or creating an intimidating, hostile, or offensive environment with respect thereto.

**Sexual orientation** is defined by the IHRA to mean actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth. "Sexual orientation" does not include a physical or sexual attraction to a minor by an adult. The Cook County Human Rights Ordinance and the Chicago Fair Housing Ordinance define sexual orientation as the status or expression, whether or actual or perceived, of heterosexuality, homosexuality, or bisexuality.

**Source of Income** is defined by the Cook County Human Rights Ordinance and the Chicago Fair Housing Ordinance as the lawful manner by which an individual supports himself or herself and his or her dependents. Additionally, the Cook County Human Rights Ordinance provides that the ordinance shall not require any person to participate in the Section 8 housing assistance program.

**Unfavorable Military Discharge** is defined by the IHRA to include discharge from the Armed Forces of the United States, their Reserve components or any National Guard or Naval Militia which are classified as RE-3 or the equivalent thereof, but does not include those characterized as RE-4 or "Dishonorable."

## THE FAIR HOUSING ACT

In 1968 Congress passed Title VIII of the Civil Rights Act, more commonly known as the Fair Housing Act. The purpose of the Fair Housing Act (FHA) is to ensure fair and equal housing opportunities and to eliminate segregated housing throughout the United States. To achieve those goals, the FHA allows aggrieved persons to bring civil actions based on “discriminatory housing practices.”

The practices which the FHA prohibits generally include the following:

- To refuse to sell, rent, negotiate for, or “otherwise make unavailable or deny, a dwelling to any person” based on a prohibited factor.
- Discrimination in the terms, conditions or privileges of the sale or rental of a dwelling and in the provision of services or facilities connected therewith.
- Discriminatory notice, statements and advertisements related to housing.
- Refusal to permit reasonable modifications and reasonable accommodations and to comply with accessibility requirements.
- Discrimination in home loans and certain other housing transactions.
- Unlawful coercion, intimidation, or interference with any person because they have exercised any right granted or protected by the FHA.

While condominium and community associations are generally not involved in the sale or rental of a dwelling, the FHA has been extended to post-acquisition cases. When a dwelling is purchased subject to a recorded declaration, the purchaser takes the property subject to that declaration’s covenants, conditions and restrictions which includes an agreement to be governed by an association created to administer the declaration. The agreement to be governed by an association is a term or condition of the sale. By virtue of a community association’s declaration, the FHA can be extended to apply to discriminatory restrictions imposed by the boards of community associations as well as to discriminatory enforcement of such restrictions.

HUD regulations extend the protections of the FHA to prohibit “[l]imiting the use of privileges, services, or facilities associated with a dwelling because of race [or] ... handicap ... of an owner, tenant or a person associated with him or her.” The FHA can be extended to apply to discrimination in providing services required by an association’s declaration.

Condominium and community associations, board members and property managers should enforce rules evenhandedly, consistently provide similar services to all members and avoid adopting rules that restrict a particular protected class.

## **Disability Discrimination Under the Fair Housing Act**

In enacting the FHA, Congress recognized that individuals with disabilities are subject to artificial, arbitrary, and unnecessary barriers preventing them from making full use of housing. Whether an individual qualifies as disabled under the FHA is a question of fact to be determined on a case-by-case basis. In determining whether an individual's impairment constitutes a disability, "the critical question in every case is what was the effect of the impairment on the life of the individual."

The FHA defines "handicap" as:

- (1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
- (2) a record of having such an impairment, or
- (3) being regarded as having such an impairment,

### **Physical or Mental Impairment**

*"Physical or mental impairment"* includes:

- (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

Not every physical and mental impairment is necessarily a disability. Some impairments may be disabling for particular individuals but not for others. While some impairments are apparent, there are many which are not visible or obvious. It is appropriate to request a verification of the individual's disability in these cases. However, it is not appropriate to require individuals requesting a reasonable accommodation to provide access to confidential medical records in order to verify their disability.

## Substantially Limit

The requirement that an impairment “substantially limit” a major life activity “suggests that the limitation must be ‘significant’ or ‘to a large degree.’” An individual must be unable to perform, or be significantly limited in the ability to perform, an activity compared to an average person in the general population. Factors courts have considered in determining whether an impairment “substantially limits” a major life activity “are (i) the nature and severity of the impairment, (ii) the duration or expected duration of the impairment, and (iii) the permanent or long term impact...of or resulting from the impairment.”

## Major Life Activity

Major life activities include walking, seeing, speaking, hearing, breathing, learning, performing manual tasks and caring for oneself and working. Courts have expanded the list to include sleeping, interacting with others, concentrating, and engaging in sexual relations.

Examples of impairments which have been found to substantially limit major life activities in cases include the following:

- Deafness substantially limits hearing;
- Blindness substantially limits seeing;
- An intellectual disability substantially limits brain function;
- Partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limit musculoskeletal function;
- Autism substantially limits brain function;
- Cancer substantially limits normal cell growth;
- Cerebral palsy substantially limits brain function;
- Diabetes substantially limits endocrine function;
- Epilepsy substantially limits neurological function;
- Human Immunodeficiency Virus (HIV) substantially limits immune function;
- Multiple sclerosis substantially limits neurological function;
- Muscular dystrophy substantially limits neurological function; and
- Major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia substantially limit brain function.

Courts have cautioned that a disability determination should not be based on lists or categories of impairments, as there are varying degrees of impairments as well as varied individuals who suffer from impairments. A finding of disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual. A determination of disability must be made on an individualized, case-by-case basis.

There are a limited number of impairments or conditions which are not considered disabilities and are not covered by the FHA. These include the following:

- General physical characteristics such as eye or hair color, left-handedness, or height or weight within a normal range, are not impairments.
- Personality traits such as poor judgment, quick temper or irresponsible behavior are not themselves impairments.
- Environmental, cultural, or economic disadvantages, such as lack of education or a prison record, also are not impairments.
- The use of illegal drugs is not a disability. “[I]t is perfectly permissible for an entity—an employer, a public housing authority etc.—to take an adverse action against someone who is caught using drugs. But what an entity cannot do is discriminate against someone for *past* drug use or for their efforts at drug rehabilitation.”
- Juvenile offenders and sex offenders are not individuals with disabilities protected by the FHA.
- An individual with a disability whose tenancy would constitute a direct threat to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

## 1. Reasonable Accommodations

The FHA prohibits the “refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for an individual with a disability to have an equal opportunity to use and enjoy their housing. To qualify for an accommodation, in addition to establishing that the individual is disabled as defined by law, there must be an identifiable relationship between the requested accommodation and the individual’s disability. Whether the requested accommodation is necessary requires a showing that the desired accommodation will affirmatively enhance a disabled plaintiff’s quality of life by ameliorating the effects of the disability.

In addition to being necessary, the requested accommodation must be reasonable. The initial burden of proof is on the plaintiff to show that the accommodation is reasonable on its face. A community association can require an individual requesting an accommodation to provide sufficient documentation from a qualified health care professional establishing that he or she is disabled and that the requested accommodation is necessary to ameliorate the effects of the disability so he or she may enjoy the use of his or her dwelling.

Even if an individual qualifies for an accommodation, they may not be entitled to the specific accommodation that they have requested. Determining whether an accommodation is reasonable is fact-specific and requires a case-by-case analysis. The requirement of reasonable accommodation does not entail an obligation to do everything humanly possible to accommodate a disabled person. The cost to the association and benefit to the resident merit consideration as well. Accommodations are not reasonable if they are unduly burdensome or require a fundamental alteration of the existing physical structure or the nature of the program.

An accommodation should not extend a preference to handicapped residents (relative to other residents), as opposed to affording them equal opportunity and accommodations that go beyond affording a handicapped resident an equal opportunity to use and enjoy a dwelling are not required by the FHA. Additionally, an accommodation will only be considered necessary when the rule in question, if left unmodified, hurts handicapped people by reason of their handicap, rather than . . . by virtue of what they have in common with other people, such as a limited amount of money to spend on housing.

Upon receiving an accommodation request, the board of a community association is obligated to engage in an “interactive process” to resolve the request. The “interactive process” involves the cooperation by both the board and the resident in identifying the causes of the difficulty the resident is having and exploring possible accommodations. If the interactive process breaks down, courts generally will look for signs of failure to participate in good faith or failure by one of the parties to make reasonable efforts to help the other party determine what specific accommodations are necessary.

a. Assigned Parking Spaces

Requests for an assigned parking space near an individual's door or the entrance to the building are common accommodation requests. An example offered by HUD is the following:

“Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a first come first served basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of Sec. 100.204 for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.”

However, the assignment of a preferred parking space is not appropriate in every circumstance. For example, in *U.S. v. WHPC-DWR, LLC*, 2012 WL 2498836 (7<sup>th</sup> Cir. June 29, 2012), the permanent assignment of a parking space to a mobile-impaired resident was not considered a reasonable accommodation. In that case, the Seventh Circuit explained:

“Although HUD regulations interpreting the FHA assume that in some circumstances a ‘first come, first served’ parking policy must yield to accommodate residents with impaired mobility, . . . the facts of this case are readily distinguished from the example posed in the regulations of a 300–unit apartment complex with 450 parking spaces.’ Village Square had twelve spaces for eighteen apartments which can be occupied *only* by persons who are older or disabled, and Singsime has never explained how preferring him with an assigned space at or near the door would not have discriminated against other tenants given the ratio of disabled residents to close parking spaces.”

Similarly, in *Sporn v. Ocean Colony Condominium Association*, 173 F.Supp.2d 244 (D.N.J. 2001), the condominium association's refusal to grant a permanent parking space to a wheelchair-bound resident until the resident complied with the association's policy that required that he give up his deeded parking space in exchange for the new handicap parking space did not violate the FHA. The court found that the resident's request was a request for an accommodation coupled with a demand for special treatment because his refusal to give up his deeded parking space was not related to his disability. He testified he wanted to keep the second parking space for family that came to visit.

## b. Emotional Support Animals

The request for an emotional support animal in a “no pet” community or building is another common disability accommodation request. When a request for an emotional support animal is made in a no-pet community, the community association must determine if the requested animal is (1) necessary to afford the resident an equal opportunity to use and enjoy their dwelling and (2) there is a relationship between the resident’s disability and the assistance that the animal provides. If both of these are met, the community association will generally be required to allow the emotional support animal unless the request is unreasonable.

A request would be considered unreasonable if it would impose an undue financial or administrative hardship on the community association, fundamentally alter the community association’s operations, pose a direct threat to the health and safety of the community association’s residents or cause significant damage to the property of others. Threats to the health and safety of residents may not be speculative or based on an individual’s fears.

For example, a community association may deny a request for an emotional support dog of a breed that its insurance carrier either will not cover or will significantly increase the community association’s rates to cover. Additionally, some municipalities restrict the ownership of certain breeds of dogs and other animals, such as chickens, within its corporate limits. A community association may deny a request for an emotional support animal banned by local laws.

A community association can require that the animal not be a nuisance and require the owner to maintain good sanitary conditions with respect to the animal, follow all rules and regulations regarding animals and be financially responsible for any damage caused by the animal. Community associations cannot impose fees or require security deposits from residents as a condition of having an emotional support animal. However, if a community association imposes a pet deposit for pets of all residents, it can require such a deposit from a resident that has an emotional support animal.

## c. Interpreters

Generally, if a deaf or hearing-impaired unit owner requires a sign language interpreter in order to participate in important association activities that would affect the unit owner’s legal or financial rights, then providing an interpreter would likely be a reasonable accommodation under the FHA. The cost of the sign language interpreter would be the responsibility of the association unless it constitutes an undue financial burden. However, the courts have held that the community association would not be required to provide a sign language interpreter for a deaf or hearing-impaired unit owner to participate in recreational activities.

## 2. Reasonable Modifications

The FHA prohibits the refusal by a community association to permit a disabled person, at his or her own expense, “reasonable modifications of existing premises occupied or to be occupied by such person if such modification may be necessary to afford such person full enjoyment of the premises . . .”

Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common areas such as lobbies and parking lots. Generally, the cost of reasonable modifications is the responsibility of the resident. However, if the dwelling was built for first occupancy after March 13, 1991, but does not meet the FHA’s design and construction requirements, the community association will be responsible for the costs of structural changes to meet such requirements. The maintenance of modifications to common areas would be the responsibility of the community association.

Examples of reasonable modifications include:

- Widening doorways
- Installing grab bars
- Installing a ramp
- Lowering the height of light switches
- Installing lever door handles
- Installing a light up doorbell

### Reasonable Accommodation and Reasonable Modification Procedures

It is recommended that a community association adopt a policy regarding how requests for reasonable accommodations and modifications will be addressed. Such a policy must be applied consistently in all cases. Suggested procedures include the following:

- (1) Requests should be in writing, however, the board should also consider verbal requests under appropriate circumstances. A resident's disability (i.e., blindness) could prevent or hinder his or her ability to write. Resident's do not need to use specific words to request a reasonable accommodation or reasonable modification.
- (2) If the requesting resident's disability is not obvious or is not known to the board, or if the need for an accommodation or modification is not obvious or known to the board, it is appropriate to request verification of the disability from a health care provider. The board may request that the health care provider (a) verify that the individual is disabled as defined by the FHA, (b) describe the necessary accommodation, and (c) explain the relationship between the individual's disability and the need for the required accommodation. However, no additional inquiry into the nature or the extent of disability is allowed. All information obtained through this process must be kept confidential.
- (3) Upon receipt of the verification, the board needs to establish whether the requested accommodation is necessary and, if necessary, whether it is reasonable.
- (4) If the requested accommodation is necessary but not reasonable, the board must engage in an "interactive dialogue" with the resident to determine if there is an alternative accommodation that would allow the resident to use and enjoy his or her dwelling.
- (5) If an agreement is not reached, it is HUD's position that the result constitutes a refusal by the board to grant an accommodation. However, it does not automatically constitute a violation of the FHA.

Community associations and property managers should also carry appropriate kinds and sufficient amounts of insurance to cover legal fees and damages when fair housing claims are brought against the association, board members and/or property managers. Boards and property managers should ensure that such policies cover (a) discrimination claims; (b) administrative proceedings; and (c) non-monetary damages.

For more information about fair housing laws or if you would like assistance in processing a request for a disability accommodation, please feel free to contact Stuart or Lara at:

Stuart A. Fullett  
s.fullett@frapc.com  
847-259-5100



Lara A. Anderson  
l.anderson@frapc.com  
847-259-5100