



Fair Housing Gazette

The newsletter of the Fair Housing Project
of the Legal Aid Society of Palm Beach County, Inc

"Making a difference in peoples lives"

Summer 2007



Our Mission

To provide outreach, education, advocacy and enforcement of all federal, state and local housing laws to ensure that no Palm Beach County resident is denied access to housing based upon his/her race, color, religion, national origin, sex, disability, marital status, familial status, age, and/or sexual orientation.

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FHA and ADA WORKING TOGETHER TO PROTECT INDIVIDUALS WITH DISABILITIES

Seventeen years ago, President George H.W. Bush signed the Americans With Disabilities Act ("ADA") into law. This legislation became one of the most successful and compassionate reforms in our nation's history. The ADA helped to ensure that individuals with disabilities had the opportunity to live full and productive lives, just like every other American. The ADA and the Fair Housing Act ("FHA") have similar yet distinct differences that are worth noting and understanding so as to know your rights as a disabled citizen.

The ADA extends to the employment sector, state and local government, public accommodations, commercial facilities, transportation, and telecommunication. By comparison, individuals may bring a claim under the FHA for discriminatory housing practices under three legal theories: disparate treatment, disparate impact, and failure to reasonably accommodate. With regard to discriminatory housing practices, both the ADA and the FHA require a "reasonable accommodation"; however, the definition of that term differs between the two.

Under both the ADA and the FHA, it is deemed to be discrimination if a housing provider refuses to make reasonable accommodations in rules, policies, practices or services, thus denying the person with a disability the same opportunity to enjoy his or her dwelling like other residents. Under the ADA, the owner of the unit is responsible to make any structural changes to the dwelling. Under the FHA, generally speaking, the owner must agree to reasonable changes, but the responsibility to make those structural changes belongs to the tenant. Also, under the FHA, "service and therapy animals" are included in the term of "assistive animal" with regard to a reasonable accommodation.

Both Acts deal with accessibility issues as well. The ADA deals with physical accommodations for buildings created after July 1992. The FHA also deals with the accessibility of buildings of first occupancy after March 13, 1991.

Upon review, the ADA requires an interactive process between the disabled tenant and the landlord in which the parties engage in a good faith dialogue about how the landlord could help the disabled tenant. This dialogue should be initiated by the landlord, and in many jurisdictions, it is viewed as an automatic violation of the ADA if this dialogue does not take place. Under the FHA, the courts are split as to whether an interactive process is required. Many jurisdictions believe the landlord has no obligation to start or continue dialogue with a disabled tenant with respect to a reasonable accommodation request. The landlord makes the decision on whether or not to grant a request for a reasonable accommodation, however, the landlord must claim that the request is unreasonable and that the landlord would derive some type of hardship should the request be granted.

Overall, both the Americans with Disabilities Act and the Fair Housing Act attempt to prevent discrimination against persons with disabilities, particularly in the area of housing. Knowing the distinctions of the Acts and understanding how to apply the principles of each Act, will afford disabled citizens the opportunity to be confident and to enjoy their housing rights.

IN THE NEWS

GLITTER CITY TAINTED WITH HOUSING DISCRIMINATION

The National Fair Housing Alliance filed suit against Ovation Development Corp. in the United District Court for the District of Nevada for having demonstrated a pattern and practice of discrimination by managing apartment buildings that are not accessible to people with disabilities. Ovation is a multifamily property management company based in Las Vegas. The lawsuit is based on an investigation of eleven apartment complexes located in Las Vegas and Henderson, Nevada. It is reported that all the buildings investigated failed to meet the accessibility requirements of the Fair Housing Act as well as (continued on page 2)

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HOUSING DISCRIMINATION IS WRONG!!!

You have a right to Fair Housing!

If you think you have been treated unfairly, contact us by phone, fax, mail or e-mail:

Phone: 561.655.8944
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(GLITTER CITY TAINTED-continued from page 1)

the Americans With Disabilities Act. The most glaring issues to the exterior of these communities were lack of curb cuts and handicap accessible parking spaces with adjacent access aisles. The concerns about the interior were that a disabled person in a wheelchair could not access the kitchen or bathroom of the units. The buildings had narrow door widths and passageways, and insurmountable thresholds. Switches and outlets were also inaccessible. Further, some model units were located on second floors, which made them inaccessible to those unable to traverse up stairs.

CAT FIGHT BREWING WITH CONDO

In Orlando, Florida, management at the Margate Condo Complex has told Ethel Turk to get rid of her cat due to the no pet rule of the development. Ms. Turk suffers from diabetes, depression, and blindness. She insists that her health depends on her cat. She has trained her cat to dial 911 by pressing a button on her phone when she has a seizure. Under the Fair Housing Act, a person with an emotional disability can keep a pet if he or she provides a doctor's note and a letter to management informing them of the person's condition. To this point, management has not commented.

COUNTY'S POSSIBLE MISREAD ON CLASSIFICATION OF HOUSING

In Tampa, Florida, the U.S. Department of Justice has sued Sarasota County for violations of the Fair Housing Act against the residents of Tammi House. Located in Warm Mineral Springs, Tammi House is a six home complex which is jointly owned by Renaissance Manor and coastal Recovery Health Care. The complex is at the end of a residential street. No more than six people live in each of the homes, and all are in recovery from either mental illnesses or substance abuse problems.

Tammi House was initially targeted by the county in the 1990's when neighbors complained about the group homes. The city commission took the lead on trying to close the homes. Despite a 1996 review of the Fair Housing Act with cases and precedent describing the limited authority local officials had over these cases, the county decided in 2004 it could order five of the homes closed.

The Justice Department believed that county officials wrongfully ordered five of the six group homes closed because they did not conform with county regulations that required 1,000 feet of separation between them. The county decided to close the homes according to a 2004 zoning ruling under Florida law that the homes qualified as community residential homes and cannot be clustered in a neighborhood setting. However, the Justice Department contended that the county never contacted state authorities to determine whether Tammi House was operating as community residential homes. The Florida Department of Children and Families is the only agency that can license community residential homes. Tammi House had operated without a license for more than ten years.

CORNERSTONE OF CONTROVERSY

Donna Weissinger filed a lawsuit against the Cornerstone Group for familial status discrimination under the Fair Housing Act. In 2003, Wessinger, who at the time was recently divorced, attempted to rent a \$900/month, three bedroom apartment at Sanctuary Cove in North Lauderdale, Florida for her and her three children. Weissinger's plan was to place her two sons, 8 and 10, in one room, her fifteen year old daughter in the other room, and have the master bedroom for herself. She was turned away for having too many children. Weissinger alleged that management at Sanctuary Cove told her that there was a "one heartbeat per bedroom rule" and that she had too many children to comply. However, she questioned the policy by stating there would be two heartbeats in a room if she were married. She was told that it was OK for two adults to be in one bedroom.

Generally, Fair Housing guidelines allow two people per bedroom. The State Attorney General's Office recently began an investigation into the Cornerstone Group to find out if the company's rental policies actually violate the Fair Housing Act, namely, the rights of families with children. To date, subpoenas for records have been issued for 36 apartment complexes. A majority of these complexes are in Broward and Miami-Dade counties.

Another concern is that Sanctuary Cove is a tax credit complex with what may be questionable rental policies. Obtaining affordable housing is extremely difficult to do, especially here in South Florida. One's effort should not be further impeded by patterns and practices of discrimination.

FOR MOST DISABLED INDIVIDUALS PETS ARE NOT A LUXURY-THEY ARE A NECESSITY

Under the Fair Housing Act, it is unlawful for any person to refuse to make a reasonable accommodation for a person with disability, especially if such an accommodation may be necessary for that person to have an equal opportunity to use and enjoy the dwelling. Allowing support animals for disabled tenants, despite a lease clause prohibiting pets, has been deemed to be a reasonable accommodation.

For a disabled tenant to have a support animal, it is critical for the tenant to establish that the animal is necessary for the use and enjoyment of the residence. Courts have consistently held that a tenant requesting a support animal as a reasonable accommodation must demonstrate a relationship between the tenant's ability to function and the companionship of the animal.

Tenants with physical disabilities are allowed to have a service animal. A service animal may be a guide dog, a sign dog, or other animal trained to do work or perform tasks for the benefit of an individual with a disability. There is no requirement that a service animal be trained by a certified trainer. Congress has stated that a recipient of federal funds could not impose any policy, such as requiring certification, if it limited the participation of a disabled tenant.

The support animal accommodation not only applies to persons with physical disabilities but persons who are mentally disabled as well. In *Janush v. Charities Housing Development Corp.*, 169 F. Supp. 2d 1133 (N.D. Cal.2000), a tenant who suffered from a severe mental health disability had four pets, two birds, and two cats. The pets helped lessen the effects of the tenant's disability by providing her with companionship. The Court in *Janush* noted that reasonable accommodation inquiries are highly fact specific and require a case determination, and that contrary to the landlord's claim, a support pet accommodation is not limited only to service animals that aid individuals with physical disabilities.

The right to a support animal is not absolute. The landlord is entitled to consider the administrative or financial burdens of allowing a tenant to bring an animal onto his premises, and whether such an animal will constitute a fundamental alteration or undue burden. A landlord will have a hard time trying to establish either of the two, since HUD regulations allowing support animals do not constitute an undue burden or fundamental alteration. A landlord does have the right to cease the tenant's support animal accommodation if he/she can prove that the animal is particularly disruptive. Furthermore, the landlord is entitled to charge a deposit for the pet to cover any

resulting damage to the property. The deposit cannot be excessive.

The needs of a person with a disability become more specific in relation to his/her disability. Persons with physical disabilities, specifically, those in wheelchairs, may require wider door ways and hallways or ramps to adequately address some accessibility issues. A sight-impaired person may require the use of a guide dog. On the other hand, individuals who suffer from a mental disability have heightened psychological or emotional needs. For a good amount of these individuals, a support pet provides them with the company and joy they are desperately looking for.

A pet is just as important an accommodation as widening door ways, hallways, ramps, and any other accessibility issue that may occur. Accommodations are made to fit the disability. For most disabled individuals, pets are not a luxury. They are a necessity.



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"Fair Housing" is the ability for any person to live where he or she chooses and can afford to live. The Fair Housing Project enforces all federal, state, and local fair housing laws to ensure that no Palm Beach County resident is denied access to housing based upon:

***Race *Color *National Origin *Religion *Disability**
***Gender *Familial Status** (pregnant women and anyone securing legal custody of a child under the age of 18)

In *Palm Beach County*, there are three additional protected classes:

***Age *Marital Status *Sexual Orientation**

The Fair Housing Project makes a difference in the community by:

~ educating individuals as well as housing providers as to their fair housing rights through workshops and presentations given throughout Palm Beach County;
~ testing for discrimination in the housing market; and
~ representing individuals who have experienced discrimination.

If you believe that you have been treated unfairly by a housing provider, ***The FAIR HOUSING PROJECT CAN HELP YOU.***
Call us at: ***(561) 655-8944 * Toll Free 1(800) 403-9353.*** The Fair Housing Project is here to protect your fair housing rights.

Yes, I am interested in receiving fair housing educational materials/fair housing presentation from the Fair Housing Project!

Please fill out this form and mail to:

Legal Aid Society of Palm Beach County, Inc.
Attn.: The Fair Housing Project
423 Fern Street, Suite 200
West Palm Beach, FL 33401

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