Federal Disability Laws Create a Clear Path for the Creation of Group Homes in ANY Community

By Holt Hackney

When the Fair Housing Act (Act) was passed in 1968, the objective, as the name implies, was clear.

It is unlawful to discriminate, when it comes to housing, against the disabled, or any other protected class.

While the definition of housing is fairly obvious, the definition of disabled merits further discussion. The Act defines "persons with a disability to mean those individuals with mental or physical impairments that 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, chronic fatigue, 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 Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment."

The Act and the above definition are the foundation of a movement to create safe places for the disabled so that they can not only survive, but thrive, alongside able-bodied, healthy Americans. One of the byproducts of this movement is the group home, or a dwelling where less than a dozen unrelated, disabled individuals live and overcome their challenges with the help of a licensed caregiver. The benefits of the group home are especially obvious when it comes to the elderly, who can't live on their own, but aren't ready to be institutionalized, at a large assisted living facility or a nursing home. These big-box facilities can create a dehumanizing experience, which adds a disquieting punctuation point to a life that has been well-lived. Group homes may offer a more fulfilling transition.

Despite the obvious benefits of group homes, there are many negative misconceptions about group homes, emanating mostly from other homeowners within the community. Among them are the belief that group homes have a negative impact on the value of other houses in the neighborhood, or create safety concerns for neighbors. History and evidence has shown that these fears to be mostly unfounded.

The Legal Basis for the Presence of a Group Home in a Community

Another misconception, which strikes at the entrepreneurial heart and altruistic intent of this movement, is that homeowner associations (HOAs) have the ability to block the establishment of a group home, based on bylaws that prohibit commercial activities and restrict the use of the property to single family residential use.

Unfortunately for the HOAs, the courts have shown time and time again that they are on the side of the people, and not a fearful few.

For example, in Rhodes vs. Palmetto Pathway Homes, Inc., 400 S.E.2d 484 (S.C. 1990), a property owner sued to prevent a builder from creating a group home in a residential subdivision. The restrictive covenants for the subdivision stated that the property could only be used for private residence purposes,

according to an article produced by the law firm of Dyekman, Meda, Curtis, Cohen & Karow, P.L.C. While the trial court initially agreed with the property owner, that ruling was overturned on appeal. The Supreme Court of South Carolina then went on to hold that "the interpretation of the restrictive covenants in such a way as to prohibit location of a group residence for mentally impaired adults in a community is contrary to public policy as enunciated in the Act and in the laws of the State of South Carolina," wrote the firm. The High Court noted that the Act "articulates a public policy of the United States as being to encourage and support handicapped persons rights to live in a group home in the community of their choice. The Court concluded that since the need for treatment and maintenance of the mentally handicapped is a legitimate and strong public interest recognized by state and federal legislation, a refusal to enforce restrictive covenants against otherwise unobtrusive group homes substantially advances that interest by promoting integration of the mentally handicapped into all neighborhoods of the community."

The firm identified other persuasive case law in Broadmoor San Clemente Homeowners Ass'n. vs. Nelson, 30 Cal. Rptr. 2d 316 (Cal.App. 1982), where a California Court of Appeals held that the Act and the California Fair Housing Act invalidate restrictive covenants that prohibit residential care facilities for non-ambulatory elderly persons; Deep East Texas Regional Mental Health and Mental Retardation Services vs. Kinnear, 877 S.W.2d 550 (Tex. App. 1994), where the Texas Court of Appeals ruled that enforcement of a restrictive covenant against a group home for disabled adults would violate the Act; and Hill vs. Community of Damien of Molokai, 911 P.2d 861 (N.M. 1996), where that state's highest court ruled that even if four unrelated residents of a group home for persons with acquired immune deficiency syndrome do not constitute a 'family' so that it violated the covenant restricting use of the property to single family residences, the covenant would violate the Act and a refusal of the homeowners association to permit the group home even though it violated the covenants would constitute a violation of the section of the Act that requires a homeowners association to make reasonable accommodations in its rules to afford handicapped persons equal opportunity to use and enjoy dwellings.

HOAs Can Be Sued if Restrictive Covenant Is Deemed Discriminatory

And not only do the developers, creators and owners of the group homes enjoy the protections of the Act, but the law also gives them the ability to go on the offensive against the HOA as demonstrated in United States vs. Scott, 788 F. Supp. 1555 (D. Kan. 1992). In that case, the United States brought suit against homeowners for violations of the Act, alleging that the defendants violated the Fair Housing Act by writing a letter threatening the filing of a lawsuit and then by filing a lawsuit to enforce a restrictive covenant limiting the use of lots to single family dwellings.

"The Court framed the issue as whether the defendants' actions in interfering with the proposed sale because of the handicaps of the prospective occupants constituted a violation of the Act," according to the firm. "The Court noted that several federal courts have held that the Act prohibits the enforcement of restrictive covenants that discriminate, or have the effect of discriminating, on the basis of handicap."

The Court, therefore, held that the defendants' actions in attempting to enforce a restrictive covenant to prevent handicapped persons from residing in their neighborhood constituted discrimination prohibited by the Act. Specifically, the Court found that "by attempting to enforce a restrictive covenant to prevent handicapped individuals from residing in their neighborhood, the defendants 'otherwise made unavailable or denied' a dwelling because of the handicap of persons intending to reside in that dwelling after it is sold. The Court stated that the phrase in the Act 'otherwise make unavailable or deny' would reasonably encompass any act of enforcing a mutual restrictive covenant through the judicial system for the purpose

of denying equal housing opportunities to disabled individuals. In addition, the Court held that the defendants' act of sending a letter threatening a lawsuit to enforce the covenant also constituted a violation of the provisions of the Act which prohibit making, printing or publishing any statement indicating a proscribed preference, limitation or discrimination based upon handicap."

Another case that provided a similar foundation was United States vs. Wagner, 940 F.Supp. 972 (N.D.Tex., 1996), in which the United States filed a lawsuit, pursuant to the Act, against homeowners in a subdivision in Ft. Worth, Texas, alleging that by filing a state lawsuit to prevent a lot owner from selling their home for use as a group home for six mentally retarded children, the homeowners violated the Act. The District Court stated that "when Congress amended the Act in 1988 to prohibit discrimination against persons with handicaps, it made clear that the Act was intended to prohibit special restrictive covenants which have the effect of excluding congregate living arrangements for persons with handicaps and that Congress specifically stated that the Act prohibits the application of special requirements through restrictive covenants that have the effect of limiting the ability of handicapped persons to live in the residence of their choice in the community," wrote the firm.

The clarity of the law also emanates from legal counsel that represent HOAs. Attorney Loura Sanchez, Managing Partner with the law firm of HindmanSanchez P.C., told HOA Leader that "associations must make accommodations because the residents fall within a class protected under the law."

Furthermore, attorney Christopher R. Moore wrote for the Homeowners Protection Bureau, L.L.C. wrote that "many such HOAs have learned the hard way that federal law provides powerful protections to certain group homes."

Moore went to suggest that HOAs clinging to the notion that a ban on commercial activity will prevent a group home from entering the community had better think again.

"Zoning ordinances and HOA covenants often disallow commercial uses of properties in residential areas," he wrote. "A group home that accepts payments for services provided at the home is almost certainly engaging in commercial activity. But, although the plain language of an ordinance or covenant might appear to prohibit such a group home, federal law forbids state and local governments or HOAs from impeding certain protected uses."

In sum, the owners and operators of group homes have the law on their side when it comes to establishing a presence in a typical community governed by an HOA. Furthermore, the Act also has mechanism that allow the owners and operators of Group Homes to countersue HOAs if they file a lawsuit that could be deemed discriminatory based on the Act.

Hackney is a legal journalist, who has been writing about the law for 25 years.

This document should not be construed as legal advice as the author is not an attorney.