

The Fair Housing Act and Group Homes

Intermountain Fair Housing Council

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Idaho Law

Idaho Code §67-6530 prohibits zoning laws that restrict persons with disabilities/elderly from living in a home with up to eight unrelated persons in a group home setting. Idaho Code §67-5901 protects persons with disabilities and other protected classes from discrimination in real estate transactions and public accommodations.

The Fair Housing Act

If a City/County/Municipality and or a Home Owner Association's Covenants, Conditions and Restrictions (CC&Rs) prohibit a business which is a group home or group homes, the prohibition may violate the Fair Housing Act. See The Department of Justice and The Department of Housing And Urban Development's Joint Statement on Group Homes, Local Land Use and the Fair Housing Act: <http://www.idaholegalaid.org/sites/idaholegalaid.org/files/HUD-DOJ%20Statement%20ReGrpHm-LocalLandUseandTheFairHousingAct.pdf>.

An owner of a home, property manager for the owner, or tenant who operates such a group home may request an exception to the rule which prohibits businesses/group homes by requesting a Reasonable Accommodation under 42 U.S.C. §3604 to allow an exception to the HOA's CCRs prohibiting "a business." See the HUD/DOJ Statement on Reasonable Accommodation found at www.hud.gov/offices/fheo/library/huddojstatement.pdf.

"In addition to not discriminating against people with disabilities, cities and counties have an affirmative duty to provide reasonable accommodation in land use and zoning rules, policies, practices and procedures where it may be necessary to provide individuals with disabilities equal opportunity in housing. While the Act intends that all people have equal access to housing, the law also recognizes that people with disabilities may need extra tools to achieve equality. In the land use and zoning context, reasonable accommodation means providing individuals with disabilities, or developers of housing for people with disabilities, flexibility in land use and zoning regulations and procedures, or waiver of certain requirements when it is necessary to achieve equal access to housing." *Turning Point, Inc. v. City of Caldwell*, 74 F. 3d 941 (1996).

The FHA Applies to HOAs

Housing Opportunities Project for Excellence, Inc. v. Key Colony No. 4 Condominium Assoc., 510 F.Supp. 2d 1003 (S.D. Fla. 2007). Plaintiff sued HOA and HOA board members under FHA, and Florida housing laws claiming that occupancy restrictions and rules for pool and clubhouse discriminated against families with children.

Savanna Club Worship Service, Inc. v. Savanna Club Homeowners' Association, 456 F. Supp. 2d 1223 (S.D. Fla. 2005). Owners of a religious club sued HOA and board members because the

HOA prohibited religious services in common areas. **Note:** The Court dismissed the Plaintiff's claims because the HOA applied its restrictions in a neutral manner. The Court recognized, however, that HOA's are governed by the FHA since they control and regulate certain property rights, such as use of common areas and facilities.

Tokh v. Water Tower Court Home Owner Association, 327 Fed. Appx. 630 (7th Cir. 2009). In *Tokh*, a member of an HOA sued his HOA and its Management Company for national origin and race discrimination after being fined for enlarging a patio in violation of the HOA's covenants.

Under 42 U.S.C. §3617, it is also a violation of the Fair Housing Act to retaliate against parties because they have asserted their fair housing rights—requested a reasonable accommodation or other fair housing assistance.

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