

LEGAL EAGLES

What community association leaders should know about the FHA and ADA



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By Hans C. Wahl

Community association board members and managers are often so preoccupied ensuring compliance with state and local laws that they sometimes overlook controlling federal law. Multiple federal acts can apply to associations in any given situation, and overlooking those federal laws can have costly consequences. Two federal acts that association leaders should know and understand are the Fair Housing Act (FHA) and the Americans with Dis-

abilities Act (ADA).

The FHA prohibits discrimination by housing providers on the basis of race, color, religion, sex, national origin, familial status, or disability. While intentional acts of discrimination unfortunately still occur at times, most claims under the FHA are not for initial acts; rather, they are for seemingly neutral rules, policies or practices that, when enforced, end up having a disparate impact on protected classes. Stated another way, associations can be found liable under the FHA even if there is no wrongful intent or knowledge that a rule has a discriminating effect when implemented.

Common issues involving the FHA include support animals, disability accommodation requests and new resident screening. Concerning support animals, the FHA governs requests for both service animals and emotional support animals. When receiving a proper request from a resident due to a disability, associations must make reasonable accommodations for both service animals and emotional support animals. This is true even if the association has a strict no pet policy. Associations are sometimes permitted to make reasonable inquiries into the request to determine its validity. (In Florida, it is a crime for someone to misrepresent a pet as a service animal when it is not.)

Disabled residents may request that

associations make modifications to existing structures. Such modifications may include wheelchair ramps, handicapped parking spaces, pool lift chairs, automatic doors, accessible bathrooms, etc. Associations must be willing to make such reasonable modifications; however, under the FHA, the person making the modification request must pay for it. (Whereas, when the ADA applies and a request is made under it, the association must pay for the modification.)

Associations get into the most trouble under the FHA with new resident screening policies. Associations may be implementing certain screening policies yet have no idea their practices violate the FHA. An example can be improper consideration of arrest records. Restrictions on housing opportunities based on arrest records may violate the FHA if, without justification, the burden falls more often on prospective buyers or renters of one race or national origin over another. Moreover, an association's blanket policy excluding individuals due to a prior arrest, without that arrest leading to a conviction, will likely not withstand scrutiny under the FHA.

The ADA prohibits discrimination on the basis of a person's disability. Whereas the FHA always applies to community associations because they are housing providers, the ADA only applies

when association property is open to the public, even if only for occasional and limited events. To illustrate, if an association clubhouse hosts local public events, such as weddings or charity functions, that association is opening itself up to regulation under the ADA. Also, associations that permit short-term rentals – giving it characteristics similar to that of a place of public lodging – will probably fall under Title III of the ADA.

When a clubhouse open to public events is located within a private residence, such as a condominium, the portion used exclusively as a residence is not subject to the ADA, but the portion used in the operation of a public event is subject to the ADA. The portion of the property subject to the ADA will extend to common elements such as restrooms, sidewalks, and doors or entryways. If an association opens its clubhouse to public events and also provides for short-term rentals of its residential properties, then the entire association property could be subject to the ADA. When governed by the ADA, an association must make reasonable modifications to accommodate individuals with disabilities, which can include items such as installing ramps, widening doorways, installing grab bars in toilet stalls and adding braille.

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