



Mulcahy Memo – May 2016

Published for clients and friends of the Mulcahy Law Firm, P.C.

by Beth Mulcahy, Esq.



Our temperatures are starting to rise! Once the temperature starts to hit triple digits (the forecast for today is 102!), many of our board members head to cooler temperatures.

During the summer months, please don't forget that Arizona law allows board members to appear telephonically or via Skype at board meetings. Specifically, a quorum of the board (or any board member who cannot attend in person) may meet by telephone if there is a speaker phone or computer available in the meeting room that allows board members and unit/lot owners to hear all parties who are speaking during the meeting. Also, don't forget that even though board members can "dial in" to a board meeting, the board meeting must be held in Arizona.

We are closely following the 2016 Arizona Legislature, specifically, SB1449, SB1498, HB2106, HB2382. Although there has been no activity on any of these bills for the past 4 weeks due to budget negotiations, we will continue to update you weekly with any developments on any community association bills. It is anticipated that in the next week or so, the Legislature will finish its 2016 business so stay tuned.

For a listing and summary of the pending bills and the one HOA-related bill that the Governor has already signed into law, please click [here](#).

During the summer months, our teaching schedule slows down a bit. At this time, we only have one class scheduled for May, 2016:

Peoria HOA Academy- May 12, 2016- 5:30-7:00 p.m.

Topic: *Budgeting for Community Associations*

Location:

Sunrise Mountain Library
21109 N. 98th Avenue
Peoria, AZ 85382

We hope you can join us! To register, please contact Jaime with the City of Peoria at 623.773.5140.

Please visit our [website](#) on July 1st to find out which classes will be offered around the valley in the Fall.

[Follow us on Facebook!](#) Our law firm has a very active page with free tips and legislative updates for board members, managers and owners that is updated weekly.

Thank you!



Sincerely,
Beth Mulcahy, Founder and Senior Partner
Mulcahy Law Firm, P.C.

The 4-1-1 on Fair Housing Laws: A Quick Overview By: Beth Mulcahy, Esq.

Does your association have nagging questions regarding the Fair Housing Act? How should associations handle "group homes", service animals, emotional support pets, and "55 and Over Housing"? Has your association's board recently received a complaint regarding a Fair Housing violation? If so, this article provides an excellent overview of the Federal Fair Housing Act.

FEDERAL FAIR HOUSING ACT (42 U.S.C. 3601 ET. SEQ.) ("FHA")

The Civil Rights Act of 1968 along with additional revisions and the Fair Housing Amendments Act of 1988 collectively are known as the Fair Housing Act. The Federal Fair Housing Act (FHA) prohibits discrimination based upon a person's race or color, religion, sex (including sexual harassment), national origin, familial status (families with children), or disability (includes persons with mental and physical impairments that substantially limit one or more major life activities - blindness, hearing impairment, mobility impairment, HIV, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, mental illness and group homes).

Many aspects of the fair housing law apply to community associations; therefore, boards should be aware of the association's requirement to follow the law.

Disability: An individual with a disability is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such impairment, or a person who is perceived by others as having such impairment.

Discrimination is the treatment of an individual based on their membership in a certain group or category. It involves excluding or restricting members of one group from opportunities that are available to other groups. Discrimination can occur when the community association fails to allow an "accommodation" to the community governing documents or "reasonable modification" to the community's common elements.

"Reasonable Accommodation" is an alteration to or variance of the association's covenants, rules, regulations, policies, and services to provide the disabled equal use and enjoyment of his/her home. For example, a community association that has a no-pet policy may be limited in its enforcement if the Fair Housing Act would require the association to grant a "reasonable accommodation" request for a disabled individual with the need of an assistance animal, despite "no pet" restrictions. (See assistance animals below)

"Reasonable Modification" is a modification/alteration to the building, common elements or limited common elements to afford the disabled equal use and enjoyment of his/her home. The fair housing laws require the association to allow the modification to the common elements so the disabled individual can use the facility. For example, a person confined to a wheelchair may request that a ramp be installed in the association's gym so he/she can use it for exercise.

Who pays? An association bears the cost of "accommodations," unless it would impose an undue financial or administrative burden on the association. The cost of "modifications" to residential premises occupied by a disabled resident must be paid by the disabled resident. In a HUD policy statement, "modifications" to common areas are to be paid by the disabled resident. There are, however, some inconsistencies between the language of the law and the government's explanation, which causes confusion and could lead to the filing of a Fair Housing complaint. Therefore, associations should proceed with caution regarding requests for accommodations and/or modifications to common areas and seek the advice of the association's attorney.

ASSISTANCE ANIMALS

Even if a community association has a no-pet policy, an occupant may be permitted to keep an animal as a "reasonable accommodation." To be protected by the Fair Housing Act with regard to "assistance animals",

the following factors must be met: 1. the person must have a disability; 2. the assistance animal must serve a function related to the person's disability; and 3. the request to have the assistance animal must be reasonable. Disabled residents can request an accommodation for most types of animals for non-specific illnesses with the animals having ill-defined uses or unknown training. Typical requests include: depression, anxiety or emotional support. To comply, the association may: 1. require the resident to provide proof of the claimed handicap/illness from a physician; however, the physician will not be required to disclose the details of the disability or provide his/her medical history; 2. require a physician's statement that the animal is necessary for the resident's handicap/illness; 3. require the resident to follow set policies for clean-up of animal waste, leash requirements, etc. It is important to note that the Fair Housing allowances for "assistance animals" is separate and distinct from the ADA's requirements for a more highly trained, specific "service animal." The FHA does not require an assistance animal to have any specific training.

GROUP HOMES

The Federal Fair Housing Act Amendments of 1988 expanded protections for individuals with all types of disabilities, thus banning the prohibition of "group homes" (a group of unrelated disabled individuals living together in a dwelling) in community associations. However, a "group home" owner will have to request any variance or "accommodation" of the governing documents and show that the variance is directly connected to diminishing the effects of the disability of the residents in the home. The association should request documentation from the "group home" operator that verifies the existence of the disability-related need for the variance. Not all "group homes" are protected under the Fair Housing laws. It is important to separate the illegitimate group homes from the legitimate: 1. current addicts; 2. current substance abusers; 3. current alcoholics; 4. criminals; 5. those with bad credit; and 6. sex offenders are not considered having a disability under the Fair Housing laws. A legitimate "group home" that serves the disabled cannot be prohibited. The association has a right to enforce the same rules and restrictions asked of all residents such as: 1. maintenance of the buildings; 2. maintenance of landscaping; 3. pre-approval of architectural modifications; 4. adherence to parking restrictions; and 5. adherence to noise or other nuisance policies, thus, treating a "group home" like the other residents in the association.

HOUSING FOR OLDER PERSONS ACT OF 1995 (42 U.S.C. 3607) (HOPA)

This amendment is an exemption to the Fair Housing Act allowing communities to restrict based on age "55+" or "age-restricted," provided certain requirements are followed. The amendment requires that a "55+" community must:

1. maintain at least 80 percent (not less restrictive, but can be 100 percent restrictive) of the occupied units with at least one person who is 55 years of age or older living in that unit; 2. publicize and adhere to policies that demonstrate intent to be housing for older persons; and 3. comply with the rules for verification of occupancy in accordance with the Act's requirements. Associations must survey residents for age verification every two years. Failure to survey could jeopardize the association's "55+" status. An age-restricted community may allow people under the age minimum to visit and stay on a limited basis and may have covenants that allow underage persons to reside in the community temporarily, providing the occupancy remains within the restrictive minimum of 80 percent. It is important to note that the "55+" occupancy requirement is related to "occupancy" and not "ownership" of the unit.

WHAT SHOULD OUR BOARD DO IF THE ATTORNEY GENERAL'S OFFICE CONTACTS US WITH A FAIR HOUSING COMPLAINT BY AN OWNER OR RESIDENT?

Our office has successfully helped many associations with Fair Housing complaints. Please contact us as soon as you receive the complaint from the Attorney General's office so that we can help your association and board formulate a response to the Complaint and a strategy for full dismissal of the allegations.

Please contact Mulcahy Law Firm, P.C. for additional information and help with this issue.