



## Fair Housing Legal Protections For Recovery Housing

**The following information provides an overview of how fair housing laws apply to recovery housing, their operators and the residents. This explanation does not constitute legal advice and you are strongly advised to consult an attorney when considering the development, location and operation of any recovery housing. This publication has been prepared for RecoveryPeople by the Law Office of Kim Savage and may not be reproduced in whole or in part without express written permission from RecoveryPeople (April 2018).**

### **Federal Law – The Fair Housing Amendments Act of 1988**

The federal Fair Housing Amendments Act of 1988 (hereafter “the Act”) provides fair housing protections to individuals with disabilities in virtually every housing activity or transaction.<sup>i</sup> The fundamental purpose of the Act is to prohibit practices that “restrict the choices” of people with disabilities to live where they wish or “that discourage or obstruct choices in a community, neighborhood or development.”<sup>ii</sup>

The Act protects an individual with a physical or mental impairment that substantially limits one or more major life activities; anyone who is regarded as having any such impairment; or anyone who has a record of having such an impairment.<sup>iii</sup> Individuals in recovery from drug or alcohol abuse are also covered under the law.<sup>iv</sup> However, current users of illegal controlled substances are not protected under the law, unless they have a separate disability. Both recovery housing, those who operate the housing and, the individuals who reside in them, are protected under the federal Act. The Department of Housing Development and the Department of Justice, which enforce the law, explain:

A household where two or more persons with disabilities choose to live together, as a matter of association, may not be subjected to requirements or conditions that are not imposed on households consisting of persons without disabilities.

Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes.<sup>v</sup>

The foregoing recognizes that unrelated individuals with disabilities who reside together as a cohesive group, may be the functional equivalent of a family of related members. The cohesiveness is comparable to a “traditional family” in that the unrelated individuals with disabilities may take meals together, share household responsibilities and derive social and emotional support from one another. Fair housing laws provide legal protections for siting in residential zones recovery housing that functions in a “family-like” way.

Land use and zoning regulations that specifically target recovery housing, singling out individuals with disabilities in recovery for substance abuse, violate fair housing laws. Discrimination may be intentional, meaning the regulation or procedural requirements were enacted with either a discriminatory motive or are being applied in a discriminatory manner. Although less obvious, a law or regulation may also violate fair housing laws if it has a discriminatory effect on housing for individuals with disabilities. A local government may not adopt regulations or ordinances or deny planning approvals for housing for individuals with disabilities based on stereotypes or

unfounded fears about the residents. Local governments may violate fair housing laws if in their decision-making they rely upon or adopt the discriminatory animus of those in the community opposing housing for individuals with disabilities.<sup>vi</sup>

In addition to not discriminating against people with disabilities, cities and counties have an affirmative duty to provide reasonable accommodations in land use and zoning rules, policies, practices and procedures where it may be necessary to provide individuals with disabilities equal opportunity in housing.<sup>vii</sup> In the land use and zoning context, reasonable accommodation means providing individuals with disabilities, or developers of housing for people with disabilities, flexibility in restrictive regulations and procedures, or waiver of certain requirements when it is necessary to achieve equal access to housing.<sup>viii</sup> Failure to provide a reasonable accommodation is a separate basis of liability and does not require a showing of intentional discrimination. Further, granting a reasonable accommodation does not cure a discriminatory land use or zoning regulation. Examples of reasonable accommodations for group homes for individuals with disabilities could include: waiving legitimate zoning restrictions for locating a large household in a single family residential zone; reducing parking requirements where residents do not drive or are not permitted to have cars at the home and; non-enforcement of distance or spacing requirements not otherwise subject to legal challenge. Reasonable accommodations are considered on a “case-by-case” basis meaning that each request is reviewed on the specific set of facts presented. Providers are advised to consult with an attorney before seeking reasonable accommodations from local governments.

The Fair Housing Amendments Act of 1988 also prohibits discriminatory conduct directed at individuals with disabilities, including those in recovery and, those who provide housing to them.<sup>ix</sup> This prohibition is interpreted broadly to reach all practices that have the effect of interfering with rights granted by fair housing laws including coercion, intimidation and, threats.

### **State Law – Texas Fair Housing Act**

The State of Texas’ fair housing statute is substantially equivalent to the federal Act, mirroring the definition of disability and excluding from the definition current users of illegal controlled substances.<sup>x</sup> The Texas Fair Housing Act prohibits discrimination against individuals with disabilities in rental, leasing and sales transactions including failing or refusing to make reasonable accommodations that are necessary to provide equal opportunity in housing.<sup>xi</sup> Under certain circumstances, and similar to federal law, the rental or sale of single family homes may be exempt from the Act.<sup>xii</sup> The Texas Workforce Commission which enforces the statute investigates and settles complaints of discrimination and provides remedies for aggrieved individuals, those providing housing for individuals with disabilities and others protected by fair housing laws. Additional information about the Texas Fair Housing Act is available at [www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us) (statute); [www.twc.state.tx.us](http://www.twc.state.tx.us) (Texas Workforce Commission); [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) (Texas Dept. of Housing & Community Affairs).

### **Privacy Rights Of Individuals Residing In Sober Living Homes**

A local government that imposes restrictions on households of unrelated individuals (excluding legal neutral occupancy standards), may violate the federal and state privacy rights of individuals with disabilities as well as federal and state fair housing laws. Municipal and state recovery housing certification requirements, suspect under fair housing laws, may also implicate resident privacy rights including HIPAA protections. Likewise, a municipality’s use of boarding home facility standards to regulate recovery housing (discussed below) may violate residents’ privacy rights.

### **Frequent Issues Regarding Recovery Housing**

#### **Mischaracterization of Recovery Housing As A Business**

Those seeking to locate recovery homes have often been told by local governments that the use is a “business” and not permitted in residential zones. However, courts throughout the country have confirmed that

simply because the use of a dwelling may entail some management functions, such activities do not change the essential character of a single family or multi-family dwelling from a residence to a “business” or commercial use.

This Court finds persuasive the reasoning of other jurisdictions which have held that the incident necessities of operating a group home such as maintaining records, filing accounting reports, managing supervising, and providing care for individuals in exchange for monetary compensation are collateral to the prime purpose and function of a family housekeeping unit. Hence, these activities do not, in and of themselves, change the character of a residence from private to commercial.<sup>xiii</sup>

A zoning code that regulates housing for individuals with disabilities as a commercial use when the same use designation is not applied to similarly situated families singles out individuals with disabilities in a discriminatory manner. A single family occupying a residential dwelling engages in comparable management functions when it employs a housekeeper or gardener and there is an exchange of money. Or, parents may charge rent to an adult child living at home. These activities do not change the residential use of the home, nor do comparable activities that assist with the sound functioning of a home for individuals with disabilities. The payment of rent does not transform a dwelling with a residential use to a business or commercial use. And, as explained earlier, fair housing laws protect the siting of recovery housing that functions in a “family-like” way in residential zones.

#### **Potential Regulation of Recovery Housing As Boarding Home Facility**

Some cities have asserted that recovery homes are “boarding home facilities” and subject to local licensing or permitting and detailed physical facility standards and operational requirements. In 2009, the Texas Legislature amended the State’s Health & Safety Code to address “boarding home facilities” and directed the Health & Human Services Commission to adopt model standards for the operation of boarding home facilities. The Texas Boarding Home Model Standards were published in 2010; since then some cities and counties have voluntarily adopted the standards and begun permitting or licensing boarding home facilities.<sup>xiv</sup>

While recovery homes provide a residence for individuals with disabilities, they are typically distinguishable from recently defined boarding home facilities which are highly regulated under the model standards. For example, the model standards require that boarding home facility operators provide residents with three meals daily and to “complete and document an annual assessment and conduct periodic monitoring to ensure that a resident is capable of self-administering medication and completing basic elements of personal care.” Additionally, in recovery housing, a landlord-tenant relationship exists with the resident (or tenant) acquiring a legal right to a designated bedroom as well as access to the entire premises. In contrast, a boarding home facility “furnishes . . . lodging.” Historically, boarding or lodging homes provide restricted access; there is no right to occupy the entire dwelling unit nor is there a landlord-tenant relationship.

Regulation of recovery housing as a boarding home facility will require compliance with a jurisdiction’s standards, based on the State’s model, and likely result in restrictive zoning. If a municipality designates a boarding home facility as a commercial use, recovery homes so designated will not be permitted in residential zones. It is recommended that recovery home providers seek legal counsel for determining their legal rights and protections should their home be subject to local boarding home facility standards.

Fair housing laws provide strong civil rights protections for individuals with disabilities, including those currently in recovery for substance abuse. In addition to prohibiting discrimination in housing, fair housing laws seek to increase housing opportunities for all segments of our society. These fair housing protections extend to the development and siting of recovery housing, its providers and residents currently in recovery. Additional general information about the federal Fair Housing Amendments Act of 1988 is available at [www.hud.gov](http://www.hud.gov). Further information about the Texas Fair Housing Act is available at [www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us) (statute); [www.twc.state.tx.us](http://www.twc.state.tx.us) (Texas Workforce Commission) [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) (Texas Dept. of Housing & Community Affairs).

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## End Notes

- <sup>i</sup> Federal Fair Housing Amendments Act of 1988 (“the Act”), 42 U.S.C. §§ 3601 *et seq.*
- <sup>ii</sup> Federal Regulations implementing the Act, 24 C.F.R. § 100.70(a) (1994).
- <sup>iii</sup> The definition of “disability” is found at 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201.
- <sup>iv</sup> 24 C.F.R. § 100.201; United States v. Southern Management Corp., 955 F. 2d 914 (4<sup>th</sup> Cir. 1992); Oxford House v. Town of Babylon, 819 F. Supp. 1179 (E.D.N.Y. 1993).
- <sup>v</sup> Joint Statement of the Dept. Of Housing & Urban Development and The Dept. of Justice, *State and Local Land Use Practices and the Application of the Fair Housing Act*, at 7, 3 (November 2016).
- <sup>vi</sup> U.S. v. City of Jackson, 359 F. 3d 727 (5<sup>th</sup> Cir. 2004); Oxford House v. City of Babylon, 819 F. Supp. 1179 (E.D.N.Y. 1993).
- <sup>vii</sup> The Act’s reasonable accommodation mandate, 42 U.S.C. § 3604(f)(3)(B). See also, Joint Statement of HUD and DOJ, *Reasonable Accommodations Under the Fair Housing Act* (2004), [www.hud.gov](http://www.hud.gov).
- <sup>viii</sup> Groome Resources Ltd., LLC v. Parish of Jefferson, 234 F. 3d 192 (5<sup>th</sup> Cir. 2000) (Texas is in the Fifth Circuit).
- <sup>ix</sup> The Act, 42 U.S.C. 3617.
- <sup>x</sup> Texas Fair Housing Act, Texas Property Code, Title 15, Chapter 301, § 301.003(6).
- <sup>xi</sup> Texas Fair Housing Act at § 301.025.
- <sup>xii</sup> Texas Fair Housing Act at § 301.041.
- <sup>xiii</sup> Rhodes v. Palmetto Pathway Homes, Inc., 400 S.E. 2d 484 (S.C. 1991) citing Gregory v. State Dept. of Mental Health Retardation and Hospitals and JT Hobby & Sons v. Family Home.
- <sup>xiv</sup> Texas Health & Safety Code, Chapter 260.