



## **Fair Housing and ADA: Dealing with the Legal Rights of Disabled Condo and HOA Residents** *By David C. Swedelson, Esq.*

Unless you have been sleeping with Rip Van Winkel for 20+ years (and if you have been, then maybe you have a disability that needs accommodation), you are likely aware that there are a number of laws that deal with the rights of disabled individuals to be accommodated. This would include the [Americans with Disabilities Act \("ADA"\)](#) and the [Federal Fair Housing Act \("FFHA"\)](#) as well as the [California Fair Housing Act \("CFHA"\)](#). These laws deal with public and private facilities, and to some extent they include condominium and homeowner associations. These laws address who is responsible for making modifications or changes to common area to accommodate individuals with disabilities. It is important to understand the distinctions in the law, as many disabled individuals may insist that their community association is obligated to comply with the ADA and its more rigorous requirements that may require that the association take action to accommodate the owner or resident at its expense.

### **Americans with Disabilities Act ("ADA")**

The ADA requires that all public and government facilities are required to comply with specific use and construction requirements to accommodate disabled individuals. As the ADA only applies to "public accommodations" and as most condo, stock cooperatives and HOA planned developments are private and not public accommodations, the ADA would not apply. A community association will not be subject to the ADA unless it is operating what can be considered a "public accommodation", defined as any facility which an association is holding out for use by members of the general public — not solely for use by the condo or HOA's members and their guests.

Some community associations have unwittingly or purposely made themselves subject to ADA by opening their facilities to the public, allowing their facilities to be used by non-owners or residents who are not guests. For example, some HOAs have been subjected to ADA requirements when they allow their pool to be used by a

swim club whose members are not members or residents of the HOA. Or, they allow members of the public to buy memberships or passes to the Association's pool. Other associations have allowed schools, religious groups, the Boy Scouts or other clubs to use their association's clubhouse or other common area facilities on a regular basis for meetings and events. Some associations even allow their facilities to be used as a balloting location open to the public.

Any community association considering or currently allowing these types of activities should determine if their facilities are ADA compliant (are the bathrooms wheelchair accessible, for example). If not, then these activities must be terminated or the association faces a possible claim/lawsuit that it is in violation of the ADA (and many businesses have faced discrimination claims/lawsuits which are not covered by some carriers for these types of claims).

### **Federal and California Fair Housing Act ("FFHA" and "CFHA")**

The FFHA and CFHA are similar to the ADA; however, the FFHA and CFHA apply directly to housing facilities, including community associations. Under the FFHA and CFHA, a condo or HOA may not legally refuse to make reasonable accommodations in its rules or policies when such accommodations may be necessary for a disabled owner to fully enjoy and use a unit. The operative word here is "reasonable" when it comes to the accommodation. And the owner (or their tenant) must establish that they have a disability that requires the accommodation, which can be complicated.

We see these types of requests all the time. Sometimes, the requests have to do with the location of a parking space or the owner's request to install a ramp or a power stair lift in the common area. Often, we field owner requests for a service or companion pet/animal that may not comply with their association's CC&Rs, which may have a weight limit or enforceable prohibition on all pets. As association's refusal to make such the requested accommodation (one that is reasonable and necessary to afford a disabled owner the full enjoyment and use of his or her unit) is deemed to be discrimination under the FFHA and CFHA.

The FFHA and CFHA may also require an association to permit a disabled owner to make, at the requesting owner's expense, reasonable modifications to the owner's

unit and the association's common areas. This requirement is found in the Davis-Stirling Act at [California Civil Code Section 1360](#).

### **California Civil Code Section 1360**

California Civil Code Section 1360 requires California condos and HOAs to allow disabled owners to make modifications to their units and the association's common areas, at the owner's expense, in order to accommodate the owner's disability. This could include power stair lifts, ramps or handrails. Under Civil Code Section 1360, a community association must allow an owner to make modifications to his or her unit and the route to the unit from a public way, so long as the modifications are compliant with building and safety regulations, the modifications are consistent with the provisions of the association's governing documents relating to safety and aesthetics, the modifications do not prevent reasonable passage by other residents, the modifications are removed by the owner when the unit is no longer occupied by the disabled individual, and the owner submits plans and specifications to the association for review. The association may (and should) require that the owner submit plans for the modifications in order to ensure consistency with the design of the association and do not negatively impact its architectural integrity, and require the execution of an agreement that the owner return the property to its original condition upon leaving the property (and the association should consider having that agreement recorded as a covenant running with the land).

The laws that address accommodating a disabled resident of a community association are complicated, and the failure to comply can lead to a claim to the appropriate governmental agency or a lawsuit. When faced with these kinds of issues, it is recommended that the association's board confer with legal counsel.

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