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Group Homes: You Probably Have More Authority to Regulate Them Than You Might Think

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Group homes have been part of the legal landscape in Arizona for decades now. As early as 1978, Arizona law provided that group homes for developmentally disabled individuals could not be prohibited by zoning ordinances or restrictive covenants. The federal Fair Housing Act Amendments of 1988 expanded protections for individuals with all types of disabilities, which resulted in an expansion of rights for group homes serving non-developmentally disabled individuals. What we know for certain is that group homes serving disabled individuals cannot be prohibited in community associations despite any restrictive covenants that prohibit business operations or require single family residential use.

However, there still are many restrictive covenants that can be enforced against a group home owner who wishes to operate a home in the community, and community associations should treat a group home owner just like any other owner or resident seeking an exception to the rules to accommodate an alleged disability. Owners wanting to operate group homes still have to request a variance (an "accommodation" in Fair Housing jargon) from the express terms of the restrictive covenants and they must be able to show that the variance is directly connected to alleviating the effects of the disability on the residents.

Not all "group homes" are protected under the Fair Housing laws. Associations are entitled to request documentation that verifies the existence of a disability and the disability-related need for the variance. This is important to separate the illegitimate group homes from the legitimate. For instance, a home catering to a variety of persons that may be current or recovering addicts or alcoholics, whose only common thread is that they are unable to secure other forms of housing, likely cannot support a claim to a variance despite calling itself a "group home." Current substance abuse and alcoholism is expressly not a disability under the Fair Housing laws. The inability to obtain other forms of housing may not be the result of any disability but may be related to criminal records, bad credit or sex offender registration requirements. If an association does not insist on getting documentation from the group home operator, it may be allowing non-disabled persons to reside in the community in a business or high-occupancy setting in violation of the restrictive covenants. If a legitimate group home that serves the elderly or developmentally disabled is operating or planning to operate in the community, the owner should have no qualms about providing the documentation

necessary to show their right to a variance. In those cases, the association clearly cannot prohibit the home.

Regardless of the right of existence or entry of a group home into the community, the association has a right to enforce a variety of other restrictions. For instance, maintenance of the buildings and landscaping must continue to meet the community standards. Architectural modifications must be pre-approved, although they need a more careful analysis because any different treatment of the group home could give rise to a claim of discrimination. Parking issues also require a careful analysis to determine what can be prohibited under the specific circumstances. Noise or other nuisance issues can be enforced as well.

The long-standing public policy supporting group homes for the developmentally disabled in Arizona and the federal Fair Housing policy to provide accommodations to all types of disabilities envision a seamless integration of group homes into existing single family residential communities. While some seams will undoubtedly be visible to the neighbors, there is still a fair amount of conformity you can expect and demand from group home owners.

If you have any questions concerning group homes, or other Fair Housing issues, please contact Jason Smith in our office.