



# FAIR HOUSING & COMMUNITY ASSOCIATIONS

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*Disclaimer: This presentation is for general informational purposes only and does not constitute legal advice, nor does it establish an attorney client relationship.*

# WHY IS THIS AN IMPORTANT TOPIC?



## Marion County Cautionary Tale

The parents of a disabled woman who say they were forced to move from their Marion County neighborhood after the homeowners association barred them from parking an RV in their driveway have settled their lawsuit for \$300,000.

A federal judge ruled that the parents were right that their daughter had faced discrimination. All that was left to decide was how much the homeowners association had to pay as compensation.



## Another one from Marion County

Oregon Senator served on HOA Board that denied school bus from accessing private street to transport disabled child to school.

# FAIR HOUSING LAWS



- What are they?
  - Civil rights laws designed to prevent discrimination and differential treatment and create a sense of fairness and equity in housing.
- Who do they apply to?
  - Applies to all “housing providers”
    - HOA Boards
    - Managers
    - Other Agents (contractors, etc.) in certain cases

# FAIR HOUSING LAWS

- What do they do?
  - Make it illegal to discriminate against someone in a protected class
  - Create requirements to provide reasonable accommodations or allow modifications necessary because of a disability

# FEDERAL PROTECTED CLASSES

- Race
- Color
- Religion
- National Origin
- Sex
- Familial Status
- Mental or Physical Disability



## OREGON

- Source of Income
- Marital Status
- Sexual Orientation
- Gender Identity

## WASHINGTON

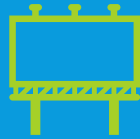
- Veteran/Military status
  - Breastfeeding (in areas of public accommodation)
  - Sexual Orientation
  - Gender Identity
- 
- Some local jurisdictions have additional protected classes, but most are reasonably related to the ones listed on these slides.

ADDITIONAL  
PROTECTED CLASSES  
OR & WA

# TYPES OF PROHIBITED ACTS



**Denial of use of facilities, services**



**Advertising or announcing a preference**

“Chilling effect”

“Steering”



**Differential Treatment**



**Harassment based upon membership in a protected class**

# WHAT IS 'DIFFERENTIAL TREATMENT'?

- Inconsistent responses to service requests
- Inconsistent reasons for routine inspections
- Inconsistent application of penalties such as fines and removal of community privileges
- Inconsistency in allowing access to common areas and facilities; for example, permitting the Bible Study Group to use the community room, but not the Atheist Club
- Making exceptions to rules/ requirements for some community members and not others



# HARASSMENT

- Vicarious liability for acts of others
- Quid Pro Quo and Hostile Environment Harassment
- Association can be legally liable if it has knowledge of discrimination, the power to act, and fails to take action.
- Consider severity and pervasiveness of harassment



# TYPES OF FAMILIAL STATUS DISCRIMINATION



Restricting the admission of children into your community



Discriminating against certain types of families; “Steering” or directing families with children to another community or segregating families with children in an area of a community.



Restricting facilities so children cannot use them; includes rules restricting children from tennis courts, basketball courts, pools and other areas.

No bicycles or tricycles are permitted to be ridden or stored anywhere in the complex.

Adults-only pool hours from 8am to 9am daily.

Children under 16 can't use the tennis courts without an adult.

ARE THESE RULES  
DISCRIMINATORY?

# CREATING AND ENFORCING RULES THAT ARE NOT DISCRIMINATORY

- Look at the existing rules in terms of whether they could have a discriminatory impact or create the perception of discrimination
  - Holiday Decorations
  - Flags
  - No toys stored on decks
- Consider language that could particularly affect a protected class
- Equal Enforcement is critical

## CREATE A RULE FOR THIS SITUATION:

- Kids are riding bikes down a steep private street in your neighborhood at an unsafe speed. Drivers have complained to the HOA that they're worried someone will get hurt. How should you address it?

Oregon: Disability means any "physical or mental impairment which substantially limits one or more of [a] person's major life activities"

Washington: Disability means "the presence of a sensory, mental or physical disability when a condition is medically cognizable or diagnosable"

## WHAT IS A DISABILITY?

# IS COVID 19 A DISABILITY?

- What if you:
  - Tested positive for it?
  - Tested positive but have no symptoms?
  - Were exposed to it and must self-isolate?

**Modification:**  
physical change  
to home or  
common area to  
accommodate  
their disability

- Requesting owner can pay costs
- HOA can impose reasonable, pre-existing aesthetic requirements that don't impose additional costs
- HOA pays costs for ongoing maintenance for modification in common area

**Accommodation:**  
exception to  
community policy

- Switching parking spaces
- Having a pet that would otherwise be prohibited

## MODIFICATION VS. ACCOMMODATION





Board can request verification of condition



Evaluate the request on its merits



Is there a relationship between request and the disability?



Is it a request for modification or accommodation?



Does the request create an undue burden or cost?



Keep documentation



Create a policy

# HANDLING REQUESTS BASED ON DISABILITY

# ASSISTANCE ANIMALS



## SERVICE DOGS

Any dog trained to perform tasks for an individual with a disability.



## EMOTIONAL SUPPORT DOGS

Medically prescribed animals providing therapeutic benefit through dedicated companionship.



## THERAPY DOGS

Animal-assisted therapy involving animals as a form of treatment.

- ADA service animals: a dog that is individually trained to perform tasks directly related to an individual's disability. (miniature horses could be service animals in certain circumstances)
- Other types of Assistance Animals: Performs tasks, assists and/or provides therapeutic emotional support for individuals with disabilities
  - Verification of Disability
  - Is the animal a type that is commonly kept in a household?
    - If not, the requestor has a substantial burden of demonstrating a disability-related therapeutic need for the specific animal.

# CREATING A POLICY



- Who should the requester contact? In writing?
- Who will respond? Manager, a committee?
- How will the request be processed?
  - Timelines
  - Requesting verification
  - Other investigation
  - What factors will be considered

# HOW WOULD YOU HANDLE THIS? (COVID-19 EXAMPLES)

Someone needs to use the pool/clubhouse because of disability

Need special services because they have to be isolated

Lost job because of quarantine, can't pay dues

Nurse needs to put RV in the driveway

Can people conduct business from home?

Holiday lights, signs thanking health care workers, 7pm salute?

## HOW WOULD YOU HANDLE THIS?

Owner contacts the HOA because the neighbor's dogs are barking and exacerbating her anxiety disorder. HOA has a rule stating that the Board can determine that a pet is a "nuisance" and require the pet to be removed from the community.

# RESOURCES

Fair Housing Council of Oregon

<http://fhco.org/>



Fair Housing Center of Washington

<https://fhcWASHINGTON.org/>



HUD guidance on assistance animals (2020)

<https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>