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THE FAIR HOUSING ACT AND ITS APPLICABILITY TO HOMEOWNERS ASSOCIATIONS

Following are some issues relating to the Fair Housing Act of which Associations should be aware:

A. Rules and Regulations

1. Review the Association's Rules and Regulations to make sure that the Rules do not focus on age unless absolutely necessary. Most rules are meant to apply equally to all ages.
 - a. For example, rules should not state, "Children may not ride their bicycles on the sidewalks." Rather, "No one is allowed to ride a bicycle on the sidewalk."
2. If an Association's Rule does focus on the age of a person, make sure that the Rule has a legitimate safety purpose. (There are very few rules that will fit into this category.)
 - a. For example, an Association may have pool rules that prohibit children under the age of 14 from being in the pool area without an adult because of the concern for the safety of the children.
3. Also make sure that the Association's Rules are enforced uniformly. Do not allow members of the Board of Directors to enforce a rule only against a certain type of person (whether it be children, a minority race, a person with a disability, etc.).

B. Fair Housing Act v. Americans with Disabilities Act

1. The Fair Housing Act (F.H.A.) requires the Association to allow the owner to make the reasonable accommodation, but the Association may require the owner to pay for the accommodation.
2. The Americans with Disability Act (A.D.A.) requires the organization to make the accommodation, if reasonable, and to pay for the cost of the accommodation.
3. If an Association opens up its facilities to the public, and rents them out to the public, it will then, most likely, be subject to the requirements of the A.D.A.

C. Facilities

1. At the time of transition, make sure that the developer has complied with accessibility requirements for disabled persons. (Examples: handicap ramps, accessible playgrounds.)
2. If the Association is considering remodeling its facilities, (such as its clubhouse, or pouring new concrete), it should make sure that it complies with any requirements to make facilities accessible to people with disabilities. (The requirements will vary depending on whether the Association falls under the A.D.A.)
3. If a person claims a disability and is requesting that an accommodation be made, always fully evaluate the request.

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4. The Association needs to make reasonable accommodations if possible, but can require the owner to pay the cost of the accommodation, if the Association does not fall under the A.D.A.
5. The Association also may evaluate the request for architectural issues.

The foregoing is a general overview of an issue and is not intended as specific legal advice regarding any particular situation. Associations are advised to seek competent legal counsel when confronted with legal issues. If you have any questions, please contact Ekmark & Ekmark at 480-922-9292.