

HOA University

February 7, 2009

I. Don't Take My Rights Away!

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** Remember the mantra for board action: 1. Act reasonably and in good faith, 2. Uniform and non-preferential adoption and application of rules.

Which is it? The ADA or the Fair Housing Act?

Most owners cry foul by referencing their alleged rights under the Americans with Disabilities Act (the "ADA"). But, the Fair Housing Act prohibits discrimination related to housing, including housing in community associations. So, which is it?

It doesn't really matter, as they both prohibit discrimination and they both require reasonable accommodations for the disabled. Further, courts interpreting one act refer to the case law under the other act and use them almost interchangeably. But, as a point of clarification, generally speaking, no one (disabled or not) has rights to assert with respect to their community association under the ADA. The ADA only deals with public accommodations, and unless any portion of your association is regularly open to the public, the ADA probably has no bearing.

Another difference between the two Acts is that the ADA uses the term "disabled" and the FHA uses the term "handicapped." That is why the term "handicapped" may be used herein, despite its political incorrectness.

Another point of clarification is that animals which assist their owners are commonly referred to as "animals," rather than "pets." Owners of service animals will often take offense if you refer to them as "pets." They will often take even more offense if you refer to their companion animals as "pets."

My Pit Bull/Python/Pot-Bellied Pig Has Rights Too!

Accommodating Service and Companion Animals

The Fair Housing Act requires that community associations make "reasonable accommodations" for the handicapped. In the most common scenarios, this requires providing wheelchair access to common areas, parking accommodations, ramps, and similar physical modifications to property. Another aspect of the Fair Housing Act, however, establishes rights for

“service animals.” The case law has established that those who have handicaps are entitled to reasonable accommodations to facilitate their occupancy of property. In recent years, the concept of a "service animal" has been pursued aggressively, so that "service animals" now encompass not only seeing-eye dogs, but also "companion animals." Companion animals are simply common pets that help alleviate the interference that a disability causes to the use and enjoyment of a disabled person's home.

When Do You Need to Accommodate a Companion Animal?

Requirements:

- Person making request is handicapped,
- Housing provider knows or should know of handicap,
- "May be reasonably necessary" to afford the individual the equal opportunity to use and enjoy the dwelling (improves a disabled person's situation)
- The accommodation is reasonable.

A Sample Doctor's Certification Letter

To: Association Name _____ (**"Association"**)
Address _____
City State Zip _____

I hereby declare, under penalty of perjury, that the following statements are true and correct to the best of my knowledge:

1. ("Patient") is my patient whose address is _____

2. My name, business address, and business telephone number are as follows:

3. I am a duly licensed physician in the State of Utah, and my medical license number is: _____

4. I am also certified in the following medical specialty(ies), if any: _____

5. The Federal Fair Housing Act defines a handicapped person as one who has "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such impairment." I hereby certify that Patient is a handicapped person pursuant to the above definition from the Fair Housing Act due to the following condition or for the following reasons: _____

6. If you have certified that the Patient is handicapped in No. 5 above, can this condition be treated to prevent any substantial limits in any of the Patient's major life activities? _____

Explain any qualifications to your answer. _____

7. If your answer to No. 5 above indicates that the condition is treatable, is the Patient's condition being treated to prevent any substantial limits in any of the Patient's major life activities? _____

Explain any qualifications to your answer. _____

8. I am aware that Patient has requested a waiver of the above Association's recorded covenants, rules, regulations or policies or is requesting an accommodation in the enforcement of those covenants, rules, regulations or policies as follows: [to be inserted by Association, Patient or Physician as the case may be]

9. I hereby certify that Patient's request in No. 8 above alleviates or mitigates Patient's handicap described in No. 5 above or otherwise assists patient in using and enjoying Patient's home or the common facilities in the Association for the following reason(s): _____

10. I understand that the Association has proposed, as a reasonable accommodation to Patient, the following [if applicable]: _____

11. I certify that the reasonable accommodation proposed by Association is satisfactory / is not satisfactory [circle one]. If you believe it is not satisfactory, please justify your response below: [Complete only if No. 8 has been completed]: _____

12. I understand that this information is solely for the internal use of the above named Association, that it will be kept confidential and will be provided only to authorized representatives of the above-named Association who periodically may need to verify and revalidate that this information is still correct. I declare under penalty of perjury under the laws of the State of Utah that the foregoing statements are true and correct.

Executed at _____, on _____, 2_____.

Signature

[Please feel free to attach another page to supplement any responses above]

TITLE 42 -THE PUBLIC HEALTH AND WELFARE

CHAPTER 45 -FAIR HOUSING

SUBCHAPTER I – GENERALLY

Sec. 3604. Discrimination in the sale or rental of housing and other prohibited practices

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of –

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a Dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling . . .

Yes, My Children Can Too Go Outside -The Fair Housing Act and Families

Where Does Protection End and Discrimination Begin?

Generally, under the Fair Housing Act, it is illegal to discriminate based on familial status in the sale and operation of housing. It is, therefore, illegal to make a rule in a community association that prevents children from moving in. It is also illegal to set age restrictions of any kind in the sale and occupancy of units and homes in community associations. Moreover, community associations risk violating the Act if they restrict children from amenities such as the pool or even try to set "no children" times in such amenities.

Recent cases illustrate this. One case involved the Federal Government and a condominium association. The result was that the rules in the Association prohibiting "children" from "loitering and playing in hallways" were removed by the Association along with rules preventing children from occupying units above the first floor. Another case involved an apartment complex in Idaho. The complex agreed, after being sued, to remove a restriction on children under 17 in the pool without supervision (substituting it for an age limit of 13) and similar restrictions on children in the common area. These cases demonstrate the far reaching effect of the Fair Housing Act.

One exception to the Fair Housing Act exists in the "Housing for Older Person" Act ("HOPA"). This law allows discrimination in community associations if certain very precise requirements are met. Generally, the community association must (1) publish and adhere to written policies providing that the community association is housing for persons older than 55; (2) maintain occupancy by someone 55 or older in at least 80% of the units or homes; and (3) conduct a survey not less than every two years obtaining proof that the association is maintaining the 80% requirement.

If a community association complies with the requirements above, it can legally discriminate on the basis of age in the community. Interestingly, while the standard requires at least one

occupant older than 55 in 80% of the units, the age restrictions can be even more restrictive. For example, it would be allowed to set the minimum age in the community at 35, while requiring that 80% of the units have one person 55 and older. It is also possible to allow one child under the age of 10, but no more. It is also possible to set the minimum age at 65 or 75 for anyone residing in the community.

Converting an association to HOPA compliant housing will generally require that at least 80% of the housing already be occupied by someone over the age of 55. Assuming this qualification is met, all that is required is a good overhaul of the governing documents to conspicuously include and carefully define the age restrictions. In addition, the association must be diligent in enforcing the restrictions and in complying with the survey and documentation requirements to retain the exempt status.

There are many great resources related to the Fair Housing Act and the Housing for Older Persons Act on the web including detailed explanations of how to comply. The U.S. Department of Housing and Urban Development ("HUD") web site has some good resources and explanations at www.hud.gov.

I Can Too Park There!

Utah Code §72-9-603. Towing notice requirements -- Cost responsibilities -- Abandoned vehicle title restrictions -- Rules for maximum rates and certification.

(1) Except for tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section **72-1-102**, after performing a tow truck service that is being done without the vehicle, vessel, or outboard motor owner's knowledge, the tow truck operator or the tow truck motor carrier shall:

(a) immediately upon arriving at the place of storage or impound of the vehicle, vessel, or outboard motor, contact the law enforcement agency having jurisdiction over the area where the vehicle, vessel, or outboard motor was picked up and notify the agency of the:

(i) location of the vehicle, vessel, or outboard motor;
(ii) date, time, and location from which the vehicle, vessel, or outboard motor was removed;

(iii) reasons for the removal of the vehicle, vessel, or outboard motor;
(iv) person who requested the removal of the vehicle, vessel, or outboard motor; and

(v) vehicle, vessel, or outboard motor's description, including its identification number and license number or other identification number issued by a state agency; and

(b) within two business days of performing the tow truck service under Subsection (1)(a), send a certified letter to the last-known address of the registered owner and lien holder of the vehicle, vessel, or outboard motor obtained from the Motor Vehicle Division or if the person has actual knowledge of the owner's address to the current address, notifying the owner of the:

(i) location of the vehicle, vessel, or outboard motor;
(ii) date, time, location from which the vehicle, vessel, or outboard motor was removed;

(iii) reasons for the removal of the vehicle, vessel, or outboard motor;
(iv) person who requested the removal of the vehicle, vessel, or outboard motor;

(v) a description, including its identification number and license number or other identification number issued by a state agency; and

(vi) costs and procedures to retrieve the vehicle, vessel, or outboard motor.

(2) (a) Until the tow truck operator or tow truck motor carrier reports the removal as required under Subsection (1)(a), a tow truck operator, tow truck motor carrier, or impound yard may not:

(i) collect any fee associated with the removal; or
(ii) begin charging storage fees.

(b) (i) Except as provided in Subsection (2)(c), a tow truck operator or tow truck motor carrier may not perform a tow truck service without the vehicle, vessel, or outboard motor owner's or a lien holder's knowledge at either of the following locations without signage that meets the requirements of Subsection (2)(b)(ii):

(A) a mobile home park as defined in Section **57-16-3**; or
(B) a multifamily dwelling of more than eight units.

(ii) Signage under Subsection (2)(b)(i) shall display:

(A) where parking is subject to towing; and

(B) (I) the Internet website address that provides access to towing database information in accordance with Section **41-6a-1406**; or

(II) one of the following:

(Aa) the name and phone number of the tow truck operator or tow truck motor carrier that performs a tow truck service for the locations listed under Subsection (2)(b)(i); or

(Bb) the name of the mobile home park or multifamily dwelling and the phone number of the mobile home park or multifamily dwelling manager or management office that authorized the vehicle, vessel, or outboard motor to be towed.

(c) Signage is not required under Subsection (2)(b) for parking in a location:

(i) that is prohibited by law;

(ii) that is prohibited by a declaration of the conditions, covenants, and restrictions or by a contract; or

(iii) if it is reasonably apparent that the location is not open to parking.

(d) Nothing in Subsection (2)(b) restricts the ability of a mobile home park as defined in Section **57-16-3** or a multifamily dwelling from instituting and enforcing regulations on parking.

(3) The owner of a vehicle, vessel, or outboard motor lawfully removed is only responsible for paying:

(a) the tow truck service and storage fees set in accordance with Subsection (7); and

(b) the administrative impound fee set in Section **41-6a-1406**, if applicable.

(4) The fees under Subsection (3) are a possessory lien on the vehicle, vessel, or outboard motor until paid.

(5) A person may not request a transfer of title to an abandoned vehicle until at least 30 days after notice has been sent under Subsection (1)(b).

(6) A tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current fees and rates for tow truck service and storage of a vehicle in accordance with rules established under Subsection (7).

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Department of Transportation shall:

(a) set maximum rates that:

(i) tow truck motor carriers may charge for the tow truck service of a vehicle, vessel, or outboard motor that are transported in response to:

(A) a peace officer dispatch call;

(B) a motor vehicle division call; and

(C) any other call where the owner of the vehicle, vessel, or outboard motor has not consented to the removal; and

(ii) impound yards may charge for the storage of a vehicle, vessel, or outboard motor stored as a result of one of the conditions listed under Subsection (7)(a)(i);

(b) establish authorized towing certification requirements, not in conflict with federal law, related to incident safety, clean-up, and hazardous material handling; and

(c) specify the form and content of the posting and disclosure of fees and rates charged by a tow truck motor carrier or impound yard.

Salt Lake City Ordinance

5.84.200 Illegal Towing Activities Designated:

Except when a wrecker or operator is acting as an agent for a legal repossession of a motor vehicle, it shall be unlawful:

A. For any wrecker or operator to tow or otherwise move a vehicle from any area or portion of a public street without the consent of the owner or custodian thereof, except at the direction of a law enforcement agency.

B. For any wrecker or operator, or any other person, to tow or otherwise move a vehicle or authorize the removal thereof from any private road or driveway, or from any other privately owned land or property within the city limits, except:

1. When such wrecker or operator is requested to perform towing services by the owner or custodian of the vehicle,

2. When the wrecker or operator is requested to perform such towing services by an owner or custodian of private property on which the vehicle is parked; provided, however, that the foregoing notwithstanding, no person shall tow, remove or authorize the removal of a vehicle from private property without the consent of the owner or custodian of such vehicle, unless:

a. The property is posted with signs that comply with section 5.84.190 of this chapter, or

b. A vehicle is parked in the driveway or in the easement of ingress and egress to a dwelling used for residential purposes or is parked on the private property owner's or custodian's grass or other landscaped space, and it is determined that the vehicle operator is not within the vehicle and is not an invitee of the owner or legal occupant of the real property having a right to use said driveway or easement, or

c. The vehicle has been abandoned. A vehicle shall be deemed abandoned for purposes of this section if it has been left unattended for seven (7) days.

C. For any wrecker or operator or any other person to fail to notify the police department immediately upon arriving at the place of storage or impound of the vehicle when removal of the vehicle is requested by a person other than the owner or custodian of the vehicle. All such notices to the police department shall include:

1. A description of the vehicle, including its identification number and license number;
2. The location of the vehicle;
3. Date, time, and location from which the vehicle was removed;
4. Reasons for the removal of the vehicle; and
5. Identity of the person who requested the removal of the vehicle.

Salt Lake City Ordinance 5.84.190 - Contents of Signs

Any sign posted for the purpose of enforcing towing policies on the private drive must meet the requirements outlined in city ordinance 5.84.190. This ordinance prescribes the following signage requirements:

- (a) There is:
 - 1. signage visible to the driver of a vehicle entering the property, and
 - 2. signage visible to the driver from the location where the vehicle is parked. Such signage shall use words and/or symbols that reasonably provide notice that parking without permission or contrary to permission of the property owner or operator will subject the vehicle to being towed at the vehicle owner's expense.
- (b) The signs contain such notice on both sides unless one side is blocked by a structure.
- (c) The signs are at least eighteen inches by twenty four inches (18" x 24") in size.
- (d) The lettering for at least the first half of the text on the sign is no smaller than one and one-half inches (1 1/2") in height, and the lettering for the remainder of the text on the sign is no smaller than one-half inch (1/2") in height. The lettering shall be reflective and against a contrasting background.
- (e) The sign states the dollar amount of the towing fee.
- (f) No vegetation or other object obstructs the view of the signage by the driver of a vehicle as the driver enters or leaves the property.

The sign provides a telephone number that can be called to make arrangements for release of the vehicle.

Don't Run Afoul of the FCC!

Satellite Dishes and Antennas - OTARD

The FCC has adopted a rule called the Over-the-Air Reception Devices ("OTARD") rule concerning restrictions on a viewers' ability to receive video programming signals from direct broadcast satellites, broadband radio service providers, and television broadcast stations.

Key Points of OTARD:

- Prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. The rule applies to video antennas including direct-to-home satellite dishes that are less than one meter (39.37") in diameter, TV antennas, and wireless cable antennas.
- The rule prohibits most restrictions that:
 - (1) unreasonably delay or prevent installation, maintenance or use;
 - (2) unreasonably increase the cost of installation, maintenance or use; or
 - (3) preclude reception of an acceptable quality signal.
- The rule applies to individuals who place antennas on property that they own and that is within their exclusive use or control, including condominium owners who have an area where they have exclusive use, such as a balcony or patio, in which to install the antenna. The rule applies to townhomes and manufactured homes, as well as to single family homes.
- The rule allows community associations to enforce restrictions that do not impair the installation, maintenance or use of the types of antennas described above, as well as restrictions needed for safety. The rule does not apply to common areas where the antenna user does not have a right of exclusive use. Such common areas may include the roof or exterior wall of a condo unit. Therefore, restrictions on antennas installed in or on such common areas are enforceable. Drilling through an exterior wall, *e.g.* to run the cable from the patio into the unit, is generally not within the protection of the rule because the exterior wall is a common element. The FCC's rules generally do not cover installations requiring drilling through a common element.

Q: What types of antennas are covered by the rule?

A: The rule applies to the following types of antennas:

- (1) A "dish" antenna that is one meter (39.37") or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service.
- (2) An antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via broadband radio service (wireless cable) or to receive or transmit fixed wireless signals other than via satellite.
- (3) An antenna that is designed to receive local television broadcast signals (of any size).

Q: What types of restrictions are prohibited?

A: The rule prohibits restrictions that impair a person's ability to install, maintain, or use an antenna covered by the rule. The rule applies to private covenants, homeowners' association rules, or similar restrictions on property within the exclusive use or control of the antenna user. A restriction impairs if it: (1) unreasonably delays or prevents use of; (2) unreasonably increases the cost of; or (3) precludes a person from receiving or transmitting an acceptable quality signal from an antenna covered under the rule. The rule does not prohibit legitimate safety restrictions provided the restriction is no more burdensome than necessary to accomplish the safety purpose.

Q: Can an antenna user be required to obtain prior approval before installing his antenna?

A: A restriction that prohibits all antennas would prevent viewers from receiving signals, and is prohibited by the FCC's rule. Procedural requirements can also unreasonably delay installation, maintenance or use of an antenna covered by this rule. For example, regulations that require a person to obtain approval prior to installation create unreasonable delay and are generally prohibited. Prior approval necessary to serve a legitimate safety purpose may be permissible. Although a simple notification process might be permissible, such a process cannot be used as a prior approval requirement and may not delay or increase the cost of installation. The burden is on the association to show that a notification process does not violate the FCC's rule.

Q: What is an unreasonable expense?

A: Any requirement to pay a fee for a permit to be allowed to install an antenna would be unreasonable because such permits are generally prohibited. It may also be unreasonable for a community association to require a viewer to incur additional costs associated with installation. Things to consider in determining the reasonableness of any costs imposed include: (1) the cost of the equipment and services, and (2) whether there are similar requirements for comparable objects, such as air conditioning units or trash receptacles. For example, restrictions cannot require that expensive landscaping screen relatively unobtrusive DBS antennas. A requirement to paint an antenna so that it blends into the background against which it is mounted would likely be acceptable, provided it will not interfere with reception or impose unreasonable costs.

Q: What restrictions prevent a viewer from receiving an acceptable quality signal? Can a homeowners association establish enforceable preferences for antenna locations?

A: For antennas designed to receive analog signals, such as TVBS, a requirement that an antenna be located where reception would be impossible or substantially degraded is prohibited by the rule. However, a regulation requiring that antennas be placed where they are not visible from the street would be permissible if this placement does not prevent reception of an acceptable quality signal or impose unreasonable expense or delay. For example, if installing an antenna in the rear of the house costs significantly more than installation on the side of the house, then such a requirement would be prohibited. If, however, installation in the rear of the house does not impose unreasonable expense or delay or preclude reception of an acceptable quality signal, then the restriction is permissible and the viewer must comply.

Digital Requires Unobstructed, Direct View. The acceptable quality signal standard is different for devices designed to receive digital signals, such as DBS antennas, digital broadband

radio service antennas, digital television ("DTV") antennas, and digital fixed wireless antennas. For a digital antenna to receive or transmit an acceptable quality signal, the antenna must be installed where it has an unobstructed, direct view of the satellite or other device from which signals are received or to which signals are to be transmitted. Unlike analog antennas, digital antennas, even in the presence of sufficient over-the-air signal strength, will at times provide no picture or sound unless they are placed and oriented properly.

Quick Reference Summary:

The OTARD Rule prohibits associations from enforcing antenna rules that:

- (1) prevent or unreasonably delay antenna installation, maintenance, or use;
- (2) unreasonably increase the cost of antenna installation, maintenance, or use; or
- (3) preclude reception of acceptable quality signals.

Examples of invalid provisions include:

- * Prohibitions on installing antennas,
- * Requirements that a fence be installed around an antenna,
- * Requirements for application fees,
- * Requirements that an antenna application go through an architectural review process,
- * Requirements that antennas be placed only in the backyard--where some backyards do not face the proper direction for quality reception.

What types of association restrictions and rules are still valid under the OTARD Rule?

Association restrictions that do not cause any one of the three impairments listed above are valid. Examples of valid requirements include:

- * Hiding antennas with existing landscaping,
- * Removing an antenna during routine maintenance.

However, exceptions for the three impairments above must be added to all association antenna restrictions and rules--otherwise, the association's antenna rules are invalid.

An association may also require a resident to sign an indemnification agreement, agreeing to reimburse the association for any personal injury or damage occurring to association residents or personnel, common property or other residents' property.

Virginia Graeme Baker Pool

and Spa Safety Act

- **Granddaughter of James Baker III drowned in June 2002 while entrapped in a hot tub.**
- **Abigail Taylor eviscerated in June 2007 in a wading pool at the Minneapolis Golf Club. She died a few months after the accident.**
- **9 entrapment deaths during 1999-2007**
- **63 injuries related to hair / body entrapment**
- **All suction outlets and covers sold must comply with ASME/ANSI A112.19.8 – 2007**
- **All public pools must be equipped with compliant frame and grates or covers**
- **Must be compliant by December 19, 2008**
- **All public pools with a single outlet, other than an unblockable drain, must employ one or more of the following additional options:**
 - **Install properly separated dual main drains**
 - **SVRS (suction limiting release system) compliant with ANSI/ASME A112.19.17 or ASTM F2387**
 - **Gravity drainage system**
 - **Automatic pump shut-off**
 - **Drain disablement (not allowed in Utah)**
 - **Equivalent system approved by CPSC**

- **Utah State Department of Health and the Salt Lake Valley Health Dept are revising their regulations to align with this important legislation (2 – 3 months out)**
- **Consumer Product Safety Commission is charged with enforcement of the VGB Act**
- **Remains to be seen how the current economic situation will affect compliance efforts. May be complaint- driven**
- **Insurance companies may drive efforts**

Questions?

Rolf Larsen

Swimming Pool Program Supervisor

Salt Lake Valley Health Department

(801)313-6696

RELarsen@slco.org

R392-302-34. Cryptosporidiosis

Watches and Warnings

- Post warning sign when watch or warning is issued
 - Diarrhea in past 2 wks? Don't use pool!
 - All users must shower with soap prior to using pool and after using the bathroom
 - All < 3 yrs must wear approved swim diapers
 - Keep pool water out of mouth
- Maintain chlorine level between 2 and 5 ppm
- Keep cyanuric acid levels below 30 ppm
- Maintain pH levels between 7.2 and 7.5

Employ one of the following countermeasures

- Hyperchlorinate to CT value of 15,300 twice weekly (20 ppm for 13 hours)
- UV treatment system (NSF-50 approved)
- Ozone disinfection (NSF 50 approved)
- Crypto-targeted filtration aid
- Other system approved by LHD