

## **Laws and Regulations Governing Group Homes**

When speaking about the regulation of “group homes” it must first be understood what a group home is. A group home, generally, is a detached, single-unit residential structure designed to serve a group of people in need of a supervised living facility. Supervised group homes of all types are regulated as Residential Care facilities in Denver.

### Federal Fair Housing Act (“FHA”) § 42 U.S.C. 3602

The FHA protects certain persons from discrimination in the sale or rental of housing. It does not regulate the zoning of certain types of homes and does not define “group home.” Key terms used in the FHA are “persons with a disability” and “mental or physical impairment.” The FHA defines persons with disability to mean those individuals with a mental or physical impairment that substantially limit one or more major life activities. Case law throughout the country has further included conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness into the definitions above. Failing to make reasonable accommodations for persons within these federally defined categories may violate the FHA. Government action, including municipal zoning, could be found to be violative of the FHA for failing to make reasonable accommodations.

The FHA (in concert with the ADA) requires not only local governments or housing providers to provide reasonable accommodations, but HOAs are also required to permit a reasonable accommodation or a reasonable modification. A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling. See, *Joint Statement of HUD and Dept. of Justice Reasonable Accommodations under the Fair Housing Act* (2004).

### State Law, C.R.S. § 31-23-303

There are three types of “group homes” as a matter of law, under Colorado law: state-licensed group homes for persons with intellectual and developmental disabilities; group homes for the aged (i.e. persons sixty years of age or older who do not need nursing facilities); and state-licensed group homes for persons with behavioral or mental health orders. State law further provides that “group homes” of up to eight persons are residential uses of property, distinguished from being considered commercial uses and being excluded from residential zone districts on that basis. However, local jurisdictions retain the right to reasonably regulate group homes.

*Spacing:* Group homes for the aged shall not be located within seven hundred fifty feet of another such home, unless otherwise provide by the municipality. A group home for persons with behavioral or mental health disorders must not be located within seven hundred fifty feet of another such group home, unless otherwise provided for by the municipality.

### Local Zoning Regulations

State law states that it may be reasonable to require proximity to convenience stores, commercial services, transportation and public recreation facilities. It is common for local governments to subject some types of group homes in some residential zone districts to a special/conditional use permit. However, even if such a permitting scheme is consistent with state law, denial of a

permit may be invalid if based on: adverse effects of the group home on the single family characteristics of the neighborhood; peace and quiet of the neighborhood; or an attitude of general hostility in the neighborhood toward the proposed facility.

Local governments can violate the FHA by enacting regulations, making decisions, and implementing policies that effectively discriminate against persons with disabilities.

*Spacing and Density in Denver:* The City currently imposes spacing and density limitations on Large Residential Care Uses requiring such uses to be spaced at least 2,000 feet from one another and no more than two other such uses within a 4,000 foot radius from such a proposed use. The Denver Zoning Code defines “Residential Care Use, Large” as a residential care use that is the primary residence of nine or more persons . . . includ[ing] shelter for the homeless of any size, or a community corrections facility of any size. Under current Denver zoning, shelters for the homeless may be permitted with limitations within many zone districts, whereas community corrections facilities are prohibited in many zone districts, but neither is classified as a group home for the disabled.

#### Homeowner Associations

An HOA wishing to curtail group homes can adopt restrictive covenants, but in many cases, federal law will prevent enforcement of those covenants. A covenant against the use of a property within an HOA as a home for disabled persons violates the FHA and is unenforceable. See, 42 U.S.C. 12102 “disability” defined as “physical or mental impairment that substantially limits one or more major life activities . . .” See also, *Rhoades vs. Palmetto Pathway Homes, Inc.*, 400 S.E.2d 484 (S.C. 1990) (the court held enforcement of a residential-use-only covenant prohibiting the operation of a group home would violate the FHA by discriminating against disabled residents), and *Deep East Texas Mental Health and Mental Retardation Services vs. Kinnear*, 877 S.W.2d 550 (Tex. App. 1994) (preventing operation of a group home for disabled adults within an HOA community with group living restrictions violated the FHA).

#### Not Protected Under the FHA

Individuals who claim to be disabled solely based on having been adjudicated a juvenile defendant, having a criminal record, or being a sex offender are not protected by the FHA. Additionally, the FHA does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others. Therefore, persons assigned to reside in community corrections are not protected by the FHA, simply by virtue of living in a community corrections facility.