FAIR HOUSING COACH®

TRAINS YOUR STAFF TO AVOID COSTLY DISCRIMINATION COMPLAINTS

SPECIAL ISSUE

How Communities Successfully Defend Fair Housing Claims in Court

➤ Let's Begin!

In this special issue of the COACH, we look at several court decisions released this year involving fair housing claims. Often, the media reports reflect only bad news: Communities forced to shell out hefty cash payments in damages, penalties, or settlements to resolve allegations of fair housing violations. But those reports tell only half the story. Though it rarely makes the news, communities can—and often do—win court battles to defend themselves against fair housing claims.

We'll review some recent court rulings involving the most common types of fair housing claims—disability, race, and familial status. We'll summarize the facts, and explain the court's reasons for finding in the community's favor. For each case, we'll also offer some lessons learned—practical tips that you can use to avoid or defend against accusations of fair housing violations. Finally, you can take the COACH's Quiz to see how much you've learned.

DISABILITY—REASONABLE ACCOMMODATION

Is Community Liable for Disability Discrimination When Fed-Up Neighbors Clean Resident's Messy Patio?

Resident Blames Community for Failing to Accommodate Her Disability by Letting Her Do It Herself

A resident couldn't sue her homeowner's association or its president for disability discrimination when neighbors took it upon themselves to clear away years of accumulated clutter in her glass-enclosed patio.

FACTS: The resident owned a home in a waterfront community, which was subject to the management oversight of a homeowners association.

For many years, her glass-enclosed patio, which was located on the community's main thoroughfare, was in a state of disarray—neighbors called it a "pig sty." At various times, neighbors complained to the president of the homeowners association about the patio's disorderly state. In response, the president said she repeatedly asked the resident to clean it up, and that the resident repeatedly promised she would. In 2005, the resident allowed the association staff move some items off the patio and in 2008, she let them put up trellises and curtains to block their view of the patio from the road. The neighbors offered to help her clean up the patio, but she said she'd prefer to do it herself.

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In May and June 2008, the president and the resident had several communications about the patio, though the specifics were in dispute. The president said she told the resident that neighbors were complaining that the messy patio was affecting the sales of their homes. Though the resident wanted more time, the president said it had to be addressed immediately. The president said she offered to put up sheer curtains to hide the view, so she believed that she could address the mess. In contrast, the resident said that she warned the president that she had to recover at her own pace and that if her neighbors—instead of herself—were to clean up the patio, it would set her back in her recovery. The president denied that the resident specifically told her that she had depression or that it was important for her to take care of the situation herself at her own pace.

Around this time, the resident was away on a trip when her neighbor noticed her garage door was open. He contacted the resident, who gave him permission to get her garage door remote to close the door. The neighbor, along with the president and another resident, entered her home and closed the door. While they were inside, they cleaned up the patio and consolidated several items in the corner of her garage.

When the resident came home and found that the messy patio had been cleared, she complained to the president and the homeowners association about their trespass. She also called the police, accusing the neighbors of trespass and burglary.

The resident filed fair housing complaints of disability discrimination with HUD and state officials. After an investigation, the state human rights agency found no evidence of her disability or that the accumulation of, or clearing away, of clutter was related to a disability. HUD affirmed the decision.

The resident sued, accusing the homeowners association and its president of violating the Fair Housing Act (FHA) by failing to accommodate her disability. Under the FHA, an entity engages in discrimination if it refuses to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling.

According to the complaint, the resident was diagnosed with clinical depression, which "prevents her from maintaining her residence in a tidy manner." The resident alleged that the defendants discriminated against her by refusing to accommodate her depression by letting her manage her messy patio in her own manner.

Ruling against the resident, the court granted judgment without a trial to the homeowners association and the president. The court found the defendants were not liable for failure to accommodate the resident because she never asked for an accommodation. Without her requesting any accommodation, the court said there was no reason for the defendants or anyone else to believe that their conduct might constitute some sort of discriminatory act, or harm of any conceivable kind.

After entering judgment against the resident, the homeowners association and its president asked the court to order the resident to pay their attorney's fees and costs. Although the FHA grants courts discre-

tion to award reasonable attorney's fees and costs to the prevailing party under certain circumstances, the court refused.

Both parties appealed.

DECISION: The resident's appeal was dismissed, and the ruling on attorney's fees was reversed.

REASONING: The resident's fair housing claims were groundless, so the homeowners association and its president were entitled to reasonable attorney's fees and costs.

Even if the president knew about her disability, the resident's claim for failure to accommodate failed because she never told the homeowners association that she needed an accommodation. The resident said she told the president that it would set back her recovery if anyone came in and cleaned out her patio, but that statement wasn't a request for a reasonable accommodation. Since there was no community rule requiring residents to maintain patios in an orderly fashion, there was simply no way to make an exception to a policy that didn't exist. In fact, she insisted that the homeowners association had no authority to tell her what she could keep on her patio, so she didn't need to request any special accommodation [Taylor v. Harbour Pointe Homeowners Association, August 2012].

LESSON LEARNED: This case illustrates how disputes with residents over accumulated clutter can lead to a fair housing complaint. Problems can linger for months or years, but fair housing experts say it's best to do as the president of the homeowners association did in this case—to patiently try to work with the resident to resolve the problem. Although you may be tempted to take matters into your own hands, that approach can backfire if a resident raises disability-related reasons for the accumulation or inability to dispose of clutter.

DISABILITY—REASONABLE MODIFICATIONS

Residents Argue Removal of Ramps Unlawfully Makes Their Units Less Accessible

Ramps from Backyard Patio to Unimproved Grassy Area Removed as Part of Renovation Project

A community didn't have to immediately reinstall wheelchair ramps removed as part of a renovation project, according to a recent ruling to deny a court order for reinstallation of the ramps, pending resolution of a disability discrimination case filed by two residents.

FACTS: Two residents of a large residential community lived in first-floor units. Both allegedly had mobility impairments; one used a wheelchair.

Both units were wheelchair accessible through the front door. In addition, there were raised patio areas at the back of the units, which were accessed by a sliding glass door, and there were ramps leading from the patios to a large, unimproved grassy area.

Aside from being mowed, according to the community, the grassy area wasn't maintained or intended to be used as a common area. The community said it maintained a separate recreation area including picnic tables, playground, and other amenities for the use and enjoyment of all residents.

In late 2011, the community informed residents of a plan for a significant renovation project to be completed in 2012. As part of the plan, the rear patios of all first-floor units were to be enclosed with no stairs or ramps to the grassy area from the patios. According to the community, the renovation plan had been approved by the town fire department and state housing officials.

After their ramps were removed, the two residents sued the community for violating fair housing law by making their units less accessible than they were before the renovations. The FHA requires communities to grant reasonable modifications and reasonable accommodations when necessary to provide a resident with a disability an equal opportunity to use and enjoy his housing.

The residents asked the court for a preliminary injunction to require the community to reinstall the ramps, pending final resolution of their lawsuit.

DECISION: Request denied.

REASONING: The residents were not entitled to a court order requiring the community to reinstall the ramps, pending a final decision on their fair housing claims.

The court rejected the residents' claim that removal of the ramps violated the FHA, ruling that the presence of the ramps from their rear patios to the grassy area wasn't a reasonable modification that was necessary to provide them with equal opportunities to use and enjoy their housing. Under the renovation plan, none of the units were to have direct access to the

grassy area, so the residents couldn't show that their access to the grassy area wasn't equal to the access afforded to residents without disabilities. Although they may prefer direct access to the grassy area, they failed to show that it was fundamental to their ability to use their units.

The residents failed to show that they would suffer irreparable harm if the ramps to their patios weren't immediately reinstalled. The resident who used a wheelchair still had access to his handicapped parking space. Although he preferred to use his back door to get to the parking area, that didn't mean that removal of the ramp would cause him irreparable harm. The other resident said that removal of the ramp required him to walk a longer distance to walk his children to and from the bus stop, but the community wasn't required to provide him with the shortest possible path to the bus stop. He could continue to access the grassy yard if he wished to do so, but like every other resident, he had to use his front door to gain access to that area.

Finally, the community alleged that the sliding glass patio doors couldn't be locked from the outside, which meant that there would be no way for the resident to lock his unit if he left through the patio. If the residents left their units unsecured, intruders would be able to access their units—and other areas of the otherwise-secured apartment building—subjecting other residents to potential personal danger or property theft. Since the community owner had a legitimate interest in maintaining the security of its buildings, it need not provide an accommodation that subjected the apartment community to a potential threat [Little v. Landsman Development Corp., September 2012].

LESSON LEARNED: Fair housing law requires that communities allow reasonable modifications when necessary to afford individuals with disabilities an equal use and enjoyment of their units and common areas. In general, that means that individuals with disabilities must receive the same housing opportunities as everyone else, not more or better opportunities. When planning renovations, consider how they may affect accessibility by individuals with disabilities and get all necessary approvals from the relevant state and local officials before starting any work.

RACE

Resident Accuses Manager of Racist Comments, Retaliation After Heated Argument

Demands Early End to Lease After Repeatedly Complaining About Smoke in His Unit

A resident failed to prove the community subjected him to discriminatory treatment on the basis of race after his complaints about smoke in his unit led to a confrontation with a management employee.

FACTS: A married couple of Chinese descent lived in an upstairs unit. After their initial six-month lease expired in June 2007, the community renewed their lease for another year.

In late January 2008, the couple complained about a smoke odor in their unit. Within minutes, a maintenance worker arrived to inspect. An assistant manager and another employee visited the next day. None detected any unusual smell. At the landlord's request, a city inspector also stopped by the unit, but he didn't smell smoke.

A week later, the wife called again to complain about a smoke odor, but the employees who arrived soon after didn't smell anything unusual. That night, the wife reported a smoke smell to the landlord's emergency after-hours line, but she didn't get a follow-up response from the landlord.

Two days later, the couple confronted the assistant manager in her office, which was located in the community's clubhouse. The husband asked to be released from the rental contract without penalty and produced a release that he had drafted. After the manager refused to sign it, the conversation became heated.

According to the manager, the husband screamed, slammed his hand on her desk, and hit items on her desk. When the husband refused to leave her office, according to the manager, she twice picked up the phone to call the police, but both times the wife pressed the button to stop the call. She said that she then paged the maintenance worker, who called the police after talking with the husband, who called 911 himself. The police arrived and escorted the couple back to their unit.

After this incident, management informed the couple that their lease wouldn't be renewed and that they were banned from entering the clubhouse. They were told that they could still contact property managers, but that they would have to do so by phone or email.

Nevertheless, the wife went alone to the management office and again asked if they could leave early without penalty because the smoke was aggravating her asthma. She was told her request would be granted if she produced documentation. She complied, and the landlord signed a release with instructions for the couple to vacate the unit by the end of February.

The wife called a few days before the end of the month to request minor repairs to a screen door and blinds in the unit. The landlord responded that these repairs wouldn't be made until after the unit was vacated.

The husband then moved out and sued the community for violating the FHA by discriminating and retaliating against him because of his race.

During a trial, the husband produced witnesses who testified that a likely source of a smoke smell was from cigarette smoke drifting upward from the unit below. However, the court credited the testimony of the city inspector and the landlord's employees, and found that none of them had detected the smoke odor because the downstairs neighbors weren't smoking when they visited.

The couple testified that during their argument at the clubhouse, the assistant manager said something like "Why do you Chinese people have so many problems?" But the manager denied saying anything of the sort, and the court believed her version of events.

The court granted judgment to the community, and the husband appealed.

DECISION: The trial court's judgment was upheld.

REASONING: The husband failed to prove that the community discriminated or retaliated against him because of his race. Although he claimed that the manager made a disparaging comment about Chinese tenants, the trial court didn't believe him, which eliminated the only direct evidence of discrimination that he offered in support of his race discrimination claim.

The trial court also found that the landlord had a legitimate explanation for every action that the husband labeled discriminatory. The landlord didn't "repair" the smell in his unit because its employees repeatedly investigated and never noticed anything unusual. And the landlord didn't fix his screen door and blinds because it generally put off minor repairs that were requested on the eve of a resident's departure.

The resident was banned from the clubhouse only after he had initiated a confrontation that resulted in the police being called, which the trial court found to be "sufficiently disruptive" to justify the landlord's response. The same was true for the landlord's decision not to renew their lease—which is what the resident wanted anyhow. And the landlord requested medical documentation before terminating the lease without penalty because its policy was to have a paper trail of such decisions [Gao v. Brickyard Apartments by Snyder, L.L.C., November 2012].

LESSONS LEARNED: Follow standard procedures and fully document your actions when dealing with difficult or disruptive residents. In this case, the community was able to demonstrate that it fully investigated the residents' complaints about smoke odors in the unit. After the resident's frustration escalated into a heated confrontation, the community was able to discredit the resident's accusations of race discrimination with proof that it had legitimate, nondiscriminatory reasons to justify its actions.

FAMILIAL STATUS

Owner Fends Off Allegations of Discrimination Against Families with Children

Owner Accused of Adopting Rules Unfairly Targeting Children's Outdoor Activities

The owner of a nine-unit townhome community successfully defended herself in a lawsuit filed by two residents, accusing her of discriminating against them because they had young children living with them.

FACTS: In 2010, a female prospect contacted the owner to inquire about a unit for herself and her two young children. During her visit, the owner told her about a nearby park for her children and encouraged her to rent the unit. The prospect agreed to rent the unit and moved in. When her initial lease expired, it was renewed for another term.

A few months later, the owner rented a unit to another female prospect with two young children. The owner also encouraged her to rent the unit, advising

her about the park as well as a bus stop and other children in the neighborhood.

At some point, conflicts developed between the owner and both families. The owner received several complaints from other residents about the noisy children playing outside. In response, the owner wrote to the families, informing them that children shouldn't use the front yard of the complex as a play area.

According to the owner, she observed misconduct by the children when they were playing outside. Among other things, she said she saw them playing "ding, dong, ditch"—that is, ringing doorbells of other units and running away—and they were yelling and running around outside at late hours. She also said they blocked neighbors' doors with their bikes and toys, and damaged landscaping by throwing their bikes onto bushes. Allegedly, the children also made chalk drawings of her on the sidewalk with insulting captions. The parents denied that it was their children who were involved in the misconduct.

Other problems arose on two occasions when one of the residents denied the owner access for maintenance or repair. The resident admitted that she denied entry, but said it was because the owner didn't give her sufficient advance notice. And on one occasion, the owner said the other resident called her insulting names and told her that other tenants should stay indoors if they didn't like the noise. The resident admitted that they were in a heated argument, but she denied calling the owner names.

Eventually, the owner refused to renew the leases of both families. They complained to fair housing advocates, who deployed testers to attempt to rent units at the complex. Allegedly, the owner failed to return calls from testers who said they had children.

The families sued, alleging that the owner discriminated against them because they had children. The families also accused her of harassment and threatening to evict them because of their children's outdoor play activities. The complaint also included similar state law claims.

The owner asked the court for judgment in her favor without a trial.

DECISION: Granted; the state law claims were dismissed.

REASONING: The families failed to prove that the owner discriminated or retaliated against them because they had children.

The results of fair housing testing weren't enough to show that the owner intended to discriminate against families with children. Although there was evidence that the owner failed to call back certain testers who represented that they had children, the undisputed evidence showed that the owner rented to families with children—including the two residents, who both admitted that the owner encouraged them to rent the units. Moreover, the owner produced undisputed evidence that of the 28 tenants who leased units between 2006 and 2012, 16 had children living with them during part or all of the tenancy. Several others had grandchildren or other children who regularly visited them.

The letters denying the children access to the front yard to play didn't show that the owner had discriminatory intent against children. The residents argued that the letters specifically targeting children reflected animosity toward children, but the letters were sent in direct response to complaints from other residents about the children's noisy behavior. The owner didn't prohibit children from playing outside, but merely made certain parts of the front yard off limits for the benefit of all residents, and it was undisputed that there was a large nearby park where the children could play.

Moreover, the owner said that the children's use of the yard was damaging the landscaping. "The FHA does not provide Plaintiffs and their children with the right to use their rental property in a manner that causes property damage or is disruptive and interferes with the use and enjoyment of the property by other residents," said the court.

The conflicts between the owner and both residents were more a matter of personal animosity, rather than a discriminatory intent against them because they had children. Evidence showing that the owner rented to many other families with children—and the absence of any evidence of other families with children targeted by the owner—further showed that the issues were related to personal conflicts, not FHA concerns.

The owner didn't violate fair housing law by refusing to renew the residents' leases. There was no evidence that she evicted them before the expiration of their leases, and the FHA doesn't provide that the residents were entitled under law to have their leases renewed. It was up to the owner to decide whether to engage in any new lease contract with the residents, and based on conflicts with the residents and complaints from other tenants, she had ample nondiscriminatory justification in declining to renew their leases. They

were not forever entitled to live there merely because they had children.

Finally, the owner wasn't liable for retaliation under fair housing law. Neither the letters nor the personal disagreements were sufficient evidence to show that the owner unlawfully harassed or retaliated against the residents because they had children [Tyrell v. Manly, August 2012].

LESSON LEARNED: Good record keeping will help you successfully defend against allegations of housing discrimination. Evidence produced by the families—such as rules targeting children's outdoor activity and fair housing testing results showing a failure to return calls from testers with children—could indicate a discriminatory intent against families with children. However, the owner produced key counterevidence—such as the numerous complaints from other residents about the children's behavior and documentation of the number of families who lived in the community over the years—to overcome any suggestion of discriminatory intent against families with children.

- Fair Housing Act: 42 USC §3601 *et seq.*

COACH'S QUIZ

We've reviewed some recent court cases to show how communities successfully defended themselves from fair housing claims. Now you can take the **COACH's Quiz** to see what you've learned.

INSTRUCTIONS: Each of the following questions has only one correct answer. On a separate piece of paper, write down the number of each question, followed by the answer you think is correct—for example, 1)b, 2)a, and so on. The correct answers (with explanations) follow the quiz. Good luck!

QUESTION #1

How do you know when a resident is making a request for a reasonable accommodation?

a. When the resident complains that your rules are unfair.

b. When the resident insists that the rules don't apply to her.

c. When the resident asks for an exception to your rules because of a disability.

QUESTION #2

When are you required to grant requests for reasonable modifications to the interior or exteriors of a unit?

a. When the request is made by or on behalf of an individual with a disability.

b. When there's an identifiable connection between the requested modification and the individual's disability.

c. When the requested modification is reasonable.

d. When the resident takes responsibility to pay for the modification.

e. All of the above.

QUESTION #3

A resident has called repeatedly to complain about secondhand smoke in his unit. Your maintenance staff has investigated but found no unusual smells. Now he says that the smoke is exacerbating a breathing problem and wants an early termination of his lease. What should you do?

a. Ignore his request.

b. Go check out his unit yourself, and deny his request if you don't smell anything.

c. Consider his request under your standard policies governing requests for reasonable accommodations.

QUESTION #4

You've received numerous complaints about a resident's children. Among other things, they've been running around late at night, disturbing the neighbors and damaging your landscaping. You've noticed the problems yourself so you try to talk to the parents, but they deny that their children are causing any problems. When their lease expires, you must renew their lease or face liability for discrimination based on familial status. True or false?

a. True.

b. False.

COACH'S ANSWERS & EXPLANATIONS

QUESTION #1

Correct answer: c

Fair housing law requires communities to make reasonable accommodations to rules, policies, practices, or services to enable an individual with a disability to fully enjoy use of the property. Requests may be made by or on behalf of an individual with a disability at any time before or during a tenancy. According to HUD, it's a reasonable accommodation request any time a person makes it clear that he is requesting an exception, adjustment, or change to a rule, policy, practice, or service because of a disability.

Wrong answers explained:

A resident isn't entitled to receive a reasonable accommodation unless he requests one. Even if you suspect that an individual has a disability, general complaints about your community's rules don't qualify as a request for a reasonable accommodation. Although no special words are required, HUD says that the individual must make the request in a manner that a reasonable person would understand as a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

QUESTION #2

Correct answer: e

Under the FHA, it's unlawful for communities to refuse to permit, at the expense of a person with a disability, reasonable modifications to his unit or common areas if the modifications are necessary to afford him full enjoyment of the premises. The individual with a disability must ask the community for approval before making a reasonable modification, but the community may not deny the request if there's an identifiable link between the requested modification and the individual's disability—and the requested modification is reasonable.

QUESTION #3

Correct answer: c

Even though you've previously investigated his complaints, you should treat his request for early termination of his lease under your standard policies governing requests for a reasonable accommodation. Among other things, you may request medical documentation that he qualifies as an individual with a disability. Each request must be considered on a case-by-case basis, so you should get legal help if needed to head off potential fair housing problems.

Wrong answers explained:

Even if you don't believe his complaints about secondhand smoke are legitimate, you run into fair housing trouble if you ignore him or turn down his request without investigating further. If you question his credibility about the smell, you could ask him about witnesses or call in an objective third-party to validate his claims. By taking these steps, you may not satisfy the resident, but you'll have persuasive evidence that you did everything possible to resolve the situation in case the matter winds up in court.

QUESTION #4

Correct answer: b

With proper documentation, you could successfully defend yourself against allegations of discrimination based on familial status. Documentation of the neighbors' complaints, your own observations, and the steps you took to resolve the problems during the lease term would provide persuasive evidence that you had legitimate, nondiscriminatory reasons for your decision not to renew the family's lease.