



NEWS OF VALUE

THE FAIR HOUSING ACT AND INSURANCE CONSIDERATIONS

The Fair Housing Act (Title VIII of the Civil Rights Act of 1968) makes it unlawful to discriminate in connection to any housing related transaction based on race, color, religion, national origin, gender, disability, or familial status. In real terms for community associations, violations in the Fair Housing Act occur when associations—

- Wrongly deny a reasonable modification or accommodation request
- Treat applicants differently
- Linguistically profile on the telephone
- Have community association rules that unreasonably target children
- Automatically evict the mentally disabled
- Fail to allow modifications for the disabled.

This area is a minefield for community associations that are not familiar with the applicability of the law. If a community association is charged with violations of The Fair Housing Act, the defense costs are high, and having to pay to either settle the case or satisfy a judgment can be staggering—easily \$100,000 or more.

The rights protected by this law are important and should not be minimized. Associations that trivialize the importance of this law and its consequences are doing a disservice to those the law protects as well as to the association and its members. Associations need to treat any request or claim seriously and respectfully and work closely with their attorney in responding to and resolving any circumstances involving a Fair Housing request or claim.

What are some recent issues?

Emotional Support Animals—More and more people are invoking the Fair Housing Act, which prohibits discrimination based on disability, to allow therapy and emotional support animals in community associations. Like service animals, these animals are not subject to the same rules as traditional pets, so even if an association prohibits pets, these emotional support animals are still commonly allowed by the law. This law supersedes all association rules and regulations. In May, the Community Associations Institute asked the Department of Housing and Urban Development to clarify emotional support animals, saying community association boards report current Federal policy may enable individuals to falsely assert a disability as a ruse to evade community covenants.

Medical Marijuana—Although this has not yet been tested by the courts, some legal experts say that if a resident has medical permission to use marijuana, community associations must treat that like any other request for an accommodation under the Fair Housing Act.

Source of Income—A lawsuit was recently filed against two D.C. real estate companies for violating consumer protection law through illegal housing discrimination. The complaint alleged that the companies, which own and manage residential properties in the District, refused to show or rent available properties to prospective residents who receive housing assistance through the federally funded Housing Choice Voucher program, commonly called “Section 8” vouchers.

Website Violations—A recent wave of ADA lawsuits contend that websites can’t be used by people who have problems seeing or hearing. No formal government standards exist for private businesses to follow to ensure their websites comply with the ADA, although a consortium of web innovators has created guidelines, known as the Web Content Accessibility Guidelines,



to make websites more accessible to disabled people. Community associations should take proactive steps toward making their websites accessible.

What about insurance?

Directors and Officers (D&O) Insurance is available to protect community associations against allegations of violations of The Fair Housing Act. D&O insurance can provide coverage for damages (awards and settlements) and the defense costs resulting from allegations of wrongful acts.

Unlike property and liability claims that seek to recover monetary damages and reimbursements, most D&O claims seek non-monetary damages. In most cases, they seek a court's intervention to order a board to either stop a current practice or to start doing something new.

The risk community associations face in most D&O claims is not a large monetary judgment; rather, it is the cost an association would incur to defend a claim: attorneys' fees and costs of litigation. It does not matter if the claim has any merit—an association must file an answer and otherwise respond to all of the proceedings at its own expense. If it fails to do so, the claim could be decided against the association.

D&O policies are not all alike. Variations include such items as—

- The basic definition of who is an insured
- What constitutes a claim
- Whether coverage applies to acts that occurred before the policy went into effect
- Whether associations can choose their own attorney
- Who controls a possible settlement: the association or the carrier
- Whether coverage exists for intentional acts of discrimination
- Whether coverage is afforded for defense costs related to non-monetary claims.

Because no “standard” D&O policy exists, it is important for a community association to work closely with an insurance professional in designing such a policy. “Full coverage” for every claim simply does not exist. The goal is to negotiate a D&O policy that covers the most common D&O claims, including discrimination. Check the policy to make sure both indemnification and defense costs are included. Any D&O policy that does not include coverage to defend the most common claims is not adequate.

Community association managers, directors, and officers should take the time to review all association insurance coverage with their association's insurance representative. The time to find out whether the association carries D&O insurance and if the scope of the coverage is sufficient is before a claim is filed.

Where should I go for more information?

Community associations owe it to their members to obtain appropriate insurance for their specific situations. Discuss any questions you might have with your insurance representative or contact one of the following:

- Theresa Melson (703-205-8753 or Theresa.Melson@usi.com),
- Jessica Knutsen (703-205-8722 or Jessica.Knutsen@usi.com), or
- Andrew Schlaffer (703-205-8764 or Andrew.Schlaffer@usi.com).