



THE SOBERING TRUTH ABOUT SOBER LIVING HOMES

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CML Summer Conference 2017

GREENWOOD VILLAGE, COLORADO



Imagine if you will an affluent community just south of Denver where well-off, well-healed, and well-to-do families live in semi-secluded neighborhoods in houses like this.



Now imagine a house in such a neighborhood becoming a rental.

A rental with at least 9 men living there.

And neither you nor your neighbors know who they are.

When you ask, they direct you to a website.

A website for a Sober Living Home.

SOBER LIVING FOR MEN
Sober living house in Denver, Colorado

At 5280 Transitions Sober Living for Men, you will enjoy living in a beautiful, centrally-located neighborhood just minutes outside of Denver, Colorado.

Accommodations are \$1,875 per month, with a minimum 6-month leasing agreement. A fully refundable security deposit of \$1,875 is due prior to move-in.



For more information, contact us!

Neighbors contacted us instead

- ▶ Municipal code:
 - ▶ Group home ordinance allows for group homes in residential areas for the aged, developmentally disabled, foster care, shelters, nursing homes, and residential care facilities, but specifically EXCLUDES



Addiction Treatment vs. Addiction Recovery

- ▶ Website for the home :

"structured, safe and sober living for individuals who have completed treatment but need time to transition successfully into the real world. Our community-based environment is 100 percent focused on recovery—providing a mutually supportive atmosphere geared to helping you rebuild the skills you need to maintain sobriety."

Studies have shown that returning immediately to the same atmosphere where the drug or alcohol abuse occurred is more likely to lead to a relapse than spending time in a sober living house first where steps to lasting recovery can be practiced for anywhere from 6 months minimum to 2 years or more.

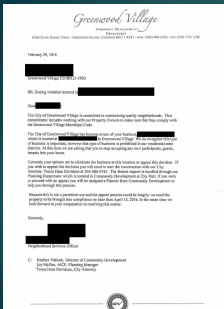
Sober Living Homes are Group Homes not Treatment Facilities

But this "sober living house" group home didn't fit our group CARE home ordinance.

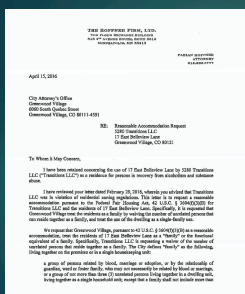
Nor were they a single family since our definition limited unrelated persons in a single family dwelling to 3.

It looked more like a business, charging \$1,875/month to live in a nice neighborhood while transitioning from residential addiction treatment to former living arrangements.

The neighbors wanted us to enforce our code.



"We do recognize this type of business is important, however this type of business is prohibited in our residential zone districts. At this time we are asking that you to stop accepting any new participants, guests, or tenants into your home."



"We request that Greenwood Village, pursuant to 42 U.S.C. §3604(f)(3)(B) as a reasonable accommodation, treat the residents ... as a "family", or the functional equivalent of a family.

"The potential recovery of people who are handicapped or disabled by reason of alcoholism or drug abuse is greatly enhanced by the mutual support and mutual monitoring provided by living with other recovering persons ... The City's restrictions on groups of disabled persons that do not meet its definition of family effectively prohibit this type of living arrangement."

Neighborhood Meeting



(Dramatization)

City Council's Role



(Again, dramatization.)

Fair Housing and People With Disabilities: Historical and Legal Background

Brian J. Connolly
Otten Johnson Robinson Neff + Ragonetti, P.C.

CML Annual Conference
Breckenridge, Colorado
June 22, 2017

OTTEN JOHNSON
ROBINSON NEFF + RAGONETTI.


Outline

- Background and historical context for group homes
- Overview of the Fair Housing Act
- Questions

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History of Group Homes

- State-run institutional treatment of people with disabilities (late 1800s-1990s)
 - Isolation approach
 - Well-documented history of inhumane treatment
- Group home movement (1970s-today)
 - Medical consensus that integration of people with disabilities into community is best treatment practice
 - Communal living arrangements encourage socialization, serve treatment needs
 - Lower cost to government
- Supportive housing (1990s-today)



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Types of Group Homes

- Cognitive disabilities and mental illness
 - Trained staff on-site; layout/arrangement similar to a single-family home; varies in size; educational/career programming; transportation services
- Physical disabilities
 - Trained staff on-site; layout more conducive to wheelchair access; educational/career programming; transportation services
- Drug and alcohol addiction recovery (sober homes)
 - House manager/leader; layout similar to single-family home; 8 to 15 residents; therapeutic/career programming; commonly individual transportation
 - **FULL detoxification required PRIOR to residency**
- Elderly living facilities/assisted living
 - Medical staff; layout varies; varies in size; social programming; transportation services
- Other types of congregate living facilities (**NOT protected by FHA**)
 - Past incarceration; homeless shelters

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Benefits of Group Homes

- For residents:
 - Access to housing, services
 - Improved socialization
 - Ability to gain employment, education
 - Reduced hospitalization
 - "Clean" environment
- For us:
 - Reduced costs on medical system
 - Significantly reduced criminality
 - Community safety benefits
 - Reduced homelessness
 - Reductions in illness



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Demand for Group Homes

- 2010: 36.4 million Americans with a disability
 - 13.8 million with cognitive disability; 19.5 million with ambulatory disability
- 37% of people over 65 had a disability
- 73% of people with disabilities were not in the labor force; median income \$19,500
- 80% of people with disabilities live with family
- 1/3 of U.S. homeless population has a disability of some kind
- 2010: 22.1 million people classified as having substance abuse issues

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Fair Housing Act: Outline

Fair Housing Act outline:

- Who is protected?
- What types of housing are protected?
- Who must comply?
- Substantive prohibitions

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Who is protected?

Protected classes under the Fair Housing Act include:

- Race
- Color
- Religion
- Sex
- Familial status
- National origin
- **Handicap**

-42 U.S.C. § 3604(a)-(f)

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Who is protected?

Handicap—protects persons with disabilities or those associated with the disabled person

- “(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 an impairment, but such term does not include current, illegal use of or addiction to a controlled substance”
- Disabilities under the FHA include past drug or alcohol addictions

-42 U.S.C. § 3602(h)

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What housing is covered?



Source: <http://www.fairhousing.com/content/view/full/1001>
http://133.39.172.288/asp/DocWebSite/

- FHA protections apply to dwellings:

“*Dwelling*’ means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.”

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Who Must Comply?

- Private landowners (with some exceptions)
- Real estate agents
- Mortgage lenders
- Homeowners associations
- Local governments

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Prohibitions

*"To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise **make unavailable or deny**, a dwelling ..."*
-42 U.S.C. § 3604(a)

- Zoning or building regulations

*"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** ..."*
-42 U.S.C. § 3604(b)

- Local government services, such as utilities

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Prohibitions

*"a refusal to make **reasonable accommodations in rules, policies, practices, or services**, when such accommodations may be necessary to afford [a disabled] person **equal opportunity to use and enjoy** a dwelling"*
-42 U.S.C. § 3604(f)(3)(b)

- Applies to both private and public rules, policies, practices or services
 - Private rules: homeowners' association rules, condo association rules, apartment policies
 - Public rules: zoning, building and other laws


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Fair Housing Act: Enforcement

Three options under FHA:

- Administrative enforcement (HUD)
 - File a written complaint with HUD, or refer to a HUD-certified fair housing agency
 - HUD may refer the complaint to the Department of Justice
 - Encourages conciliation agreements
- Direct lawsuit
- Department of Justice proceeding

OR enforce via compliance with Housing and Community Development Act



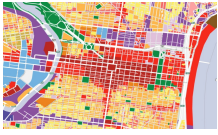
Source: <http://www.ira.usmh.edu/gallery/for702/2008room>

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Zoning and Fair Housing

Ways that regulations can violate the FHA:

- Disparate *treatment*
- Disparate *impact*
- Failure to reasonably accommodate (*disability cases only*)



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Disparate Treatment

- Facial discrimination
 - Example: "Group homes for the mentally disabled shall not be located within 1,500 feet of a school zone"
 - May be permissible if the facially disparate treatment *benefits* the protected class
- Discriminatory intent
 - Focus mostly on perceived discriminatory animus in passing the regulation

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Disparate Impact

- Looks at whether a particular action has greater *effect* on a particular protected
- Three-pronged test:
 - (1) showing of impact; (2) government's interest in the decision; (3) is the government being compelled to provide housing, or just restrained from interfering with property owners' interests?
- Reaffirmed by the U.S. Supreme Court in 2015 in *Texas Department of Housing and Community Development v. Inclusive Communities Project, Inc.*

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Reasonable Accommodation

- Applies in the disability context only
- Three components
 - *Reasonableness* of the accommodation
 - *Necessity* of the accommodation
 - *Equal enjoyment* by the disabled resident
- Requests for accommodation
- Lone exception: if the accommodation would cause a public safety problem (very limited)

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What Can't Be Done

- Outright prohibition
- Discriminatory treatment and "special" rules for group homes
- Regulation that is neutral but disproportionately impacts group homes
- Failure to grant "reasonable accommodation"

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What Can Be Done

- Enforcement of neutral, generally-applicable laws
 - Noise ordinances, parking requirements, building occupancy limits, property maintenance, building design
- Enforcement of criminal laws
- State health licensing requirements
- “Good neighbor” agreements (but local governments should stay out)

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Resources:

- HUD/DOJ Joint Statement:
<https://www.justice.gov/crt/joint-statement-department-justice-and-department-housing-and-urban-development-1>
- Group Homes: Strategies for Effective and Defensible Planning and Regulation:
<https://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productid=215023>

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Application

- ▶ Requires the allowance of a site visit.
- ▶ Requires exploration of alternatives.
- ▶ Requires affirmation that the applicant or person needing the accommodation is in fact protected under the FHAA.

Purpose of Site Visit



- ▶ "There are **16 bedrooms** in the property, and residents rented rooms and were **sharing a kitchen and bathroom** in the units. A manager was living on site with a child."
- ▶ "Residents identified the place as a sober house and told Hathaway that **single residents** were paying \$500 a month for rent while **couples** were paying \$800 to rent a room."

ORDINANCE – Criteria for Approval

- ▶ (1) Whether the dwelling unit will at all times be used by an individual or group of individuals with a qualifying disability or handicap - This petition more to a sober living home and addresses concerns that it is really just a rental house with too many renters.
- ▶ (2) Whether the requested accommodation is necessary to afford persons with disabilities equal opportunities to use and enjoy housing;
- ▶ (3) Whether the requested accommodation is reasonable under the factual circumstances;
- ▶ (4) Whether the requested accommodation will impose an undue financial or administrative burden on the City or will require a fundamental alteration of the subject rules, regulations, ordinances, policies, and practices;
- ▶ (5) Whether adequate measures are in place to mitigate potential negative impacts to surrounding properties;
- ▶ (6) Whether there are alternative reasonable accommodations available that would provide an equivalent level of benefit to the Applicant.

ADMINISTRATIVE DECISION



The City Council chose wisely to leave the decision on whether to grant a reasonable accommodation request under the FHAA to staff.

Having a public hearing gives a false hope to the neighbors that we can address their concerns about:

- Criminals – background checks
- Addicts in general
- Safety of children
- Geographic restrictions
- Property values

'We Want To Have Some Oversight': State Legislators Take Up Proposed Bills Regulating Sober Houses
By MICHAEL ORBAN 7/1/17

Sober-living Home Operators in California Charged in \$176M Fraud Scheme
By MICHAEL ORBAN 7/1/17

Behind the Explosive Growth of West L.A.'s Sober-Living Industry
By MICHAEL ORBAN 7/1/17

Village president says sober-living home will have low impact
By MICHAEL ORBAN 7/1/17

Neighbors upset over sober home development in Lowell
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DOJ, HUD Close Investigation On Prescott Sober Living Home Regulations
By MICHAEL ORBAN 7/1/17

Sober-living homes forum attracts 300 in San Clemente
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With No Oversight, How Sober is 'Sober Living' in New Hampshire?
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Delray will hire expert attorney on sober homes to consult on regulations
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