



## Disabled Residents and the Law

### The Legal Obligations of an Association in Accommodating Disabled Residents

#### Introduction

Various laws have been established to protect the rights of disabled individuals, such as the Americans with Disabilities Act (“ADA”) and the Federal Fair Housing Act (“FFHA”). These laws govern both public and private facilities, and set forth the degree to which an entity, such as a homeowners association (“Association”), is responsible for making modifications or improvements to accommodate individuals with disabilities. This resource addresses the applicability of each of these laws to Associations and sheds some light on the potential issues that Homeowner Association’s Boards and Managers should be aware of.



#### Americans with Disabilities Act (“ADA”)

Under the ADA, all public and government facilities are required to comply with specific use and construction requirements to accommodate disabled individuals. It is important to note that the ADA applies only to “public accommodations.” Therefore, an Association will not be subject to the ADA unless the Association is operating what can be considered a “public accommodation.” A “public accommodation” is any facility which an Association is holding out for use by members of the general public—not solely for use by the Association’s members and their guests. Though these situations are rare, Associations have been subjected to ADA requirements when: (1) an Association allows members of the public to buy memberships or passes to the Association’s pool, (2) where an Association allows schools, church groups or clubs to use Association facilities on a regular basis, and (3) where an Association maintains a rental

office on the property that receives regular visits from the general public. Any Association considering or currently allowing such activity should carefully inspect their facilities to ensure compliance with the ADA or, in the alternative, cease all such activities immediately. The failure to do so may lead to claims of discrimination against the Association and otherwise subject the Association to liability.

#### Federal Fair Housing Act (“FFHA”)

The FFHA is similar to the ADA; however, the FFHA applies directly to housing facilities, including Associations. Under the FFHA, an Association may not legally refuse to make reasonable accommodations in its rules or policies when such accommodations may be necessary for a disabled owner to fully enjoy and use her unit. An example would include when a disabled

**“...an Association may not legally refuse to make reasonable accommodations...”**

owner requires the assistance of a service animal; an Association would be obligated to grant a waiver from its “no pets” rule.



The Association’s refusal to make such an accommodation (one that is reasonable and necessary to afford a disabled owner the full enjoyment and use of her unit) is deemed to be discrimination under the FFHA. The FFHA also requires Associations to permit a disabled owner to make, at such owner’s expense, reasonable modifications to the owner’s unit and Association common areas. This requirement is also codified in California Civil Code Section 1360, discussed further on page 2.

## California Civil Code Section 1360

Civil Code Section 1360 requires Associations to allow disabled owners to make modifications to their units and Association common areas at the owners' expense in order to accommodate the owner's disability. Examples of such modifications may include power stair lifts, ramps or handrails.



Under Civil Code Section 1360, an Association must allow an owner to make modifications to her unit and the route to the unit from a public way, so long as (1) the modifications are consistent with building codes, (2) the modifications are consistent with the intent of the governing documents relating to safety and aesthetics, (3) the modifications do not prevent reasonable passage by other residents, (4) the modifications are removed by the owner when the unit is no longer occupied by the disabled individual, and (5) the owner submits plans and specifications to the Association for review. Accordingly, the Association may require (1) the submission of plans for the modifications in order to ensure consistency with the overall design of the neighborhood, and (2) the execution of an agreement that the owner return the property to its original condition upon leaving the property.

### Summary

An Association may be subjected to these laws in certain circumstances, including when an Association opens its facilities to members of the public or when an Association receives an accommodation request from a disabled resident. An Association may be required to make reasonable accommodations in its rules and policies, or otherwise permit architectural modifications to a disabled owner's unit and Association common areas at such owner's expense. Associations that have received a request for modifications, or are granting members of the public access to Association facilities, should contact their legal counsel to determine the Association's rights, obligations and liabilities.

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