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Alcoholism, Drug Addiction, and the Right to Fair Housing:

How The Fair Housing Act Applies To Sober Living Homes

*By Matthew M. Gorman, Anthony Marinaccio, and Christopher Cardinale**

I. INTRODUCTION

In 2007, staff working at a city in east Los Angeles County was notified that a small single family home in a quaint residential neighborhood was occupied by more than ten unemployed drug addicts, most of whom were on parole, with little or no supervision by authorities or others. Investigation of the home revealed that its two bedrooms had been illegally subdivided and furnished with bunk beds. The living room had been divided with drywall and make-shift plumbing had been installed for an extra toilet. A tent had been pitched in the backyard to house additional occupants, and the garage had been furnished with carpet, a toilet, a shower, and beds. In fact, all occupants were found to be parolees with alcohol or drug addictions, most were unemployed, and many had lived there for only a few days or more due to the frequency in turnover. To make matters worse, the home was located next door to a family with three children, across the street from another family with four children, and within walking distance of an elementary school bus stop.

Prompted by neighbor complaints, city councilmember outrage, and public safety concerns from police, the city took steps to vacate the home. These efforts met resistance. The property owner claimed that the residents were "disabled individuals" protected from dislocation under the Federal Fair Housing Act ("FHA" or the "Act"),[1] and that they were entitled to continue residing at that house because it was a "***sober living home***" which provided an environment of support and sobriety necessary for recovery.

Miles away, a multi-million dollar mansion is charging wealthy occupants thousands of dollars to reside in a serene environment, free of alcohol and drugs, to assist in recovery from addiction. When faced by complaints of neighboring properties, the operators of this facility also claimed that it was a "***sober living home,***" protected from regulation pursuant to the FHA.

While in Orange County, whole sections of beachfront neighborhoods have been converted to so-called "***sober living homes***." The operators object to city and neighborhood complaints on the ground that their operations are protected by the FHA.

These scenarios may sound strange, but they are certainly true. They illustrate a challenging issue in residential land use and Fair Housing Act jurisprudence: Where should individuals undergo rehabilitation for alcohol and drug addiction? How does the Fair Housing Act affect local government's authority to regulate and restrict alcohol and drug recovery facilities? With the advent of "sober living homes" – homes designed to incorporate alcohol and drug addiction recovery into normal residential life – these issues have been pushed to the forefront in many communities and will likely face increasing attention as the popularity of sober living treatment advances.

This article summarizes the legal characteristics of sober living homes and how they are regulated under their relation with the FHA. In particular, this article illustrates how the FHA is being used by owners and residents of sober living homes to advance their establishment and operation, and it explores what local jurisdictions can do to regulate sober living homes in light of FHA requirements.

II. WHAT IS A SOBER LIVING HOME?

There are many variations among sober living facilities and operators; however, all emphasize the same facets of life under their roofs. The location of a sober living or alcohol recovery home in a drug free, single family neighborhood plays a crucial role in an individual's recovery by providing a supportive environment that promotes self esteem, helps create an incentive not to relapse, and avoids the temptations that the presence of drug use can create.[2]

A plethora of for-profit and non-profit organizations operate sober living facilities, ranging from the single landlord who rents his/her home to individuals with alcohol or drug addictions to the corporation that employs a full-time staff of treatment professionals and owns multiple facilities across numerous cities or states. A good example of the "sober living model" is Oxford House, a well-known network of sober living facilities that operate throughout the United States and internationally. Although each residence is an independent organization, the umbrella organization, Oxford House, serves as a network connecting other sober living homes in the area. According to Oxford House, 1,200 self-sustaining homes operate on its model, serving 9,500 people at any one time, totaling more than 24,000 annually.[3] Oxford House operates on the theory that those recovering from drug and alcohol addictions will remain sober if they live in a supportive environment with those suffering similar addictions.[4]

Whether sober living facilities follow the Oxford House model or some other approach, their locations vary from high end beach communities that mirror resort living, to dilapidated single family homes located in high crime neighborhoods plagued by poverty. Reactions to sober living facilities can be similarly varied. Some view sober living facilities as service providers, providing much-needed support to individuals recovering from addictions. For others, sober living facilities are viewed as blight in the community, often becoming most problematic when neighbors and nearby residents learn that large numbers of alcohol and drug addicts reside together near them.

Nearly any single family home can become a "sober living home" by adopting that label and renting rooms to individuals with alcohol or drug addictions. It is not uncommon for landlords seeking to maximize their rents to adopt the sober living moniker even though no actual sober living programs are implemented at the site. Abuses of the sober living model abound, with some single family homes housing upwards of twenty or thirty individuals under the guise of

"sober living" when, in fact, these homes provide no meaningful program for recovery and do not adhere to "legitimate" sober living guidelines.

This creates significant confusion for cities, counties, and other agencies charged with regulating residential land use and assisting disabled individuals. In perhaps the most well-known jurisdiction facing problems posed by sober living facilities, the City of Newport Beach has experienced an extreme concentration of sober living facilities, which have transformed neighborhoods from a relaxed beach going atmosphere to a quasi-clinical community providing services from a patchwork of residential buildings. In this context, neighborhood outrage prompted regulation by the city, ultimately precipitating an FHA lawsuit by sober living operators.[5]

Indeed, it is difficult for those agencies to discern between "legitimate" sober living facilities, which employ good faith measures to assist individuals in their alcohol or drug addiction recovery, from "illegitimate" facilities which use the "sober living" title as a front for questionable rental practices. This confusion can be complicated by the various state licensing provisions that regulate facilities providing care for the disabled or for those recovering from addiction. In California, the Department of Social Services[6] and the Department of Alcohol and Drug Programs,[7] are responsible for licensing and supervising specified facilities which may operate as sober living programs, or which may provide housing or services similar to that provided by unlicensed sober living facilities.[8] The California Attorney General has noted the difference between licensed facilities and non-licensed sober living homes. Licensed facilities are different "from facilities that simply provide a cooperative living arrangement for persons recovering from alcohol and other drug problems. The latter 'sober living environments' are not subject to licensing from the Department."[9] Such licensed facilities enjoy substantial protections from local regulation and therefore make it difficult for local agencies to police sober living homes and to prohibit "illegitimate" sites from operating.

III. HOW DOES THE FHA APPLY TO SOBER LIVING HOMES?

A. HISTORIC ROOTS DEFINING DRUG AND ALCOHOL ADDICTION AS A DISABILITY

The crux of the FHA's application to sober living facilities is based on the definition of a "disability." The FEHA does not address alcoholism or drug abuse as disabilities that would be protected under FEHA; however, it includes the definition of a "disability" found in the Americans with Disabilities Act ("ADA") if it provides results in "broader protection of the civil rights of individuals with a mental disability or physical disability . . . or would include any medical condition not included."[10] As amended in 1988, the FHA prohibits discrimination in housing on the basis of handicap. As amended, the Act defines "handicap" as:

> "(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."[11]

In determining whether substance abuse would be considered a handicap, Congress' intent is important to discern.[12] Such intent was first formed when Congress first formed its intent when it adopted the Rehabilitation Act a few years prior to the FHA.[13] Under the Rehabilitation Act:

> "[I]ndividuals who have a record of drug use or addiction but who are not currently using illegal drugs would continue to be protected if they fell under the definition of handicap.... Just like any other person with a disability, such as cancer or tuberculosis, former drug-dependent persons do not pose a threat to a dwelling or its inhabitants simply on the basis of status. Depriving such individuals of housing, or evicting them, would constitute irrational discrimination that may seriously jeopardize their continued recovery."[14]

Ultimately, Congress determined that many terms of the Rehabilitation Act should apply to the FHA, and courts have later found that the term "physical or mental impairment" under the FHA includes diseases such as drug addiction (when it is not caused by current illegal use of a controlled substance) and alcoholism.[15] Thus, although many would not, at first glance, realize that a handicapped person includes one suffering from alcoholism or drug addiction; in fact the FHA extends its protections to such persons. In 2000, the Ninth Circuit held: "It is well established that individuals recovering from drug or alcohol addiction are handicapped under the Act [FHA]."[16]

B. ESTABLISHING ALCOHOL OR DRUG ADDICTION AS A DISABILITY UNDER THE FHA

To demonstrate a disability under the FHA, a plaintiff must show: (1) a physical or mental impairment that substantially limits one or major life activities, (2) a record of having such an impairment, and (3) that the plaintiffs are regarded as having such an impairment.[17] However, a plaintiff must show not only that he was an alcoholic in the past, but also that his past alcoholism substantially limited one or more major life activities.[18] To be substantially limited, the impairment must prevent or severely restrict the person from activities that are centrally important to most people's lives, and it must be long term.[19]

However, to qualify as a handicap under the FHA, the person must not be currently abusing alcohol and/or drugs. The FHA expressly limits protection to not include "current, illegal use of or addiction to a controlled substance."[20] Although the FHA does not define what it means to be a current drug user, courts rely upon the ADA and the Rehabilitation Act to determine what is "current drug use." At the time of the alleged discrimination the plaintiff must prove he was not using illegal drugs – even if the person later uses illegal drugs again at the time the complaint is filed or at the time of trial.[21] Thus, an individual with an alcohol or drug addiction may qualify for preferential housing rights pursuant to the FHA.

C. NEXUS BETWEEN THE ADDICTION DISABILITY AND HOUSING NEED

Of course, disability due to an alcohol or drug addiction does not immediately entitle an individual to live wherever he or she wants. To qualify as disabled under the FHA, there must be a ***nexus*** that links the treatment of the disability with the need for housing. In the context of sober living homes this nexus arguably exists when living at a particular location is, in and of itself, a means of treating the alcohol or drug disability.

Typically, this nexus is shown by asserting that a supportive, sober residential environment is necessary for sobriety and addiction recovery. Individuals with alcohol or drug addiction allege that such environments foster sobriety, and encourage trust and camaraderie between residents that is necessary for recovery. Plaintiffs argue that they would suffer substantial limitations and risk "falling off the wagon" if not for living in a sober living environment. Courts have agreed with this theory.[22]

Sober living advocates assert this nexus when claiming FHA protection over sober living facilities. For example, when recovering alcohol and drug addicts live together, "house rules" prohibiting the consumption of alcohol and drugs, requiring attendance at "house meetings" to encourage sobriety, mutual support are established. House rules are intended to maximize efforts to cope with, and overcome addiction. Merely living in a sober house may be viewed as a necessary means of accommodating one's disability such that the FHA essentially entitles the right to live there.

Applying the FHA in this way opens the door to any number of living arrangements intended to assist those recovering from alcohol or drug addiction. Essentially, anywhere a sober environment is provided, or where support for addiction recovery is encouraged, might be viewed as location where an alcohol or drug addict may assert FHA protections.

For example, in 2007, the City of Newport Beach attempted to address the "clustering" of multiple unlicensed sober living homes by imposing restrictions on the establishment and operation of "group residential uses," aimed at curbing a perceived saturation of sober living facilities in neighborhoods.[23] Such efforts prompted a lawsuit by an operator, "Sober Living by the Sea," alleging FHA violations and other claims.[24] In addition, Sober Living by the Sea filed a complaint with the U.S. Department of Housing and Urban Development alleging violations of the Federal housing laws. According to the City's website, the City has since settled the lawsuit with Sober Living by the Sea and other sober living home operators.[25] However, certain sober living facilities remain in operation despite continued opposition from residents, and recent reports have indicated that lawsuits by other sober living operators continue.[26] Such events illustrate that FHA may significantly complicate local agencies' efforts to regulate sober living operations, and highlight the means by which sober living operators can challenge local regulation.

D. WHAT LOCATIONS MAY QUALIFY AS SOBER LIVING HOMES PROTECTED BY THE FHA?

Despite the broad application of FHA requirements to locations claiming to offer a sober living experience, there are some limits to applying the Act.

First, the FHA itself is limited to "dwellings." The Fair Housing Act makes it unlawful "[t]o refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin."[27] A dwelling includes "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families."[28] Although the FHA does not define what a residence is, courts have interpreted the definition of a residence to be the ordinary meaning of the term.[29]

The definition of a dwelling is important because many sober living homes offer short term residencies and experience high turnover rates. Because tenancies at sober living homes vary dramatically the way residents treat their facilities and how they view these facilities are important indicators for whether the structure will be considered a dwelling under the FHA.

Although a dwelling is covered by the FHA, temporary shelters are not. Dwellings must be intended for use as a residence. Two factors determine whether a facility is a dwelling under the FHA: first is whether the facility is intended or designed for occupants who intend to remain at the facility for a significant period; and second is whether the occupants of the facility would view it as a place to return to during that period.[30] Courts typically find that a "significant period of time" is longer than one would normally stay in a motel and can be for as short as two weeks.[31]

Locations viewed as "temporary dwellings," such as boarding homes, halfway houses, flop houses, and similar locations, have been found to be "dwellings" under the FHA.[32] Notably, however, a homeless shelter is ***not*** considered a "dwelling" protected under the FHA because it only provides emergency, overnight shelter.[33] Thus, application of the FHA to such "temporary" sober living establishments may be of limited use in some contexts.

Similarly, in reviewing the differences between a "home" and a "hotel," the more occupants treat the structure like their home by performing tasks such as cooking their own meals, cleaning their own rooms and the premises, doing their own laundry, and spending free time in the common areas the more likely courts will determine that a structure is a dwelling for purposes of the FHA.[34]

Under these definitions, a sober living home may qualify as a home or a hotel depending on how the living situation is arranged. Often, a sober living home does not provide anything more than a bed, while other homes provide actual care, such as prepared meals and cleaning services. Although many sober living homes provide some form of counseling and guidance, sparse supervision is not uncommon and residents who can care for themselves are often allowed a high degree of independence.

IV. HOW DOES A SOBER LIVING HOME ASSERT THE FHA?

FHA violations may be established either by (1) showing ***disparate impact*** based upon a practice or policy of a particular group; or (2) by "showing that the defendant failed to make ***reasonable accommodations*** in rules, policies, or practices so as to afford people with disabilities an equal opportunity to live in a dwelling."[35]

A. DISPARATE IMPACT

To prove disparate impact under the FHA, a plaintiff must demonstrate that the challenged practice actually or predictably results in discrimination.[36] If a plaintiff is able to establish discrimination, the defendant must then prove his or her action further a legitimate government interest and that there is no alternative available to serve the interest would have a less discriminatory effect.[37] Further, when plaintiffs are merely requesting to remove an obstacle to housing, rather than creating new housing units, a local government must establish a more substantial justification for its conduct.[38]

In the context of sober living homes, it is often difficult to prove a disparate impact because similar group living arrangements such as fraternity or sorority houses and other group homes may also be excluded from a particular zone, so a sober living home would have to prove that the exclusion disparately impacts substance abusers more so than those living under different group arrangements.[39] Other types of land use or building regulations, such as building codes, may also be of little value to plaintiffs asserting disparate impact claims because such regulatory measures are applied uniformly.[40]

However, disparate impact analysis is easier to prove when there is evidence of discriminatory intent. For example, in *Oxford House v. Town of Babylon*, the town attempted to evict residents of a sober living home from a single family home because the town code defined a single family home as a building established for the residency of not more than one family.[41] In *Town of Babylon*, an Oxford House was established in a single family neighborhood. Soon thereafter nearby residents complained that they did not want recovering alcoholics and drug addicts living in their neighborhood.[42] Because the record of town council meetings contained discriminatory statements against alcoholics, the court found the town had evicted a sober living home from a single family neighborhood because it disliked alcoholics.[43]

Plaintiffs requested that the town modify the definition of a family. Although the court agreed that the town's interest in its zoning ordinance was substantial, it found that evicting the residents from a sober living home did not further that interest because evidence showed that the house was well maintained, the town had not received many complaints from neighbors, and the house did not alter the residential character of the neighborhood.[44] Relying on the FHA, the court balanced plaintiff's claim of discriminatory impact against the City's justification.[45] When balancing the interests, the discriminatory impact was far greater than the town's interests which may not have been supported by substantial evidence. Further, the court found that two factors weighed heavily in plaintiff's favor. First, evidence of discriminatory intent by the town; and second, evidence that plaintiff wanted the town to eliminate an obstacle to housing rather than suing the city to compel the city to building housing.[46] Consequently, plaintiff had proven a disparate impact under the FHA because the town's policy of preventing a sober living home from being established in a single family neighborhood disparately impacted individuals with alcohol and drug addiction.[47]

B. REASONABLE ACCOMMODATION

Under the FHA, it is a discriminatory practice to refuse to make "a reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling."[48] Under the FHA, a handicap is defined as a physical or mental impairment which substantially limits one or more major life activities of a person.[49] As stated by the Central District of California in *Behavioral Health Services v. City of Gardena*:

> "[A city] must accommodate plaintiffs when the accommodation is necessary [i.e., when plaintiffs' disability prevents them from use of the property unless exceptions are granted] and does not impose undue financial or administrative burdens, or require a fundamental alteration of the zoning program."[50]

An accommodation is reasonable under the FHA if it does not cause undue hardship, fiscal or administrative burdens on the municipality, or does not undermine the basic purpose that the zoning ordinance seeks to achieve.[51] Courts have applied the reasonable accommodations requirements to zoning ordinances and other land use regulations and practices thereby requiring cities to make reasonable accommodations for those disabled under the FHA's definition.[52] Under similar laws, courts have held that even one incident of a denial of reasonable accommodation is sufficient to trigger a violation.[53] Thus, a three-part test is applied in determining whether a reasonable accommodation is necessary: (1) the accommodation must be reasonable and (2) necessary, and must, (3) allow a substance abuser equal opportunity to use and enjoy a particular dwelling.[54] To determine if an accommodation is reasonable the Court must determine whether the accommodation would undermine a legitimate governmental purpose and effect of an existing zoning ordinance, and must consider the benefit to the handicapped person, and the costs associated with such an accommodation.[55] In particular, an accommodation is unreasonable if it would cause an undue financial and administrative burden on the local jurisdiction.[56] In sum, a reasonable accommodation changes a rule of general applicability to make it less burdensome on a handicapped person.

Consequently, courts have held that municipalities must change, waive or make exceptions in their zoning rules to afford people with disabilities the same access to housing as those who are without disabilities.[57] However, a municipality is not required to make fundamental or substantial modifications from its municipal or zoning code to accommodate a disabled person.[58] The crux of the issue often becomes what is considered a reasonable versus a substantial modification.

A local government or private entity must make an accommodation if it is reasonable and necessary to afford handicapped persons equal opportunity to use and enjoy housing.[59] A court will look at many factors to determine whether or not an accommodation would be reasonable, including whether the accommodation would undermine the legitimate purposes of zoning regulations and the benefits that the accommodation would provide to the handicapped person.[60] Further, a reasonable accommodation cannot require an undue financial and administrative burden on a local government.[61] However, the city may not impose unreasonable restrictions if it grants a reasonable accommodation.[62]

C. STANDING AND EXHAUSTION OF REMEDIES

One who seeks a reasonable accommodation from a governmental regulation, ordinance or practice must do so through the agency's established procedure to obtain the relief that he/she seeks. A plaintiff must first provide the governmental entity an opportunity to accommodate the plaintiff through the entity's established procedures used to adjust the neutral policy in question.[63]

The first hurdle plaintiffs must establish when challenging an ordinance or decision by a government body is whether the plaintiff has ***standing***. Issues concerning standing under the FHA are similar to those under other laws for the disabled, such as the ADA. In general, those rules permit non-disabled persons to assert claims under the law on behalf of individuals who are disabled.[64] Under the FHA, one has standing if one would have standing under Article III of the U.S. Constitution.[65] Under the FEHA, any "aggrieved person" may bring suit to seek relief for a discriminatory housing practice.[66] An "aggrieved person" is one who has been injured by a discriminatory housing practice.[67]

An organization is allowed to bring a suit on its own under the FHA when its purpose is frustrated and when it expends resources because of a discriminatory action.[68] For example, in *Fair Housing of Marin v. Combs*, Fair Housing of Marin ("FHM") filed suit alleging discrimination against African-Americans which caused the group to suffer injury to its ability to provide outreach and education to end unlawful discrimination practices and alleging it had to spend additional resources in response to defendant's discriminatory actions.[69] The Ninth Circuit held that FHM established standing to sue under the FHA because the defendant's illegal housing discrimination injured FHM's outreach programs, requiring it to implement alternate programs in the community to compensate for the discrimination.[70]

In addition, an organization is allowed to bring suit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right; (2) the interest it seeks to vindicate is germane to the organization's interests; and (3) neither the claim asserted nor the relief requested requires the individual participation of its members.[71]

Perhaps more important than who may bring a lawsuit is whether the lawsuit is ***ripe***. "To prevail on a reasonable accommodation claim, plaintiffs must first provide the governmental entity an opportunity to accommodate them through the entity's established procedures used to adjust the neutral policy in question."[72] In *Oxford House v. City of St. Louis*, the Eighth Circuit found that plaintiff did not have a claim of failure to make a reasonable accommodation when plaintiff had not applied for a variance even after the city had requested that plaintiff (a sober living home with eight residents) first apply for a variance.[73] The court stated, "The Oxford Houses must give the City a chance to accommodate them through the City's established procedures for adjusting the zoning code."[74] However, a plaintiff is not first required to appeal a decision through the local body and may file suit once a reasonable accommodation is first denied.[75] The first approval may require a public hearing which is not considered unreasonable if applied evenly to the handicapped and non-handicapped.[76] Therefore, a public hearing may be required to receive a reasonable accommodation and that alone is not considered unreasonable.

Accordingly, although a disabled individual must first request a reasonable accommodation and follow the local jurisdiction's procedures to receive a reasonable accommodation, it may not have to follow the appeal procedure once the first denial occurs. It is important to note this because a lawsuit is subject to dismissal without a determination of the merits if there is no standing or the issue is not ripe for review.

V. PITFALLS AND POSSIBILITIES IN REGULATING SOBER LIVING SITES

As the foregoing makes clear, FHA claims involving sober living facilities typically involve two competing interests: (1) the interests of individuals recovering from addition, often represented by landowners or organizations which provide addiction recovery services; versus (2) the interests of residents who seek to preserve the "family-friendly" character of their neighborhoods, often represented by city attorneys, county counsel, or other public agency attorneys (or attorneys hired by citizen groups opposed to sober living facilities in their neighborhoods). These disputes arise after a claimed sober living home is established in a single family residential neighborhood bringing with it unfamiliar and seemingly unrelated faces living together, congregating on porches and front yards, or wandering nearby streets. Disturbances arise, eventually leading to phone calls to the police, complaints to the local officials, and ultimately for demands by the city or county to intervene and shut down the sober living home.

It is at this point where FHA requirements may first become a concern. Faced with such claims, local jurisdictions may determine that a sober living site does not operate as a "single family home," but rather constitutes a "board-and-care facility," "rooming house," or similar type of group living facility which may not be permitted in a single family neighborhood, or which my be subject to land use or business permit requirements in order to lawfully operate. Typically, code enforcement citations are issued or other legal steps are taken to enforce such provisions against the facility, in response to which the facility operator or owner raises the FHA as a basis for challenge, asserting that enforcement is unlawful because doing so would infringe upon the fair housing rights of residents, each of which are "disabled" due to their alcohol or drug addiction.

A. THE LEGAL ENVIRONMENT IN WHICH FHA CLAIMS ARE MADE

A local jurisdiction's authority to regulate sober living facilities is derived from its general police powers. Article XI, Section 7, of the California Constitution grants local governments the authority to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."[77] Additionally, the Planning and Zoning Law[78] authorizes cities and counties to regulate the use of buildings and land for residential purposes,[79] and numerous other provisions vest in local agencies broad authority to regulate residential uses and housing within their jurisdictions.[80] When disputes involving sober living facilities arise, cities and counties often seek to regulate the facility's operations or prohibit its existence entirely. *FHA claims are therefore pitted against these authorities. As such, issues triggered by sober living sites often concern local government's legitimate state law powers, and whether they are preempted by the interests sought to be advanced by the FHA.

Significantly, because sober living facilities are a relatively new form of residential use, and because they involve the interplay of unique and technical legal provisions, most local jurisdictions lack a standard land use definition for such facilities in their zoning and regulatory codes. Thus, when problems with sober living facilities arise, municipalities must categorize the facilities within existing land use definitions in order to regulate them. Many local codes define "boarding houses," "rooming houses," or similar types of "group living facilities" as unique residential use which are regulated according to established zoning provisions, often requiring the owner to obtain a Conditional Use Permit or other discretionary approval for the use to occur.

Therefore, a municipality faced with a problematic sober living facility may, for example, assert that the facility is an un-permitted boarding house, and may cite the owner or pursue legal action to shut the facility down based on such authority. Alternatively, where the sober living facility is located in single family zone, a municipality may assert that the sober living facility is an unlawful multi-family use which is prohibited in that location. Similarly, it may claim that that the facility operates as a residential "business," akin to a residential hotel or hostel rather than a residence, and therefore is prohibited in residential zones. Municipalities may also discover building code, housing code, and other technical problems with facilities that have been illegally remodeled to accommodate occupancies beyond that for which the structure was originally designed.

In response to such claims, the sober living operator may rely on the FHA to assert that the city's authorities are unlawful because they either: (a) create a ***disparate impact***, so as to discriminate against disabled individuals (i.e., those with an alcohol or drug addiction); or (b) require ***reasonable accommodation***, so as to grant the site an exemption from strict application of the city's authorities. Plaintiffs filing suit under the FHA often bring actions alleging both ***disparate impact*** and ***reasonable accommodation*** theories.[81] Of course, the analyses for each theory are different. Disparate impact analysis focuses on neutral policies that disparately impact handicapped persons,[82] whereas reasonable accommodation analysis focuses on whether a local jurisdiction could make an exemption to a policy to allow a handicapped person to use and enjoy a dwelling.[83]

Despite the restrictions imposed on a municipality's ability to enforce otherwise generally applicable zoning restrictions, there are some exemptions created by the FHA. Application of these exemptions, however, is often complicated. For example, in *City of Edmonds v. Oxford House*, the Supreme Court dealt with an FHA exemption allowing "any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.[84] Specifically, the Court analyzed a provision of the City's zoning code governing areas zoned for "single family residences."[85] The section at issue defined "family as "persons [without regard to number] related by genetics, adoption, or marriage, or a group of five or fewer [unrelated] persons."[86] The Court held that the exemption did not apply to provisions designed to "foster the family character of a neighborhood," and instead applied only to occupancy limits seeking to prevent overcrowding in living quarters.[87] As such, the City's single family residence zoning requirement was not exempt from the FHA, and the City was required to permit operation of the facility.

The maximum occupancy exemption was also at issue in *Turning Point, Inc. v. City of Caldwell.*[88] After receiving complaints from its citizens regarding a dwelling that was housing homeless individuals suffering from disabilities, the City imposed a 15 person occupancy limit on the dwelling.[89] The City imposed the limitation "to preserve the integrity of the neighborhood."[90] However, the court invalidated the limitation after finding it "unreasonable."[91] Instead, the court ordered the occupancy set at 25, a number supported by the City Building Inspector's analysis of the dwelling.[92]

Another FHA exemption was analyzed in *Gibson v. County of Riverside*, which dealt with a City ordinance imposing age restrictions on persons occupying dwelling units in the zoned area.[93] Pursuant to the FHA, developments qualifying as housing for older persons ("HOP") can discriminate based on family status.[94] Analyzing the ordinance at issue, the court cited three requirements, recognized by congress, that must be met by housing developments seeking to qualify as a HOP: 1) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons; 2) the occupation of at least 80 percent of the units by at least one person 55 years of age or older and; 3) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.[95] While the individuals challenging the ordinance were not handicapped in *Gibson*, this exemption does apply to sober living homes, and is valid if the three requirements are met.

Exemptions under the FHA do allow cities some leeway in enforcing zoning and planning schemes. However, because exemptions are exceptions to the general rule prohibiting discrimination, the exceptions are construed narrowly.[96]

B. PRACTICE POINTERS FOR AGENCY COUNSEL AND SOBER LIVING ADVOCATES

Concerns are often greatest when the sober living operator is perceived as "illegitimate." For example, some operators offer housing to individuals with alcohol or drug addiction in "flophouses" or boarding homes designed to house as many individuals as possible where residents do not follow any sober living regimen and might not be in treatment for addiction. Indeed, the residents may themselves be viewed as vulnerable, emotionally or mentally disturbed individuals who are being taken advantage of because they have few other places to find housing; or they may be viewed as social deviants who feign disability in order to "work the system."

The problems such facilities pose to a neighborhood can be enormous because their residents often do suffer from one or more emotional or mental disabilities, are often unemployed, or loiter in and around the premises, congregate in yards, or create a fearful presence in the neighborhood which disrupts the "family-friendly" character of a traditional single family neighborhood. The outrage voiced by residents and neighbors in such circumstances can be extreme, and the operator may raise the FHA not as a legitimate basis for defense, but as a tactic to remain operating without governmental challenge.

Because of the deference, courts have shown to the FHA operators of "illegitimate" facilities have used the FHA and their residents' disabilities as a tool to avoid local government oversight. An operator facing city enforcement may, for example, assert the FHA's reasonable accommodation requirements as a shield to avoid liability and to coerce the city to allow the facility to remain operating. This stands in stark contrast to "legitimate" sober living facilities, some of which may be licensed by the state or affiliated with hospitals or respected clinics. Such "legitimate" facilities may face similar public outcry, and may likewise assert the protections of the FHA to avoid local government regulation.

For practitioners who represent cities, counties, or interest groups concerned about the potential impact that a sober living facility will have on a neighborhood, facing such claims can be challenging, as passionate residents and public officials demand prompt action ,while concern for potential liability for violating the FHA requires counsel to proceed very cautiously.

Often, applying the FHA's requirements strictly, methodically, and uniformly will "ferret-out" the legitimate sober living sites from those that merely use the FHA as a mask for otherwise unprotected operations. Counsel should consider answering the following questions:

1. Are the residents truly "disabled?" Only those with a disability are protected under the FHA. Counsel should verify the claimed disability prior to considering FHA claims. For example, merely claiming that a house is used for "sober living" is insufficient to establish protections under the FHA. Residents must actually be "disabled" meaning they must actually be recovering from alcohol or drug addiction. While an operator may have standing to assert FHA protections on their behalf, this does not waive the obligation to show that residents are in fact disabled. Sites which claim to be "sober living homes," but are fronts for flop-houses, may be unable to establish FHA protection. Residents' disabilities should be verified.

2. Is the site a "dwelling?" The FHA applies to "dwellings" only, and while it may be difficult to differentiate between a site which provides in-and-out transitional housing from a true "dwelling," courts have found that merely providing a place for someone to sleep for the night is insufficient. For example, motels are not dwellings, even though some other short term rental situations such as boarding houses, halfway homes, and flop houses are considered dwellings. Investigating the actual living conditions and terms of occupancy may help determine whether the site is a "dwelling" under the FHA, or a transitional facility outside the FHA's protections.[97]

3. Does mere "occupancy" at a site make it a "residence?" While case law has not addressed this point, a colorable argument could be made that the FHA applies only to "residences," and not to occupancies which are temporary or transitional in nature. If, for example, a sober living site has a weekly turnover of occupants, it may be a stretch to argue that the FHA was intended to apply to such sites because they do not function as true housing which the FHA was adopted to protect. "Legitimate" sober living facilities typically provide long-term residencies in order to provide a sufficient period for recovery. Focusing on the length of occupancy may be helpful in determining the legitimacy of the facility. Additionally, there is authority to support the proposition that such impermanent occupancies may be excluded from single family residential zones because they do not adhere to the "residential" character of those areas.[98] Although this issue has not been clearly delineated by the courts, excluding sober living sites on this basis may be proper both under the FHA and principles of zoning.

4. Has the ***nexus*** between the disability and the need for housing been established? The FHA applies where housing is needed in order to accommodate disability. Even when reasonable accommodation is sought, it must be "necessary" to address the disability.[99] Thus, in the context of sober living, it must be determined why living at a particular site serves the residents' alcohol or drug addiction. "Legitimate" sober living sites should be able to demonstrate this connection through group living arrangements that support sobriety, encourage recovery through mutual support of housemates, and provide services that help residents cope with their addictions. "Illegitimate" facilities may be unable to show such factors, or may have such routine turnover in occupancy that the connection is too tenuous to be valid.

5. Even if the FHA applies, must ***reasonable accommodation*** be granted? As noted previously, while disabled individuals are entitled to reasonable accommodation from government restrictions which impact their use or enjoyment of housing, such does not automatically exempt all contrary provisions. Rather, accommodation from government restrictions may be denied if it imposes undue financial or administrative burdens on the agency or requires a fundamental alteration of an agency's zoning provisions.[100] Therefore, rather than "rubber stamp" all requests for reasonable accommodation, a city or county may undertake a formal review of the request and weigh the financial, administrative, and zoning impacts that approving the request would have on the jurisdiction and surrounding community.

6. Can other agency procedures or entitlements resolve the problem? As noted previously, a disabled individual may not pursue reasonable accommodation unless he/she has first sought "traditional" approvals to alleviate barriers to equal use and enjoyment of a dwelling. Thus, where an agency requires an operator to obtain a Conditional Use Permit prior to establishing a sober living facility, the operator must apply for, and be denied, the CUP before he/she may request reasonable accommodation from the CUP requirement. Counsel for the agency may, in such circumstance, advise that the CUP be crafted so as to address the accommodations that the operator otherwise seeks, thus avoiding any FHA issues from arising. Alternatively, counsel may advise the agency to consider reasonable accommodation requests in conjunction with the CUP application, such that requested accommodations can become conditions within the CUP itself. Because these steps require the facility to submit information for agency evaluation, and culminating in a public hearing, employing such procedures may help identify "legitimate" sober living operators. Additionally, such procedures will create a record that will be useful in future proceedings involving the facility.

How an agency responds to a sober living facility often depends, in large part, on the politics of the community. Certain municipalities are known for their "progressive" stance toward accommodating individuals recovering from drug or alcohol addiction. Other municipalities may disfavor such facilities, and may seek to exclude all but the most exclusive sober living facilities from their jurisdictions. When facing those in the latter category, practitioners representing sober living operators, residents in sober living programs, or advocates for sober living facilities would be well served to answer the following:

1. Has verification of disabilities been provided? For FHA protections to apply, true disabilities must be established. Sober living advocates should be prepared to provide proof that residents at a sober living site have been diagnosed with an alcohol or drug addiction, are undergoing treatment for such addiction, or to provide such other evidence to substantiate residents' disabled status. When representing an organization asserting FHA protection on others' behalf, counsel may consider soliciting residents' consent to provide records of medical evaluation or treatment to substantiate disability status. However, counsel should be aware of privacy concerns and the laws governing privacy of health information, including the Federal Health Insurance Portability and Accountability Act (HIPAA).[101] Providing such evidence may go far to "legitimize" the facility and differentiate it from "illegitimate" sites disfavored by cities and counties.

2. Has a ***nexus*** between the disability and the accommodation been articulated? Courts have recognized that mutually-supportive group living arrangements may be an important accommodation for individuals with alcohol or drug addictions.[102] In order to demonstrate the importance of a sober living environment in recovery, sober living advocates should be prepared to produce evidence demonstrating the connection sober living arrangements have with treating residents' disabilities. Based on well-established precedent applying the FHA, if this showing is established, restrictions on operation may be difficult for a city or county to justify, and the legitimacy of the facility may be enhanced in the eyes of public officials charged with reviewing the site.

3. Is there evidence of ***disparate impact*** in application or enforcement? There is legal authority to support FHA claims where a city or county enforces its police or zoning powers in a manner that bans or unfairly discriminates against sober living facilities.[103] Thus, sober living advocates should consider whether local zoning and regulatory codes establish unacceptable barriers to the operation of sober living facilities, and whether the jurisdiction has a history of excluding sober living facilities from operating. If such disparate treatment is evident, sober living advocates may be able to persuade the local agency that further exclusions will violate the FHA. Additionally, to the extent that a sober living site causes impacts which are no different than other normal residences in the area, prohibiting the site from operating may be problematic. "Legitimate" sober living sites should fall within this category and enjoy a relatively strong position in negotiating with cities and counties over their operations.

4. Does zoning improperly define "family" when restricting residency? In the context of land use regulation, case law prohibits

government agencies from limiting the definition of a "family" to those related by blood, marriage or adoption.[104] Rather, courts have held that the concept of "family" must be broadly construed to include numerous types of "non-traditional" living arrangements, including group living among individuals who are not related.[105] While not necessarily an FHA concern, such authorities empower sober living operators by enabling them to assert that residents of sober living homes are just as much a "family" as are a husband, wife, and children. Jurisdictions which exclude such living arrangements from the definition of a "family," or which prohibit such arrangements in single family zones where traditional families are otherwise welcome, may be subject to legal challenge. Sober living advocates who can demonstrate that residents, even though unrelated, act as a cooperative "family unit," may be significantly advantaged when facing such challenges by local agencies.

5. Is due consideration given to requests for ***reasonable accommodation***? A local agency is required to grant disabled individuals ***reasonable accommodation*** from agency restrictions when necessary for equal use or enjoyment of a dwelling.[106] Where local zoning or regulatory restrictions prohibit group living arrangements, sober living advocates should request reasonable accommodation from such restrictions. Because reasonable accommodation must be granted unless it causes undue financial or administrative burdens to the agency or fundamentally alters an agency's zoning provisions, sober living advocates start with an advantage when presenting reasonable accommodation requests to cities and counties. However, prudent advocates should be prepared to substantiate the requests by demonstrating that the facility will not be burdensome to the agency. For example, submitting evidence as to the facility's internal policies and procedures which are intended to minimize impacts and smoothly integrate the facility into the surrounding neighborhood may go far in any request for reasonable accommodation. Additionally, providing such evidence will demonstrate the "legitimacy" of the site and distinguish it from "illegitimate" facilities which may be problematic for the agency. In short, the FHA provides a number of options which can be helpful in ensuring that communities remain protected without infringing on individuals' rights to fair housing. Practitioners representing local agencies may undertake a number of steps when faced with FHA scenarios which may help to screen "legitimate" facilities from those which use the FHA to mask their motives. Conversely, those representing sober living operators, residents, and advocates should not take the FHA for granted, but should be aware that its provisions must be properly utilized to protect legitimate sober living facilities.

VI. CONCLUSION-QUESTIONSTHAT REMAIN UNANSWERED

While cases have done much to flush out the application of the FHA in the context of sober living regulation, much remains unanswered. For example, while cities and counties may seek to strictly apply the FHA in order to limit the establishment of sober living facilities, courts have not addressed whether doing so violates those agencies' housing requirements, including obligations to maintain adequate affordable housing and to meet regional housing needs allocations.[107]

Perhaps more importantly, however, no cases have addressed whether the FHA applies to "specialized" residential sites, such as locations which exclusively house parolees or probationers, locations which house sex offenders, or locations commonly known as "reentry facilities," which serve as transitional housing for those recently released from prison who are seeking to transition into "normal" life. Such facilities have been increasing over the past several years, and may increase dramatically in the near future, given the Governor's plans to reduce prison overcrowding and federal court-ordered reductions in prison populations.

Thus, while precedent construing the FHA and its application to sober living facilities is helpful to public agency counsel and sober living advocates, the future promises to pose even more questions about the FHA's requirements, and the scope of its protections.

* Matthew M. Gorman is a partner of Alvarez-Glasman & Colvin practicing in the fields of municipal law, land use, real estate law.

Anthony Marinaccio is an Associate Attorney at Alvarez-Glasman & Colvin specializing in real estate and landlord-tenant law.

Christopher Cardinale is a J.D. candidate currently enrolled at Pepperdine Law School.

ENDNOTES

1. The federal Fair Housing Act is codified at 42 U.S.C. § 3601, *et seq.* California's State law counterpart, the California Fair Employment and Housing Act, is codified at Gov't Code § 12900, *et seq.* This article focuses on the requirements of the federal Act, although the California Act is interpreted according to federal law precedent.
2. *Oxford House v. Township of Cherry Hill* (N.J. 1992) 799 F.Supp. 450, 453.
3. http://www.oxfordhouse.org/userfiles/file/oxford_house_history.php.
4. *Tsombanidis v. West Haven Fire Dept.* (2d Dist. 2003) 352 F.3d 565, 570.
5. *See* fn. 24, *ante.*
6. Health & Safety Code § 1500, *et seq.*
7. Health & Safety Code § 11834.01, *et seq.*
8. *See, e.g.*, Health & Safety Code § 11834.01(a) (alcohol or drug abuse recovery or treatment facilities licensed by the Department of Alcohol and Drug Programs are defined as: "any premises, place, or building that provides 24-hour residential non-medical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug recovery treatment or detoxification services.").
9. Cal. Op. Atty. Gen. 07-601.
10. Cal. Govt. § 12926.
11. 42 U.S.C. § 3602(h).
12. *Oxford House v. Township of Cherry Hill,* (D.N.J. 1992) 799 F.Supp. 450, 459 ("Congress contemplated alcoholism and drug addiction as being among the kinds of "impairments" covered under this definition.").
13. *Id.*
14. See, *Oxford House v. Township of Cherry Hill,* 799 F.Supp. 450, 459 (D.N.J. 1992).
15. 24 CFR § 100.201(a)(2).
16. *Corporation of the Episcopal Church in Utah v. West Valley City* (2000) 119 F.Supp.2d 1215, 1219.
17. *Regional Economic Community Action Program v. City of Middletown* (2d Dist. 2001) 294 F.3d 35, 46.
18. *Id.*
19. *Id.* at 47.
20. 42 U.S.C. § 3602(h).
21. *Fowler v. Borough of Westville* (N.J. 2000) 97 F.Supp.2d 602, 609.
22. *Id.*
23. City of Newport Beach Ordinance No.'s 2007-8, 2008-05.
24. Claims were brought pursuant to the FHA, the Americans with Disabilities Act, the Rehabilitation Act of 1974 (29 U.S.C. § 794 et seq.), 42 U.S.C. § 1983, California Fair Employment & Housing Act, the California Alcohol & Drug Program (Health & Safety Code § 11834 et seq.), California Civil Code § 52.1, and federal and state causes of action for inverse condemnation.
25. Settlement agreement available at www.newportbeachca.gov.
26. *See, e.g.*, Brianna Bailey, *Daily Pilot,* "Civic Center Costs Mulled" (Oct. 27, 2009) (describing City of Newport Beach City Council hearing approving continued operation of Pacific Shores Recovery, a sober living facility which underwent City review, and noting additional sober living operators which either have lawsuits against the City or are pursuing administrative review pursuant to the City regulatory provisions).

27. 42 U.S.C. § 3604(a) (emphasis added).
28. 42 U.S.C. § 36502(b).
29. *Mills Music, Inc. v. Snyder* (1985) 468 U.S. 153, 164.
30. *Lakeside Resort Enterprises v. Board of Supervisors of Palmyra* (3d Cir. 2006) 455 F.3d 154, 158.
31. *Id.* at 159.
32. *Schwarz v. City of Treasure Island* (11th Cir. 2008) 544 F.3d 1201, 1214.
33. *Johnson v. Dixon* (D.D.C. 1991) 786 F.Supp. 1, 4.
34. *Schwarz v. City of Treasure Island*, 544 F.3d at 1214-1215.
35. *Corporation of the Episcopal Church in Utah v. West Valley City* (2000) 119 F.Supp.2d 1215, 1219.
36. *Oxford House v. Town of Babylon* (E.D.N.Y. 1993) 819 F.Supp. 1179, 1182.
37. *Id.*
38. *Id.* at 1185.
39. *Corporation of the Episcopal Church in Utah v. West Valley City* (2000) 119 F.Supp.2d 1215, 1220.
40. *Tsombanidis v. West Haven Fire Dept.* (2d Dist. 2003) 352 F.3d 565, 574-75.
41. *Oxford House v. Town of Babylon* (E.D.N.Y. 1993) 819 F.Supp. 1179, 1181.
42. *Id.*
43. *Id.*
44. *Oxford House v. Town of Babylon* (E.D.N.Y. 1993) 819 F.Supp. 1179, 1181
45. *Id.* at 1183.
46. *Id.*
47. *Id.*
48. *Oxford House, Inc., v. Town of Babylon*, 819 F.Supp. 1179, 1185 (E.D.N.Y. 1993), *citing* 42 U.S.C. § 3604(f)(3)(B).
49. 42 U.S.C. § 3602(h).
50. *Behavioral Health Services v. City of Gardena* (C.D. Cal. Feb. 26, 2003) No. CV 01-07183, 2003 WL 21750852.
51. *Township of Cherry Hill*, 799 F.Supp. at 463-66.
52. See, *Township of Cherry Hill*, 799 F.Supp. at 462-63; *Horizon House Developmental Service Inc., v. Town of Upper Southampton*, 804 F. Supp 683, 699-670 (E.D.Pa. 1992); *Stewart B. McKinney Foundation, Inc., v. Town Plan & Zoning Commission of the Town of Fairfield*, 790 F.Supp. 1197, 1221 (D.Conn. 1992).
53. *A.M. v. Albertsons, LLC* (2009) Cal. Ct. of Appeal, First App. Dist., Case No. A122307.
54. *The Corporation of the Episcopal Church of Utah v. West Valley City* (D. Utah 2000) 119 F.Supp.2d 1215, 1221.
55. *Id.*
56. *Id.*
57. *Oxford House, Inc., v. Town of Babylon*, 819 F.Supp. 1179, 1186 (E.D.N.Y. 1993); *Horizon House Developmental Service Inc., v. Town of Upper Southampton* (E.D.Pa. 1992) 804 F. Supp 683, 699.
58. *Sanghvi v. City of Claremont* (9th Cir. 2003) 328 F.3d 532.
59. 42 U.S.C. § 3604(f)(3).
60. *Corporation of the Episcopal Church in Utah v. West Valley City* (2000) 119 F.Supp.2d 1215, 1221.
61. *Corporation of the Episcopal Church in Utah v. West Valley City* (2000) 119 F.Supp.2d 1215, 1221.
62. *Behavioral Health Services v. City of Gardena* (C.D. Cal. February 26, 2003) No. CV 01-07183, 2003 WL 21750852.
63. *Tsombanidis v. West Haven Fire Dept.* (2d Cir. 2003) 352 F.3d 565, 578.
64. In a recent case, for example, a teacher who was retaliated against after advocating for disabled students has standing to sue under the Rehabilitation Act and the ADA. *Barker v. Riverside County Office of Education* (9th Cir. Cal. 2009) 2009 DJDAR 15159.
65. *Smith v. Pacific Properties* (9th Cir. 2004) 358 F.3d 1097,1102.
66. Gov't Code § 12989.1.
67. Gov't Code § 12927(g).
68. *Fair Housing of Marin v. Combs* (9th Cir. 2002) 285 F.3d 899.
69. *Id.* at 905.
70. *Id.*
71. *Smith v. Pacific Properties and Development Corp.* (9th Cir. 2004) 358 F.3d 1097, 1101.
72. *Tsombanidis v. West Haven Fire Dept.* (2d Cir. 2003) 352 F.3d 565, 578.
73. *Oxford House v. City of St. Louis* (8th Cir. 1996) 77 F.3d 249.
74. *Id.* at 253.
75. *Bryant Woods Inn v. Howard County* (4th Cir. 1997) 124 F.3d 597, 601-602.
76. *U.S. v. Village of Palatine* (7th Cir. 1994) 37 F.3d 1230, 1234.
77. Cal. Const. Article XI, § 7.
78. Gov't code 65000, *et seq.*
79. Gov't Code 65850.
80. Gov't Code 65103 (regulation pursuant to general plan designations); Gov't Code 66410, *et seq.* (regulation through implementation of Subdivision Map Act).
81. *Oxford House v. Township of Cherry Hill* (D.N.J. 1992) 799 F.Supp. 450.
82. *Tsombanidis v. West Haven Fire Dept.* (2d Cir. 2003) 352 F.3d 565, 574-75.
83. *Id.* at 578.
84. 42 U.S.C. 3607(b)(1).
85. City of Edmonds v. Oxford House. (1995) 514 U.S. 725, 728.
86. *Id.*
87. *Id.*
88. *Turning Point, Inc., v. City of Caldwell* (1996) 74 F.3d 941.
89. *Id.* at 943.
90. *Id.*
91. *Id.* at 944.
92. *Id.*
93. *Gibson v. County of Riverside* (2002) 181 F.Supp.2d 1057, 1072.
94. *Id.* at 1075.
95. *Id.* at 1075, 1076.
96. *City of Edmonds v. Oxford House, Inc.* (1995) 514 U.S. 725, 731.
97. *Schwarz v. City of Treasure Island* (11th Cir. 2008) 544 F.3d 1201.
98. *Ewing v. City Carmel-by-the-Sea* (1991) 234 Cal.App.3d 1579, 1593.
99. *Behavioral Health Services v. City of Gardena*, No. CV 01-07183, 2003 WL 21750852, 10 (C.D. Cal. February 26, 2003).
100. *Oxford House v. Township of Cherry Hill* (D. N.J. 1992) 799 F.Supp. 450, 462; *Behavioral Health Services v. City of Gardena* (C.D. Cal. February 26, 2003) No. CV 01-07183, 2003 WL 21750852, 10.
101. 45 CFR §§ 160, 162, 164; Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
102. *Oxford House v. Township of Cherry Hill* (D. N.J. 1992) 799 F.Supp. 450, 460.
103. *Oxford House v. Town of Babylon* (E.D.N.Y. 1993) 819 F.Supp. 1179, 1182-1185.
104. *City of Santa Barbara v. Adamson* (1980) 27 Cal. 3d 123, 132-33; *City of Chula Vista v. Pagard* (1981) 115 Cal.App.3d 785, 795; *College Area Renters & Landlord Assn. v. City of San Diego* (1996) 43 Cal.App.4th 677, 687-88.
105. *Id.*
106. *Tsombanidis v. West Haven Fire Dept.* (2d Cir. 2003) 352 F.3d 565, 578.
107. California Housing Development Law, Gov't Code § 65913, *et seq.*; California Housing Element Law, Gov't Code § 65580, *et seq.*