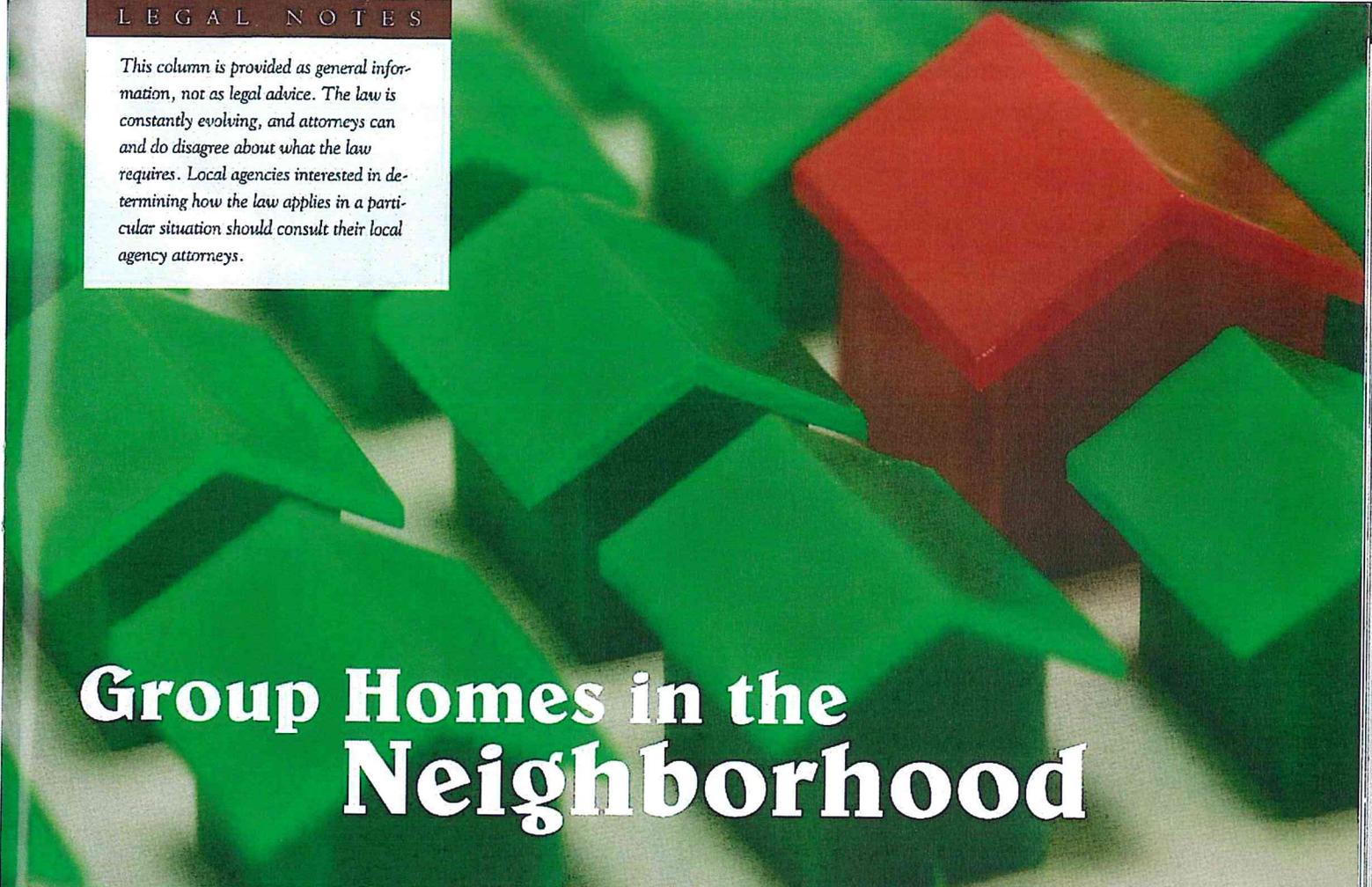


This column is provided as general information, not as legal advice. The law is constantly evolving, and attorneys can and do disagree about what the law requires. Local agencies interested in determining how the law applies in a particular situation should consult their local agency attorneys.



Group Homes in the Neighborhood

by David DeBerry and Jeff Ballinger

Group homes have long had a presence, albeit a controversial one, in California. Because neighbors are often concerned about noise, traffic, crime, safety and a decline in property values associated with group homes, city council members are frequently besieged with demands from constituents that a group home not be allowed in their neighborhood. This article addresses some of the policy and legal implications of group homes, with a focus on sober living facilities.

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Several significant pieces of legislation have played a role in the expansion of group homes. These include California's Lanterman Mental Retardation Act, the California Community Care Facilities Act, the Federal Fair Housing Amendments Act of 1988 (FHA) and California's Substance Abuse and Crime Prevention Act of 2000 (Proposition 36), as well as long-standing alcohol rehabilitation programs.

In the City of Riverside, a single-family home called "Fresh Start Sober Living" was found to be anything but. It had 21 occupants, including six parolees or probationers and several occupants who admitted being drug addicts but were not receiving any treatment.

A core policy of the Lanterman Act, Facilities Act and FHA is to open residential options for the disabled that previously were not available. The Lanterman Act states in part, "... that mentally and physically handicapped persons are entitled to live in normal residential surroundings and should not be excluded therefrom because of their disability, [and] in order to achieve [this purpose] it is necessary to establish a statewide policy that the use of property for the care of six or fewer mentally disordered or otherwise handicapped persons is a residential use of such property for the purposes of zoning."



The presence of multiple group homes can have a detrimental impact on a neighborhood and is the subject of state legislation.

The legislative concept of who is legally considered disabled has expanded as well, most notably to include drug and alcohol addicts. Indeed, state and federal law broadly define disability to include alcoholism and substance abuse, high blood pressure, emotional problems and/or learning disabilities. Prop. 36 mandates substance abuse treatment instead of incarceration for specified first time and repeat nonviolent drug possession offenders. The categorization of recovering addicts as disabled and the movement in favor of treatment over incarceration appear to be at least partly responsible for the increase in so-called sober living facilities.

The State's Group Home Pre-Emption of Local Zoning Laws

State laws require that specified state licensed group homes serving six or fewer persons be treated as a single-family dwelling. This includes a prohibition against any conditional use permit requirement, zoning variance or other discretionary action that is not required of a single-family dwelling in the same zone. In *Los Angeles v. California Department of Health*, the court found that the placement, treatment and "hopefully, return of the handicapped to a productive and respected place in society is a subject that transcends mu-

nicipal boundaries." Therefore, the state's pre-emption of local zoning laws applies to both charter and general law cities.

The state Legislature has recognized, to some extent, that the clustering of group homes ("overconcentration") can change the character of a residential neighborhood and has adopted legislation requiring at least some group homes to be located specified distances apart, typically 300 and in some cases 1,000 feet. Group homes that are subject to overconcentration restrictions cannot locate within these parameters without the permission of the local city or county.

Notably and somewhat unexplainably, there are no overconcentration regulations that apply to sober living facilities. Sober living facilities can and often do cluster and in some cases, operators have

continued

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purchased multi-family complexes, filled them with recovering addicts four to a room and essentially created a sober living institution. The lack of distance regulations can create the very type of institutional or campus-style living and negative neighborhood impacts that state law was meant to discourage.

Recently, state legislation was proposed to set distance requirements on licensed sober living facilities. AB 3007 would have imposed a 300-foot distance requirement. AB 3005 would have permitted a city or county to make a showing that allowing a new group home into a particular location would be detrimental to a neighbor-

The legislative concept of who is legally considered disabled has expanded, most notably to include drug and alcohol addicts.

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hood, notwithstanding that the group home may meet distance requirements. But neither bill passed the Assembly and consequently both are dead for the current legislative session.

The Federal Zoning Variance (FHA)

The FHA prohibits discrimination in housing against the disabled, including recovering alcoholics and drug addicts, among others. In addition to overt discrimination, the FHA also prohibits "a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford [handicapped]

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Group homes that house drug addicts can be of particular concern to neighbors with families.

person[s] equal opportunity to use and enjoy a dwelling." In essence, this statute provides for a federal "variance" from local laws, which can be broader than variances allowed under state zoning law. Under the FHA, cities may be required to grant preferences in their zoning laws for group homes that house the disabled.

The California attorney general has concluded that a city may limit the number of rooms rented or the number of separate rental agreements authorized per residence.

Reasons often cited in support of relief from zoning laws are the limited financial means of the disabled and the clinical belief that group support is a significant factor in recovery from addiction. In a Michigan case, a federal appeals court held that a city was required under the FHA to make a reasonable accommodation for a group home serving nine elderly disabled residents. In a case favorable for cities, *Oxford House v. City of St. Louis*, the court found that St. Louis' zoning code, which limited group homes to eight or fewer unrelated handicapped residents, did not discriminate against the disabled. The court noted that the zoning code actually favored the disabled, allowing eight unrelated disabled boarders to share a dwelling, while allowing only three nondisabled boarders. The court held: "Cities have a legitimate interest in decreasing congestion, traffic and noise in residential areas, and ordinances restricting the number of unrelated people who may occupy a single-family residence are reasonably related to these legitimate goals."

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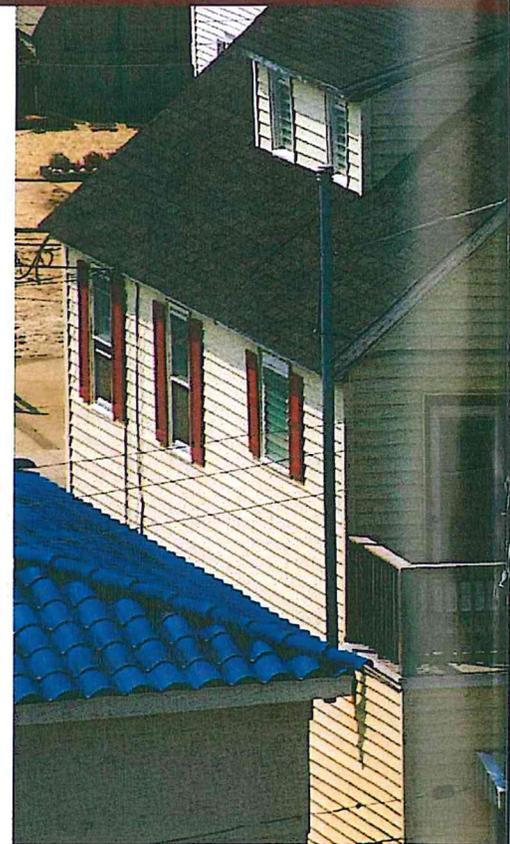
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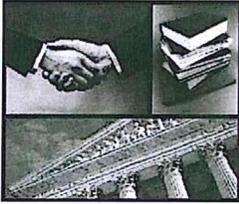
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Regulating in a Pre-Emptive Environment

For state-licensed group homes entitled to the zoning pre-emption, local regulation is not available. What a city can do is track where the facilities are located to ensure that group homes comply with overconcentration limits, and support state legislation that lessens their impacts.

However, local regulation is not pre-empted when it comes to *unlicensed group homes* and, given that it appears that the number of sober living facilities is expanding, it is a business your city may want to look into. According to a July 2005 UCLA study, more than 700 new drug treatment programs were started statewide since the inception of Prop. 36 in 2001. The report found that in its first four years, 140,000 Californians were diverted from incarceration, resulting in a 32 percent drop in the number of people incarcerated for drug possession. While generally concluding that Prop. 36 was working, the report noted that 65-70 percent of those who enter treatment do not



- The fact that such clustering cuts against state policy: and
- A citation of state legislation imposing distance requirements.

Citations for the numerous cases recognizing the government's interest in preserving the character of a residential

neighborhood may also prove helpful to include in the record.

Second, the regulations should have a mechanism by which a group home can seek reasonable accommodation under the FHA and/or even allow by right

continued

successfully finish. Treating an offender is substantially less expensive than jailing him or her — an average cost of \$3,000 for treatment compared to \$30,000 for prison. However, sober living facilities are not cheap. Cornerstone, which operates 11 treatment homes in the City of Orange, advertises a charge of \$500 per day with an average stay of 10 days. Thus, a financial incentive exists to meet the demand.

Initially, your city should have an ordinance that regulates based on the use rather than the user, and it must apply evenly and fairly to the disabled and non-disabled alike. For example, the California attorney general has concluded that a city may limit the number of rooms rented or the number of separate rental agreements authorized per residence.

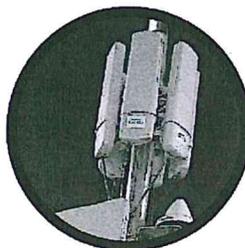
A distance requirement should be considered and should include:

- Sufficient evidence in the record concerning the impacts of clustered group homes;

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(or subject to local regulations) unlicensed group homes serving six or fewer residents. The City of Newport Beach recently adopted an ordinance wherein a group home can apply for a "Federal Exemption Permit" based on FHA reasonable accommodation requirements.

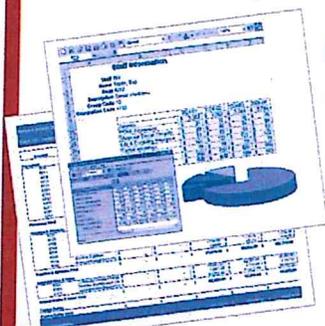
Cities should require operators of unlicensed group homes to present at least some evidence that they are actually housing persons who are covered by the FHA. In a recent case in the City of Riverside, a single-family home called "Fresh Start Sober Living" was found to be anything but. It had 21 occupants, including six parolees or probationers and several occupants who admitted being drug addicts but were not receiving any treatment. The owner was ordered to evict some of the tenants and the on-site manager was arrested.

Finally, your city should remember to use other code enforcement tools, such as enforcement of the state building and housing codes and local ordinances. In some cases, group homes, whether licensed or not, may contain violations, entitling the city to require corrections, prosecute violations and obtain injunctions. ■

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