

REGULATING GROUP HOMES FOR THE DISABLED

- Federal and state law protects the “disabled” from housing discrimination.
- Those who suffer from alcohol and drug dependency are considered disabled under the law.
- Recovering substance abusers who choose to live together in a home are a “protected class”.
- Federal law provides significant protections for recovering addicts, which interfere with the ability of cities to regulate recovery homes.
- A complex set of state and federal laws work in concert to promote and protect group homes operating in residential neighborhoods
- Usually unrelated adults are living together in SLH’s in a mutually supportive, drug-free home environment – according to studies, this has therapeutic benefits
- Usually, these residents are not living as a single-housekeeping unit (meaning they are not a group of unrelated persons under one rental agreement who have decided to live together as a “family” have established ties and share common household duties, chores, finances, etc.)
- Although, many SLH’s assert that their residents are in fact operating as a single-housekeeping unit and in doing so are acting as any other “family” sharing the entire home, chores, and common household duties and responsibilities in order to gain additional state and federal law protections that allow any number of unrelated persons to live together as a family.
- Residents living together as a “family” – or single-housekeeping unit - are exempt for zoning regulations; cities cannot have residential zoning laws that require occupants to be “related”
- State-licensed treatment facilities (offering nonmedical treatment and other services) of 6 or < are considered a residential use under state law and cities must treat them the same as any other single-family residential use.
- SLH’s are also not limited to 6 or fewer occupants – they can potentially include more occupants provided the home does not exceed state housing occupancy limits.
- SLH’s do not require a state license if they do not provide treatment or rehabilitation services.
- SLH’s that provide treatment and rehabilitation programs or services are required to be licensed by the state.

REGULATING GROUP HOMES FOR THE DISABLED

- There are no state limits on the number of SLH's that operate within a particular neighborhood or given community.
- No "overconcentration" regulations (i.e., spacing/distance restrictions) apply to SLH's.
- FHA requires recovering addicts be afforded equal opportunity to live in single-family homes and in safe, clean residential neighborhoods (drug free).
- Local ordinances must not run afoul of anti-housing discrimination laws, which seek to protect recovering addicts living in residential neighborhoods – FHA and ADA
- SLH's are in most if not all cities, whether licensed or unlicensed, and whether known or unknown.
- There are currently no licensing or other restrictions on SLH's under state or federal law to protect the residential character of a neighborhood.
- Discriminatory local zoning laws that target group homes for the disabled are prohibited under the law.
- Records of city council meetings containing disparaging remarks made by the public about recovering addicts could be found to be sufficient evidence of discriminatory intent – courts could find that the enactment of local zoning laws targeting SLH to be based on discriminatory animus because of disparaging public comments made in the record leading up to the adoption of a group home ordinance
- Two equally important and competing interests are pitted against each other in any FHA case: (1) protection of the disabled from housing discrimination; and (2) protection of residential character of neighborhoods.
- Several attempts at special legislation to address impacts on neighborhoods caused by overconcentration of SLH's have been attempted and have failed.
- Several cities have engaged in an expensive trial and error approach to enact zoning regulations in an effort to address overconcentration of SLH; Newport Beach has been unsuccessful to date having recently settled litigation for \$5.2 million and paying its attorneys \$4 million;
- Costa Mesa recently prevailed at the federal trial court level with a (New) Group Home R-1 Ordinance, granting preferential treatment in housing opportunities for the disabled; however additional litigation is expected and it is too early to determine whether such ordinance will be meaningful and effective.

REGULATING GROUP HOMES FOR THE DISABLED

- Cities have experienced difficulty enacting SLH regulations; regulating SLH's at the local level has proven costly and challenging in other jurisdictions.
- Even if cities enact lawful zoning regulations to regulate SLH's, federal law requires cities to provide a "reasonable accommodation" from such regulations.
- Cities may be able to regulate SLH's by tightening definition of "boardinghouse", enacting "overconcentration" regulations and certain permitting and operational rules, provided the city gives a preferential housing treatment under its zoning laws to group homes for the disabled (i.e., creating housing opportunities that are available to the disabled and that are not otherwise available to the nondisabled); however, such approach remains subject to legal challenge.
- This is an unsettled area of the law.