

Community Association Claims Under the Fair Housing Act and Americans With Disabilities Act

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COMMUNITY ASSOCIATION CLAIMS UNDER THE FAIR HOUSING ACT AND AMERICANS WITH DISABILITIES ACT



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AMERICANS WITH DISABILITIES ACT 101

Title III of ADA (42 U.S.C. § 12181-12189) prohibits discrimination of disabled individuals by owner, lessor, lessees, or operators of places of public accommodation.

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AMERICANS WITH DISABILITIES ACT 101

Requires places of public accommodation to be designed, constructed, and altered in compliance with established accessibility standards.



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AMERICANS WITH DISABILITIES ACT 101

- Typically, 47A, 47C, and 47F community amenities are not considered places of public accommodation under ADA.
- The North Carolina Building Code also incorporates many of the ADA accessibility standards.

FEDERAL FAIR HOUSING ACT 101

FHA (42 U.S.C. § 3601-3619) prohibits discrimination in housing based

on:

1. Race
2. Color
3. Sex
4. Religion
5. National Origin
6. Familial status (42 U.S.C. § 3602(k)) – 18 years of age or younger living with parent or legal guardian
7. Handicap (42 U.S.C. § 3602(h))



FEDERAL FAIR HOUSING ACT (cont.)

- Unlawful for community associations to discriminate against any person in the providing of services or facilities because of race, color, religion, sex, religion, national origin, familial status, or handicap (collectively, "Protected Classes").
- Unlawful for community associations to allow harassment within the subdivision because of Protected Class, if the community Association has the authority to intervene.

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FEDERAL FAIR HOUSING ACT (cont.)

- Reasonable accommodations – providing a reasonable accommodation in the rules, policies, practices, or services, when such accommodations may be necessary to afford such persons equal opportunity to use and enjoy a dwelling - common area. The community association is responsible for the costs of the reasonable accommodation requested
- Reasonable modifications – allowing a modification of the existing premises to afford such person full enjoyment of the premises. The party requesting the reasonable modification is responsible for the cost of the reasonable modification.



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FEDERAL FAIR HOUSING ACT (cont.)

- **Familial Status Issues**
 - Age not a protected class under the Act, but limiting access to services and facilities based on age negatively impacts families with children under the age of 18 and, therefore, constitutes familial status discrimination.



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FEDERAL FAIR HOUSING ACT (cont.)

- **Harassment Issues**
 - In 2016, the U.S. Department of Housing and Urban Development ("HUD"), the executive department that administers and enforces the Fair Housing Act, amended its regulations to address harassment that significantly impact condominium and homeowner associations.



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FEDERAL FAIR HOUSING ACT (cont.)

- HUD provides that there are two types of harassment under the FHA:

1. **Quid Pro Quo Harassment** – an unwelcome request or demand to engage in conduct, due to race, color, religion, sex, national origin, disability, or familial status, where submission to the request or demand is made a condition related to the provision of services or facilities.
2. **Hostile Environment Harassment** – Unwelcome conduct that is sufficiently severe or pervasive as to interfere with the provision or enjoyment of services or facilities based on a person's race, color, religion, sex, familial status, national origin, or handicap.



FEDERAL FAIR HOUSING ACT (cont.)

- Community associations are now directly liable for the discriminatory acts of third parties, such as a resident, guest, or outside vendor.
- Community associations are now liable for failing to take prompt action to correct and end a discriminatory housing practice by a third party, where the person knew or should have known of the discriminatory conduct and had the power/authority to correct it.

NORTH CAROLINA FAIR HOUSING ACT

- Mirrors the Federal Fair Housing Act (prohibits discrimination based on race, color, religion, sex, national origin, handicapping condition, familial status)
- Enforced by the North Carolina Human Relations Commissions ("HRC")

CASE STUDY 1

Gerald, a disabled veteran, lives in Sunny Pastures Homeowners Association. The Sunny Pastures Declaration allows members to own household pets like dogs and cats, but it expressly prohibits non-domesticated animals.

Gerald buys a flock of seagulls. When a member of the Sunny Pastures Board of Directors asks him to remove the seagulls, he says they are therapeutic and aid his disability.

At this point, can the Association deny his seagulls?





CASE STUDY 1

The Association should not outright deny his seagulls, but it can ask for more information.

Under the FHA, community associations are permitted to obtain verification of a disability in determining whether a reasonable accommodation or modification is necessary, as long as the disability is not readily apparent (e.g. anxiety, depression, other emotion disabilities).

Verification can come in any form from a health care provider. It must simply state the existence of a disability and the nexus between the disability and the alleviation of the symptoms of that disability that the accommodation provides.

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CASE STUDY 1

Gerald provides the Board with a note from a social worker, stating that he has a disability. The note does not explain what Gerald's disability is, but it does state that the seagulls alleviate the symptoms of Gerald's disability.

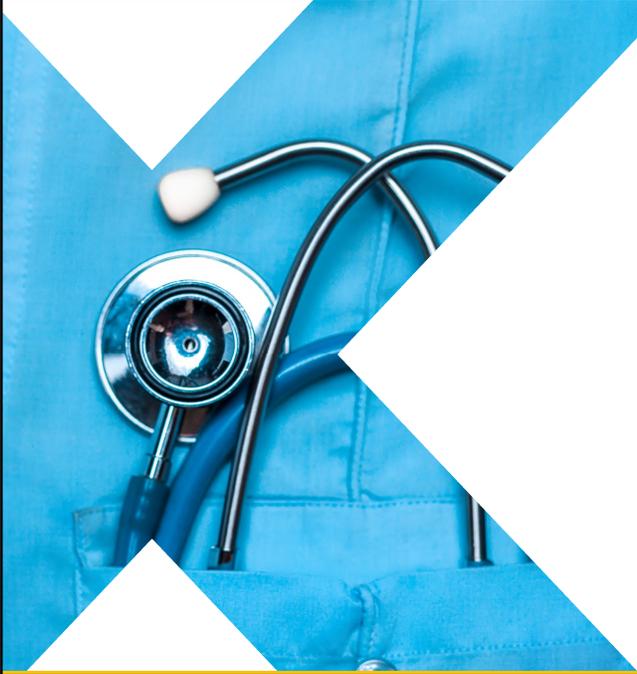
The Association denies the request, because a) the social worker is not a doctor; b) the note didn't describe the disability, and c) the Association's declaration expressly prohibits non-domesticated birds.

Is the Association in the clear with respect to the FHA?



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CASE STUDY 1

No.

First, HUD considers a "health care provider" to be anyone in the health care industry. This can be a nurse practitioner, a chiropractor, a therapist, or a social worker.

Second, verification does not mean a description of the disability. In fact, community associations are prohibited from asking what kind of disability a person has in making a determination on a request for a reasonable accommodation or modification.

Third, the type of animal (domestic or otherwise) is not material to whether it can provide emotional support.

Fourth, federal law trumps the governing documents. If a person can prove that he or she is disabled and needs a reasonable accommodation, such as a seagull, despite a declaration's provisions, federal law will control.


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CASE STUDY 2

Crystal Waters Homeowners Association is concerned about children swimming in the Association's swimming pool. After all, unattended children are a nuisance, could slip and fall, go to the bathroom in the pool, and are disruptive to the other pool goers' enjoyment.

The Crystal Waters Declaration allows the Board to make rules and restrictions governing use of the common areas, including the pool, so the Crystal Waters Board decides to adopt the following Rules:

1. All children under the age of 16 must be accompanied by a parent or guardian at the Crystal Waters community pool.
2. Children may not run or engage in horseplay in the pool area.
3. No children in diapers are allowed in the pool.
4. Adult swim-only periods will take places twice per day.

Crystal Waters resident Sally is infuriated. She thinks her 13-year-old son, Mikey, should be able to use the pool without her there. He's been on the swim team for years and is a capable swimmer.

Can the Association prevent Mikey from accessing the pool without his mom or another adult?




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CASE STUDY 2

No. Courts have held that pool rules denying accessing to an individual based on age is a violation of the Fair Housing Act, as it is discrimination based on familial status.

Can the Association require children to be accompanied by a parent or guardian?

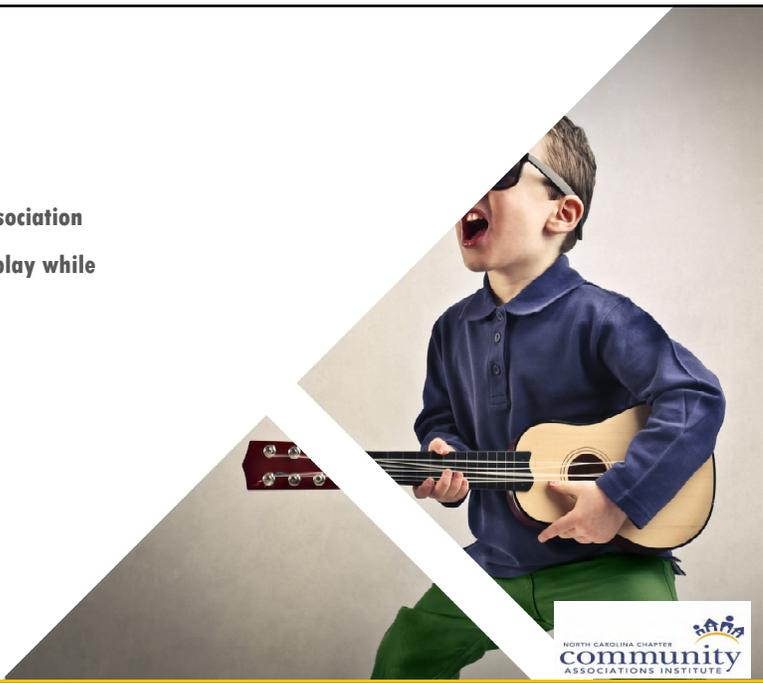
Can the Association prohibit children that are not potty-trained from using the pool?



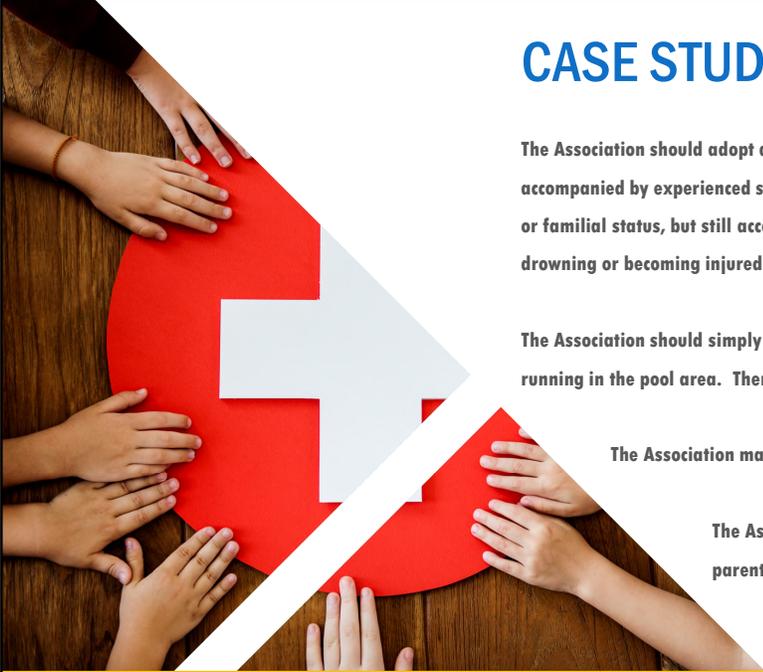
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CASE STUDY 2

How can the Crystal Waters Homeowners Association address its concerns about safety and horseplay while not running afoul of the Fair Housing Act?



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CASE STUDY 2

The Association should adopt a rule that requires inexperienced swimmers to be accompanied by experienced swimmers at all times. This way, it does not implicate age or familial status, but still accomplishes its goal of preventing an owner or guest from drowning or becoming injured.

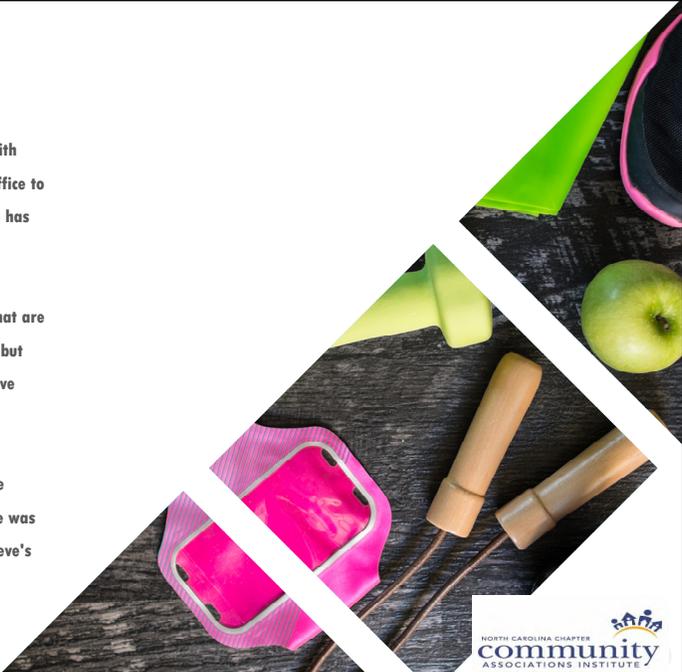
The Association should simply prohibit ALL individuals from engaging in horseplay or running in the pool area. There is no reason to target children.

The Association may prohibit all incontinent people from using the pool.

The Association cannot limit supervision of children to parents or guardians only.

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CASE STUDY 3

Steve, an on-site manager of Ocean View Homeowners Association, flirts with Darla, a resident of Ocean View, every time she comes to the Ocean View office to sign into the Association's gym. He has asked her out a few times, and she has always declined, stating that she is not interested.

Darla emails Steve to request a guest pass to the gym for her two friends that are visiting from out of town, and he responds, "I'll give you the guest passes, but only if you come to my place tonight in those spandex workout clothes you've always got on."

Darla immediately emails the Board to complain about Steve's conduct. The Board tells Darla that while they think Steve's actions are inappropriate, he was probably kidding, and if she has a real issue, she should take it up with Steve's supervisor with the management company.

Did the Association act appropriately?

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CASE STUDY 3

No. Steve's actions are "quid pro quo" harassment: it was an unwelcome demand (a late-night rendezvous despite Darla's repeated rejections for a date), based on sex, where submission to the demand was made a condition related to the provision of services or facilities (Darla only gets the guest passes for the community gym if she agrees to the late-night rendezvous with Steve).

Darla reported the behavior to the Association, and Steve, as the on-site manager of the company the Association has hired, is an agent of the Association. This means the Association must take prompt action to correct and end the discriminatory housing practice, since it knew the conduct occurred and had the power to correct it. The Association should not pawn the matter off to the member to deal directly with the management company.

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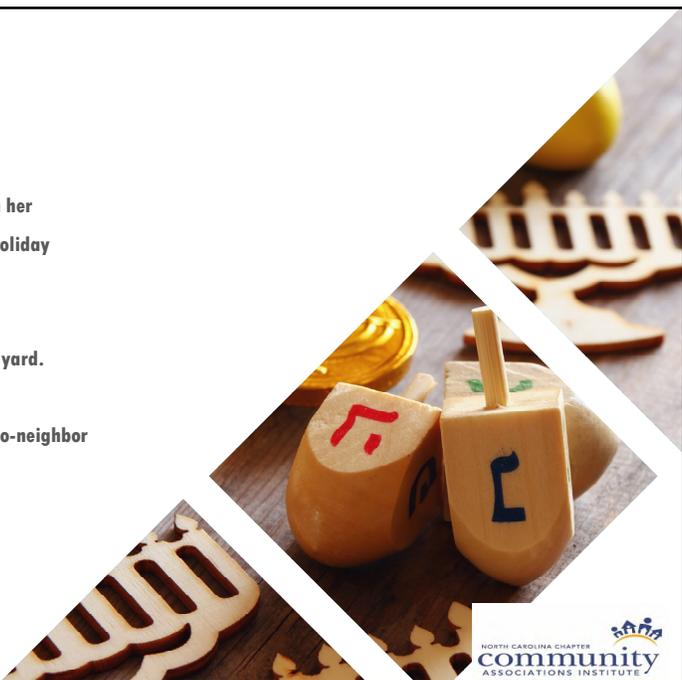
CASE STUDY 4

Darla, who is Jewish, proudly displayed Hanukkah decorations on her property in Ocean View last year. She took them down after the holiday season, as required by the Ocean View Declaration.

Since then, her neighbor, Bob, has put up anti-Semitic signs in his yard.

Darla tells the Association, but the Board says this is a neighbor-to-neighbor dispute that the Association will not get involved with.

Has the Association made the right decision?



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CASE STUDY 4

No. Under the FHA, an association is "directly liable" for failing to take prompt action to correct and end a discriminatory housing practice by a third party, such as a homeowner, where the association knew or should have known of the discrimination and had the power to correct it.

Bob's actions were discrimination based on religion, a protected class under the FHA, and Darla communicated the discrimination to the Board. Therefore, the Association must investigate the matter and demand that Bob take down his anti-Semitic signs from his yard.

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CASE STUDY 5

Jim is a white male, age 40, and a member of the Green Acres Homeowners Association. He has a fire pit in his back yard that he uses a few times a week. Jim's neighbor, Nate, a 60-year old white male, has constantly complained about the smoke from the fire pit wafting onto his property and triggering his allergies.

Jim and Nate have been quarreling over the fire pit for months. The fight has gotten so severe that Nate emails Jim six times per day, threatening legal action over the fire pit and making veiled threats that Nate will damage Jim's property.

Jim finally goes to the Green Acres Board and tells the Board that Jim is harassing him and the harassment has created a hostile environment.

Will the Board be liable if it refuses to correct Nate's conduct?



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CASE STUDY 5

Probably not. Based on the facts as they appear, this is a simple neighbor-to-neighbor dispute, and it is not harassment based on race, color, religion, sex, national origin, disability, or familial status.

However, because Jim has raised the issue with the Board, the Board should look into the matter to ensure that it does not involve a protected class.

Following this preliminary investigation, the Board can likely tell Jim and Nate that this is a neighbor-to-neighbor dispute, and the Association has no business getting involved. The Association can encourage both owners to contact their own personal attorneys.

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WHAT IS "CORRECTIVE ACTION"?

- A prompt investigation – speak to the complainant, the alleged offender, and any other individuals involved
- Issue verbal or written warnings that the discriminatory conduct stop
- Examine the governing documents to determine if enforcement procedures are permitted in these situations (hearing, fine, amenity restrictions)
- Depending on how severe the harassment is, report it to local law enforcement
- Consider legal action, such as restraining orders
- Document all efforts and discuss the process with counsel



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QUESTIONS?



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