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Presents

Michigan Condominiums and the Rights of the Disabled

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Complying with the Michigan Condominium Act, MPWDCRA, ADA and FHA/FHAA



Michigan Condominium Association Boards regularly receive requests and complaints regarding condominium access from co-owners or guests who suffer (or claim to suffer) from physical and mental disabilities. It is important that Boards seriously consider these communications because the American people have strongly expressed, through their elected legislators, a public policy preference for accommodating persons with disabilities. The strength of this preference is expressed by the existence of the “alphabet soup” of legislation indicated in the heading above. This article will guide the interested co-owner, board member or property manager through appropriate consideration of these issues.

I. Disability Compliance for Michigan Condominium Associations

The first two points of reference for a Michigan condominium association are the Michigan Condominium Act¹ and the Michigan Persons with Disabilities Civil Rights Act (MPWDCRA)².

The definition of “disabled person”, as used in the Michigan Condominium Act, is taken from the Michigan Construction Code Act:

an individual whose physical characteristics have a particular relationship to that individual's ability to be self-reliant in the individual's movement throughout and use of the building environment.³

The basic requirement of the Condominium Act is found in Section 47a (1), which generally requires a condominium association to permit a co-owner to make alterations to his or her unit if such alterations are needed to facilitate the co-owner's access to or movement within the co-owner's unit:

A co-owner may make improvements or modifications to the co-owner's condominium unit, including improvements or modifications to common elements and to the route from the public way to the door of the co-owner's condominium unit, at his or her expense, if the purpose of the improvement or modification is to facilitate access to or movement within the unit for persons with disabilities who reside in or regularly visit the unit, or to alleviate

¹ MCL 559.101 et seq.

² MCL 37.1101 et seq.

³ MCL 125.1502a(1)(x)

conditions that could be hazardous to persons with disabilities who reside in or regularly visit the unit.⁴

The statute goes on to indicate that, while such alterations must meet the requirements of local building codes and ordinances, they are not bound by restrictions in the bylaws or other condominium documents.⁵ The statute also sets forth a procedure by which a disabled person can submit his or her alteration plans to the Association's Board of Directors for its determination as to whether or not they comply with the statute. Once such plans are submitted, the Association is required to address them in a timely fashion, and may only deny the plans for good cause.

The MPWDCRA similarly provides that a person with disabilities must be permitted to carry out any alterations needed for his or her use of the premises:

(1) A person shall not ... refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if those modifications may be necessary to afford the person with a disability full enjoyment of the premises.⁶

II. How do the Fair Housing Act and the Fair Housing Amendment Act apply to Michigan Condominium Associations?

The Fair Housing Act (1968) ("FHA") and the Fair Housing Amendment Act (1988) ("FHAA") specifically identify condominiums as being subject to federal regulations in favor of disabled persons. These statutes forbid any discrimination against disabled persons.

A. Who are the "disabled": The FHAA protects: (1) an individual with a physical or mental impairment which substantially limits one or more of a person's major life activities; (2) an individual with a record of such an impairment; or (3) an individual who is regarded as having such an impairment, whether the individual is in fact so impaired.⁷ The FHAA, therefore, protects persons with physiological disorders or conditions, cosmetic disfigurement, anatomical loss affecting a major body system, and mental or psychological disorders, such as retardation or emotional or mental illness.

The FHAA also applies to individuals who are impaired as to sight, hearing or mobility, as well as to less obviously protected individuals, such as those with cancer, heart disease, diabetes, epilepsy and alcoholism.⁸ The FHAA applies where any of these conditions substantially limits "any major life activity," such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning or working.⁹

B. Duties under the Acts: The FHAA imposes affirmative duties on housing providers (such as condominium associations) in dealing with disabled persons. Among these duties are the obligation to allow certain modifications of existing premises, as well as the duty to make reasonable accommodations in rules, policies, practices and services to accommodate the needs of the disabled. The failure to perform these affirmative duties is an act of discrimination.¹⁰ Where necessary to accommodate mentally or physically disabled individuals, the Board has an affirmative duty to apply the rules in an accommodating fashion.

⁴ MCL 559.147a(1) (emphasis supplied)

⁵ MCL 559.147a(4)

⁶ MCL 37.1506(1)(a)

⁷ 42 USC §3602(h); 24 CFR §100.201

⁸ 24 CFR §100.201(a)(2)

⁹ 24 CFR §100.201(b)

¹⁰ 42 USC §3604(f)(3)(A), (B)

The FHAA permits a disabled resident to make changes to the exterior elements of a building, including the public and common use areas of a building, as well as the residence interior.¹¹ The FHAA requires that a disabled individual, at his or her own expense, be allowed to make reasonable modifications to enable him or her to make the property more accessible or useable. Examples of such modifications include the installation of fold-back hinges to enable a person in a wheelchair to go through a door and the construction of a ramp to enable a person in a wheelchair to enter a dwelling unit, lounge, lobby, laundry room, recreational area or passageways among and between buildings.

A condominium association may require reasonable assurances from the disabled person that such modifications will be done in a workman-like manner, and that all required building permits will be obtained.¹² There are no published cases in Michigan construing this regulation, and the extent to which an association's architectural control authority can be exercised to control the aesthetics of such modifications is unclear.

The FHAA requires associations to make reasonable accommodations in rules, policies, practices or services when necessary to afford disabled persons equal opportunity to the use and enjoyment of a dwelling, including public use and common area use.¹³ The “reasonable accommodation” requirement is a potential trap for the unwary. The courts have held that an accommodation is “reasonable,” and is therefore required, unless it imposes an “undue financial or administrative burden” on the property owner. If the Association denies a requested accommodation on the basis that it would impose an “undue burden” and the co-owner files a discrimination claim, the Association will have to prove that the requested accommodation presents an undue burden in order to defeat the discrimination claim.

III. Does the Americans with Disabilities Act apply to Michigan Condominium Associations?

The Americans with Disabilities Act (“ADA”) regulates “places of public accommodation,” but exempts “strictly residential facilities.” **The Department of Justice and the Federal courts have consistently determined that residential condominiums are not “places of public accommodation,” so long as the units and common areas are limited to the exclusive use of co-owners and their guests.**

However, if areas of a condominium association are permitted to affect commerce in any way – such as the operation of a sales office or of a senior citizens center, or by the one-time rental of the condominium clubhouse or swimming pool to a co-owner or outside guest – then those areas would be subject to the ADA.

A. Implications of ADA Compliance. If part of an Association is a “place of public accommodation,” then the Association: (1) cannot deny persons with disabilities the full and equal enjoyment of goods, services and accommodations in that place; (2) must make reasonable modifications in policies, practices and procedures where necessary to afford goods, services, facilities, and accommodations to individuals with disabilities; and (3) must remove accessibility barriers where such removal is “readily achievable,” such as installing grab bars in restrooms, ramps and creating curb cuts.

B. Costs of Failing to Comply with the ADA. A private individual who is denied the required facilities, services or accommodations may bring an ADA lawsuit on his or her own behalf. Injunctive relief is available to require access to facilities and services, or modifications of policies and procedures.¹⁴ In addition, the Department of Justice may bring an action to enforce compliance and obtain injunctive relief, monetary damages and civil penalties. Civil penalties may be up to \$50,000 for a first violation, or \$100,000 for any subsequent violation. The application of civil penalties is to be evaluated based on the good faith effort or attempt of the entity to comply with the Act.¹⁵ Further, a prevailing party is generally entitled to reasonable attorneys’ fees and costs.

¹¹ 24 CFR §100.201

¹² 24 CFR §100.203(b)

¹³ 42 USC §3604(f)(3)(B) and 24 CFR §100.204(a)

¹⁴ 28 CFR §36.501

¹⁵ 28 CFR §36.504(d)

As with other issues of community living, the best policy for the board of a condominium association is to respect the human dignity of each person, including those who are disabled. When requests and complaints are submitted regarding condominium access, it is important that the Board or its agents receive those communications respectfully and deliver the appropriate response within a reasonable amount of time. Frequently, these requests may strike Board members or property managers as unreasonable or unduly contentious. This may quickly lead to escalating conflict and threaten the Board's ability to deal with the matter in an objective manner. There are many agencies that provide legal assistance to potential claimants for disability claims. THEREFORE WE ADVISE THAT BOARDS PROMPTLY CONSULT WITH LEGAL COUNSEL FOR ASSISTANCE IN RESPONDING TO THESE REQUESTS. Getting off on the right foot can save associations much unnecessary time and expense that may result if a misguided strategy is adopted.