

DOS AND DON'TS OF RULE WRITING

Following are some rule-writing dos and don'ts that will help keep you out of hot water, saving your association legal troubles and costly fines:

- **Don't** write rules about status or people; for example, rules applying only to children, teenagers, people with disabilities, etc. **Do** write rules about problem behaviors.

For example, don't deny children access to the pool or pool area if a parent isn't with them. **Don't** outlaw only infants and kids who aren't potty-trained from swimming in your pool. (What about adults who are incontinent?) In this case, **do** write policies that require people, in general, who are incontinent or not potty-trained to wear appropriate waterproof clothing in the pool.



- **Do** create rules that get at the root of health and safety concerns.

Concerned about horseplay, roughhousing, bad language and unreasonably loud noise at the pool? **Don't** refuse access to children and teens. Instead, **do** simply prohibit the unsafe behaviors: running on the pool deck, profanity, rough play and diving. Be sure to include language stating a consequence: for example, "violators will be asked to leave the pool and may lose access, possibly facing suspension of future use by the board of directors."

- **Do** watch your words! **Don't** use these red flag words:

"child," "children," "parents," "adult," and any words having to do with age such as "ages" and "years old."

- **Do** be smart.

Want an adult swim time at your pool? You should not do that, because it's a possible FHA violation to restrict only families or kids. However, you *can* have times for "lap-swimming" only. By mandating lap swimming only, you are not discriminating against children or families, because they could lap swim also.

As if it weren't complicated enough, there are state regulations that seem to contradict the FHA. For example, North Carolina requires swimming pools operating without a lifeguard to post a sign in a prominent place that reads: Children should not use the swimming pool without adult supervision. What should you do: Comply with NC law or federal FHA law? In many cases, federal law supersedes state law. It's a challenge. Protect yourself: Consult your legal advisor for sound advice.

**Don't risk making a mistake that could cost your association \$100,000 or more...
Call AMG today—we will help you get qualified legal representation, before it is too late.**

Information contained herein is not legal advice and should not be relied upon other than as general information, which may or may not apply to particular circumstances. Association Management Group encourages all communities with legal questions or concerns to consult with their attorneys for guidance. If you do not have a legal advisor, AMG can help you retain a qualified attorney.



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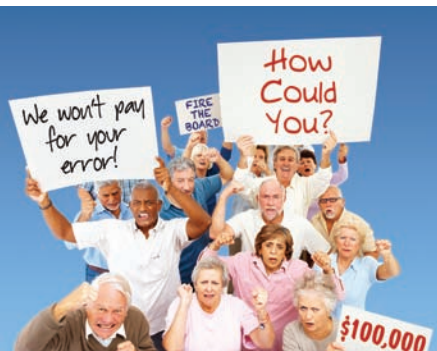
How to Avoid a \$100,000 Board Mistake



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REAL CASES THAT CAUSED REAL PROBLEMS FOR ASSOCIATIONS

- Limiting children’s use of the common areas cost a Minnesota association more than \$100,000 in fines, legal fees and settlement costs. (<http://www.justice.gov/opa/pr/greenbrier-village-settles-lawsuit-alleging-unlawful-discrimination-against-families-children>)
- Raleigh, NC, association agreed to pay \$20,000 related to failure to allow reasonable architectural accommodations. (<http://www.newsobserver.com/news/local/community/north-raleigh-news/article16394222.html>)



4 THINGS EVERY HOA DIRECTOR MUST KNOW

1. FAMILIES WITH CHILDREN UNDER 18 ARE PROTECTED (THEY HAVE LEGAL “FAMILIAL STATUS”).

Associations should not make or enforce rules that treat families with children differently than families of only adults. Rules that single out minors such as “Adult-Only Swim Time” and “Children under age X must be accompanied by a parent,” may well be Fair Housing violations unless you can prove your rule is specifically related to health and safety. This applies to all common areas, not just pools. Not sure if your community rules are correct? Seek legal guidance immediately.



2. BE SMART ABOUT MAKING ACCOMMODATIONS.

When a request for an accommodation—such as a ramp, service animal or special parking space—is made by a person claiming a disability or handicap of any kind, share the request immediately with legal counsel experienced with Fair Housing laws for review. Never assume that you can ask residents making these requests questions about the severity of their disability or details about their medical records. Get legal advice on how to handle the request. Our experience is that no matter how well intentioned a board of directors may be, it is very easy to violate these important laws inadvertently.



3. LET A PROFESSIONAL REVIEW YOUR COMMUNITY RULES.

Now is the time to have your community rules reviewed by your legal advisor. Compared to the cost of fines for a Fair Housing Act violation, the expense of having an experienced attorney review your current rules and policies is negligible.

4. AMG IS HERE TO HELP.

Since 1985, AMG has helped guide and assist associations with everything from board training and writing effective policies and procedures to setting up financial systems and creating connected communities. Contact Joselin Paz at (888) 908-4264 or jpaz@amgworld.com for immediate assistance. We have qualified managers and connections to expert lawyers and other professionals who can help with FHA and other issues.



ABOUT THE FAIR HOUSING ACT AND WHAT IT MEANS FOR YOU

The federal Fair Housing Act, passed in 1968, prohibits discrimination in residential housing based on color, race, sex, religion and national origin. Over the years, it’s been augmented to prohibit discrimination on the basis of disability and familial status. The Fair Housing Act absolutely applies to community associations, and we’ve found that the Act’s guidance on discrimination based on “Familial Status” is often misunderstood or overlooked.

FAMILIAL STATUS

- **Definition:** one or more individuals who have not attained the age of 18 years being domiciled with (i.e., living in the same household as) a parent or another person who has legal custody of such individual or individuals, or the designee of such parent or other person.
- **Law:** It is unlawful to discriminate against a person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status or national origin.



BOTTOM LINE

It’s against the law for you and your association to deny or limit access to your common areas, swimming pool or any other facilities just because a household includes one or more children under the age of 18. That means rules, conditions and policies about use of your facilities should not be solely age based – for example, “no children allowed.”

ABOUT THE AMERICANS WITH DISABILITIES ACT AND WHAT IT MEANS FOR YOU

The Americans with Disabilities Act (ADA) was signed into law in 1990. The ADA is one of the United States’ most comprehensive pieces of civil rights legislation that prohibits discrimination and guarantees that people with disabilities have the same opportunities as everyone else to participate in the mainstream of American life—to enjoy employment opportunities, to purchase goods and services and to participate in state and local government programs and services.

ARE YOU COVERED?

The ADA prohibits discrimination in places of “Public Accommodation” on the basis of disability and requires that private entities make alterations if they open their premises to the general public. “Public Accommodation” as defined in the ADA does not include residential facilities; therefore, common areas of a homeowners’ association and common elements of a condominium (such as the clubhouse and pool) are likely not covered by the ADA **because use is restricted exclusively to residents and their guests—these facilities are not open to the public.** The exemption from the requirements of the ADA would generally not apply if the Association were to open its common areas, such as the clubhouse or pool, to use by the general public who are not residents or guests of residents. For instance, if the Association were to rent the use of the clubhouse or pool to the general public or host events open to the general public, then the ADA rules would likely apply.

BOTTOM LINE

When you or your community receives a request for an accommodation, **don’t say no or even ask questions about the requester’s disabilities—some questions can get you in trouble.** Call your legal advisor. While the ADA may not apply, other statutes may. Be prepared to be reasonable and to make or allow reasonable accommodations, perhaps even if not required. Always follow your lawyer’s advice!

For Immediate Assistance, Please Call (888) 908-4264.

