Discrimination Considerations of Homeowner Associations

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Although homeowner associations and management companies possess good intentions when it comes to regulating families and children, they must be careful not to discriminate against families by enacting rules and restrictions that treat families with children differently. Typical rules and restrictions that are considered discriminatory include: restricting children to certain portions of an Association's common area, the setting of age limitations on certain facilities inside the Association. Despite the fact that associations and their governing entities are private, nonprofit corporations or organizations, California State and Federal courts have applied anti-discrimination statutes such that condominium associations are bound by statutes such as the Fair Housing Act, California Government Code § 12955, and California Civil Code §§ 51-52. Under such statutes, associations cannot discriminate against families or children, unless there is a legitimate health, safety, or business reason.

In a recent federal case, Housing Rights Center, et al. v. Rivera Town Homes, et al., CV02-5163PA, the Housing Center and seven families sued a condominium association, and its property management company alleging that Rivera Town Homes discriminated against the Plaintiffs on the basis of familial status. More specifically, the plaintiffs alleged that Rivera Town Homes enforced a rule prohibiting children from playing in the Association's common areas, which included grass covered yards and balconies. On February 12, 2003, the Federal Court issued a Consent Decree and Final Order requiring Rivera Town Homes to pay plaintiffs $130,000.00 along with repealing all rules regarding children. Rivera Town Homes also agreed to a two-year program of training for staff, the management company, and the board members.

The Plaintiffs' claim stemmed, in part, from allegations of severe emotional distress brought on by discrimination against familial status. Such allegations were supported and endorsed by Los Angeles child physiologist Dr. Robert Caper who wrote: "Children need easily accessible outside places to play. Playing outside is an important part of the child's developmental program to differentiate himself or herself physiologically from his or her parents. . . . Children who are cooped up exhibit signs of stress, and this in turn causes stress to their parents, which in turn has a direct effect on their ability to parent well, which causes additional stress to their children and so on in a vicious cycle." In other words, children associate the discriminatory rules, enacted by Associations with their parents' rules, which adversely affects the parent-child relationship.

Whether or not Dr. Caper's findings are valid is irrelevant. Even though Rivera Town Homes denied all allegations referenced in the Complaint, it was ordered to pay a substantial amount of money, and it expended resources to change its CC&Rs, and to comply with the remaining terms of the Consent Decree and Final Order. The Association incurred a substantial monetary loss due to discriminatory rules and restrictions. And, Housing Rights Center et al. v. Rivera Town Homes, et al. is just one example of how courts oppose discrimination against families and children and the Fair Housing Act and other similar statutes can be used against associations that overreach when attempting to control the behavior of children and families.

In another recent federal case, entitled Llanos v. Estate of Anthony Coehle, involving the designation of "family pools" and "adult areas" of the Association, the Court found that the Association=s rules which restricted children's swimming pool access to family pools and prohibited children from playing in and around adult areas of the complex was discriminatory and violated the Fair Housing Act. The Court reasoned that such restrictions "steered" families with children away from areas in the complex where families without children were allowed to go. Therefore, unless the restriction is excepted through a good health, safety, or business reason, it will be discriminatory and illegal if such restriction discriminates against families and children by treating the latter differently.

Associations and their Management Companies should be cautious when constructing rules that concern families and children. If the restriction treats families with children different than families without children — absent a compelling reason — it will be held to be discriminatory and legal action may be taken by homeowners as well as government agencies against the association. Before drafting such rules, it is always a good idea to consult a legal professional in the area, who can help reduce the likelihood of restrictions being found invalid and/or discriminatory. Professional consultation will also reduce long term costs such as litigation expenses that may arise if a lawsuit is pursued by a homeowner or government agency. The bottom line is that these efforts on the front end will help to reduce the likelihood of adverse outcomes for associations such as the one in the Rivera Town Homes case.