



VOLUME 2, ISSUE 1

Serving Bucks, Chester, Delaware and Montgomery Counties Since 2001

Mission

Our mission at LASP is to provide quality legal representation to low-income people, to empower them to solve problems without legal representation through legal education and increased access to the courts, and to change community practices and systems that cause or aggravate poverty.

David Bennethum, Esq.
Editor

The Fair Housing Newsletter is a project of the Bucks County Division of Legal Aid of Southeastern Pennsylvania. Funding for this newsletter is provided through a contract with the Bucks County Department of Community and Business Development.

IN THIS ISSUE:

Disability-Related Poverty.....2
Federally-Assisted Housing.....3
No to Medical Marijuana.....4
Get Legal Help.....4

Bucks County Residents Voice Concerns About Group Home

An important issue for communities throughout the nation and in Bucks County is the location of “group homes” and “recovery houses” for persons with disabilities, including mental illness, substance dependence and addiction. Issues of property values and safety for both the community and group home residents often lead to heated debate and litigation.



Recently, some residents in upper Bucks County joined with their neighbors in Northampton County to oppose the continued operation of one such home in an area zoned agricultural. Local authorities have issued a cease and desist order. The nonprofit organization that owns and runs the home has appealed that order on the grounds that the zoning restriction discriminates against the disabled in violation of the Fair Housing Amendments Act (FHAA). In enacting the FHAA Congress stated it was intended to prohibit the imposition of restrictions which have the effect of excluding “congregate” living arrangements for persons with handicaps.

Zoning authorities are permitted by law to manage land use within their communities. However, they may not enact and enforce overly restrictive zoning regulations that have the effect of excluding the disabled and other classes of protected persons from living in the community. Furthermore, there is an affirmative duty upon local governments to grant zoning variances as reasonable accommodations for the housing needs of disabled persons where to do so will not impose an undue financial or administrative burden on the local government nor fundamentally undermine its zoning scheme. Each case must be decided on its own set of facts and there are legitimate concerns on both sides of the issue.





Can Fair Housing Laws Accommodate Disability-Related Poverty?

Legal Aid recently negotiated a reasonable accommodation for a handicapped man that allowed him to be added to his mother's lease after his mother's request to do so was denied by her landlord because of the son's unfavorable credit history.

The law is unsettled on whether landlords can be required to bend tenant screening policies based on income and credit history, which are not inherently discriminatory, where the prospective tenant's economic status is the direct result of his or her handicap. The question is not whether the requested accommodation is a reasonable one, because the tenant must show that they have the means to pay the rent, but rather whether the Fair Housing Amendments Act (FHAA) can ever be used to accommodate a person's disability-related poverty rather than his or her disability directly. The issue is an important one because many handicapped persons have low incomes and poor credit histories because of their handicaps, and such screening policies have a greater adverse impact on the handicapped than others, denying to them the housing of their choice and excluding them from the American mainstream.

The United States Court of Appeals for the Ninth Circuit, citing the U.S. Supreme Court's 2002 opinion in *U.S. Airways, Inc. v. Barnett*, has ruled that disability-neutral policies, like a landlord's tenant income qualifications, do not escape all scrutiny under the FHAA's reasonable accommodation mandate simply because they are based on financial considerations. On the other hand, the U.S. Appeals Courts for the Second and Seventh Circuits have held that accommodations of one's personal economic situation are outside the scope of the FHAA's reasonable accommodation requirement, even where the disabled person's economic status is the direct result of his or her disability.

The Delaware Valley is part of the Third Circuit Court of Appeals, which has not directly addressed the issue. However, there is Third Circuit precedent holding that strict adherence to a policy which has the effect of precluding handicapped individuals from residing in the residence of their choice is the type of exclusionary policy which the FHAA seeks to overcome. Accordingly, it is likely that the Third Circuit would follow the reasoning of the Ninth Circuit if given the opportunity to decide such a case.

Fortunately for our client, the landlord was responsive to our attorney's request to allow our disabled client to live with his mother and has promised to lease them a larger apartment when one becomes available.



Nondiscrimination in Federally-Assisted Housing Programs

Legal Aid recently negotiated a reasonable accommodation for the handicap of a client who was threatened with losing her federally funded Section 8 rent subsidy for having more than one residence and failing to report an extended absence from her federally subsidized apartment. After being advised by her physician that she should not live alone during a period of recovery, the client left her rent subsidized apartment to live with and receive assistance from her family for approximately six months. When she left, she failed to notify the apartment owner or the local housing authority. Because this was a clear violation of federal regulations governing the Section 8 program, the housing authority initiated a termination proceeding.



As recipients of federal funding, local housing authorities are required to administer their programs in conformity with the Fair Housing Act, the Rehabilitation Act of 1973 and the Americans with Disabilities Act. Additionally, when bringing any action to terminate the benefits of a program participant, housing authorities are required to make their decisions subject to consideration of reasonable accommodation for the disability of a family member, if relevant to the underlying program violation committed by the participant. Because the client's program violation grew out of her handicap the housing authority was amenable to an accommodation, provided it was reasonable.

Generally, only accommodations that do not impose an undue financial burden on a housing provider are considered reasonable. In this case, the housing authority could not be reimbursed by HUD for the six months of rent paid to the private landlord while the client was absent from the apartment. Accordingly, the client was required to reimburse the housing authority for the subsidy it paid on her behalf during that period and she remained a participant in the Section 8 program. While it was financially challenging for our client to pay back the housing authority, she was grateful to be able to stay in the apartment which had been her home prior to her illness.



Bucks County Offices

1290 Veterans Highway, Box 809
Bristol, PA 19007
215-781-1111
Walk-ins:
W 1-3:30pm

100 Union Street
Doylestown, PA 18901
215-340-1818
Walk-ins:
M-F 8:30am-4:30pm

www.lasp.org

No Medical Marijuana in Public Housing (...Snakes are Iffy, Too)



A federal appeals court recently rejected a public housing tenant's medical necessity defense to eviction for illegal drug use. The Fair Housing Act, ADA, and Rehabilitation Act all expressly exclude illegal drug use and the court held that the housing authority did not have a duty to reasonably accommodate the tenant's medical marijuana use. The court stated that requiring public housing authorities to violate federal law would not be "reasonable." The court declined to consider the question of whether or not the tenant's snakes qualified as "service animals."

Need Legal Help? Call Us!

Legal Aid of Southeastern Pennsylvania provides free legal advice and representation to eligible low-income clients on a variety of civil matters. The primary issues handled by LASP include, but are not limited to: custody, Chapter 7 bankruptcy, employment law, protection from abuse for plaintiffs, landlord/tenant law, welfare benefits, Social Security, public housing and elder law issues

If you need legal help, the first step is to call the LASP toll-free Helpline at 1-877-429-5994 (Monday through Friday, 9am-1pm).

During your first call, an intake worker will determine if you are eligible for our services and if your legal problem is one that we handle. The degree of assistance LASP provides is determined on a case-by-case basis.