

## Heather Dukes

5064 E. Yucca Street  
Scottsdale, AZ 85254  
602.320.8866

City Clerk  
CITY OF SCOTTSDALE  
3939 N. Drinkwater Boulevard  
Scottsdale, AZ 85251

July 1, 2021

**RE: Appeal of Zoning Interpretation to the City of Scottsdale Board of Adjustment – 7910 and 7920 E. Wilshire Drive, Scottsdale, Arizona 85257 (the “Property”)**

Dear City Clerk,

On behalf of my clients, Scottsdale Recovery II, LLC, a Delaware limited liability company and Centered Living, LLC, an Arizona limited liability company, I submit the enclosed application to the Board of Adjustment pursuant to Sections 1.801 and 1.805 of the City of Scottsdale Zoning Ordinance (the “Zoning Ordinance”) for purposes of appealing the Zoning Administrator’s Interpretation dated June 23, 2021 with regard to the above-referenced Property (the “ZA Interpretation”).

Specifically, the ZA Interpretation determined that the proposed sober living use of the Property would constitute a “Care Home” and would not be permitted in the Medium Density Residential (R-3) zoning district. For the reasons set forth in the attached Interpretation Application dated May 13, 2021, the ZA Interpretation is erroneous, and therefore is being appealed to the Board of Adjustment as arbitrary, capricious or an abuse of discretion.

We respectfully request that this appeal be scheduled to be heard at the August 4, 2021 Board of Adjustment hearing. We also request the opportunity to submit additional evidence and written materials in support of this appeal. The supplemental materials will be submitted at least 14 calendar days prior to the Board’s hearing in accordance with Section 403 of the Rules of Procedure for the Board of Adjustment effective September 7, 2016.

If you need additional information or documentation in order to process this appeal, please do not hesitate to contact me at [hdukesesq@gmail.com](mailto:hdukesesq@gmail.com) or by phone at 602.320.8866. Thank you.

Very truly yours,

**Heather N. Dukes**

602.320.8866 | [hdukesesq@gmail.com](mailto:hdukesesq@gmail.com)



**Planning and Development Services**  
**Current Planning**

7447 East Indian School Road  
Scottsdale, Arizona 85251

Snell & Wilmer LLP  
ONE ARIZONA CENTER  
ATTN: Heather N. Dukes  
400 E Van Buren Suite 1900  
Phoenix, AZ 85004-2202

6/23/2021

Re: Zoning Interpretation Request

Dear Ms. Dukes:

In response to the Request for Interpretation received on 5/13/2021, this correspondence confirms that proposed residential use (sober living home) is not permitted as of right in the Medium Density Residential (R-3) zoning district because the “Care Home” land use regulations apply to licensed sober living homes and Care Home is not permitted in the R-3 district.

1. The Proposed use is a “care home.”

Because the State of Arizona extensively regulates the public health activity, the city uses the State’s licensing requirements to determine “care home” applicability.

This application of zoning has been the city’s practice for years and is supported by the city’s Care Home definition of a dwelling shared as a primary residence by no more than ten (10) adults with a disability that is *licensed* as a health care institution under Arizona law, and in which on-site *supervisory or other care services* are provided to the disabled residents.

In 2017, the City adopted Ordinance No. [4326](#) and Resolution No. [10963](#) (Care Homes/Group Homes Text Amendment) that updated a variety of zoning regulations pertaining to home care. During that zoning code amendment process, the [City Council Action Report](#) stated that home care has evolved over time to include treatment of persons suffering from a variety of disabilities, including those recovering from substance abuse (sober living homes).

One of the specific components of the zoning update was identifying that there are different types of care homes (including elder care and sober living) and the zoning update consolidated all types of home care licensed by the State into a single “Care Home”

category. The city relies on the State's expertise of home care licensing and uses that qualifier for zoning implementation.

Sober Living Homes are State licensed and include supervised activities toward recovery. Both the license and supervision qualify under the City's Care Home definition. The State defines "Sober living home" as any premises, place or building that provides alcohol-free or drug-free housing and that: (a) Promotes independent living and life skills development; (b) May provide activities that are directed primarily toward recovery from substance use disorders; (c) Provides a *supervised* setting to a group of unrelated individuals who are recovering from substance use disorders; and (d) Does not provide any medical or clinical services or medication administration on-site, except for verification of abstinence. A.R.S. § [36-2061.3](#)

Further, the State defines a "Health care institution" as every place, institution, building or agency, whether organized for profit or not, that provides facilities with medical services, nursing services, behavioral health services, health screening services, other health-related services, *supervisory care services*, *personal care services* or *directed care services* and includes home health agencies as defined in section 36-151, outdoor behavioral health care programs and hospice service agencies (A.R.S. § [36-401.22](#)). Additionally, section [R9-10-102](#) of the Arizona Administrative code has identified subclasses of health care institutions that may apply for licensure, and 'Substance Abuse Transitional Facility' is a recognized category.

2. The proposed use is not permitted as of right.

A dwelling unit, by city definition, is intended for occupancy by a family and the city's family definition is very inclusive. When there is a state license involved for the purpose of regulating care services in a dwelling, that dwelling uniquely qualifies under the city's Care Home definition. A family is a component of a dwelling, and a licensed dwelling is a care home.

3. The proposed use is not a group home.

The R-3 zoning district allows for group homes not care homes. A "group home" defined in Section 3.1000 of the Ordinance as a "dwelling shared by more than six (6) adults as their primary residence in which no supervisory or other care is provided." Because each dwelling unit on this property can only accommodate two to four residents per unit, it cannot meet the definition of a 'group home', nor is the use analogous to a group home because the proposed use will require a license from DHS for a sober living facility, and may provide services directed toward recovery from substance abuse.

I hope this provides the clarification you are seeking.

Sincerely,

A handwritten signature in black ink, appearing to read 'Randy Grant', written in a cursive style.

Randy Grant  
Zoning Administrator

Attachment: Request for Interpretation received on 5/13/2021



**Zoning Group**

Heather Dukes, Esq  
Attorney

Noel J. Griemsmann, AICP  
Sr. Urban Planner

Taylor N. Moran  
Urban Planner

Paola Jaramillo  
Assistant Planner

Ryan McCann  
Assistant Planner

# Scottsdale Recovery II, LLC

## Interpretation Application

**Request for a Clarification of an Interpretation or Application of a Statute, Ordinance, Code, or Policy Statement, Including a Request for an Interpretation of the Zoning Ordinance**  
Request Submittal Requirements and Application



**General Information:**

Pursuant to A.R.S. §9-836, an applicant/agent may request a clarification from the City regarding an interpretation or application of a statute, ordinance, code or authorized substantive policy, or policy statement. Requests to clarify an interpretation or application of a statute, ordinance, code, policy statement administered by the Planning and Development Services, including a request for an interpretation of the Zoning Ordinance, shall be submitted in writing to the One Stop Shop to the attention of the Planning and Development Services Director. Zoning Administrator or designee will respond within thirty (30) days of the receipt of the written request with a written interpretation, explanation of its interpretation or application as specified in the written request.


**Submittal Requirements:**


All such requests must be submitted in accordance with this checklist.


**1. Contact Information:**

Owner: Trullies LLC	
Company:	
Address: 10257 N. 99th Street Scottsdale, AZ 85258	
Phone: N/A	Fax: N/A
E-mail: N/A	

Applicant/Agent: Heather N. Duker	
Company: Snell & Wilmer, LLP	
Address: 400 E. Van Buren Street, Suite 1900 Phoenix, AZ 85004	
Phone: 602.382.6347	Fax:
E-mail: hdukes@swlaw.com	

  
 J. Elizabeth Freeman (May 13, 2021 17:04 MDT)  
 Owner Signature

  
 J. Elizabeth Freeman (May 13, 2021 17:04 MDT)  
 Agent/Applicant Signature

  
 For H. Duker

2. Specify the statute, ordinance, code or authorized substantive policy statement or part of the statute, ordinance, code or authorized substantive policy statement that requires clarification (including the any Zoning Ordinance section that an interpretation is being requested).

Table 5.703 and relevant definitions in Section 3.100 of the City of Scottsdale Zoning Ordinance

**Planning and Development Services**

7447 East Indian School Road Suite 105, Scottsdale, Arizona 85251 • www.ScottsdaleAZ.gov

**Request for a Clarification of an Interpretation or Application of a Statute, Ordinance, Code, or Policy Statement, Including a Request for an Interpretation of the Zoning Ordinance**

3. Specify any facts relevant to the requested ruling.

(Additional facts may be attached. Check the Box if attachments are included )  
Please see attached narrative.

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4. Specify the proposed interpretation of the applicable statute, ordinance, code or authorized substantive policy statement or part of the statute, ordinance, code or authorized substantive policy statement that requires clarification.

Please see attached narrative.

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5. Specify whether, to the best knowledge of the applicant/agent, the issues or related issues are being considered by the municipality in connection with an existing application, permit, or other license application.

N/A

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Official Use Only:	Submittal Date: _____	Application No.: _____
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**Zoning Group**

Heather Dukes, Esq  
Attorney

Noel J. Griemsmann, AICP  
Sr. Urban Planner

Taylor N. Moran  
Urban Planner

Paola Jaramillo  
Assistant Planner

Ryan McCann  
Assistant Planner

# Scottsdale Recovery II, LLC

Narrative



# Snell & Wilmer

ONE ARIZONA CENTER  
400 E. VAN BUREN, SUITE 1900  
PHOENIX, AZ 85004-2202  
602.382.6000 P  
602.382.6070 F

**Heather N. Dukes**  
**(602) 382-6347**  
**hdukes@swlaw.com**

May 13, 2021

## **VIA EMAIL**

Randy Grant, Zoning Administrator  
City of Scottsdale  
Planning and Development Services  
3939 N. Drinkwater Boulevard  
Scottsdale, AZ 85251

**Re: Request for Zoning Interpretation for Condominium Property Located at  
7910 and 7920 E. Wilshire Drive (the “Property”)**

Dear Mr. Grant:

On behalf of our client, Scottsdale Recovery II, LLC, a Delaware limited liability company (“SRII”), we submit this request for a zoning interpretation finding the proposed residential use of the above-referenced Property to be permitted in the Medium Density Residential (R-3) zoning district as “dwelling units” to be occupied by families or a “group home” pursuant to Table 5.703 and relevant definitions in Section 3.100 of the City of Scottsdale Zoning Ordinance (the “Ordinance”).

Due to our client’s pending purchase of the Property, we would respectfully request receiving an interpretation decision no later than Thursday, June 10, 2021.

### **I. ZONING ADMINISTRATOR’S AUTHORITY.**

Pursuant to Sections 1.202.A and 1.202.D of the Ordinance, the provisions of the Ordinance “shall be interpreted and applied by the Zoning Administrator” and “[t]he Zoning Administrator shall interpret uses within each district.” This request seeks an interpretation of the allowable uses within the Medium Density Residential (R-3) zoning district and, thus, falls within the authority of the Zoning Administrator to interpret uses within each district.

Randy Grant, Zoning Administrator  
City of Scottsdale  
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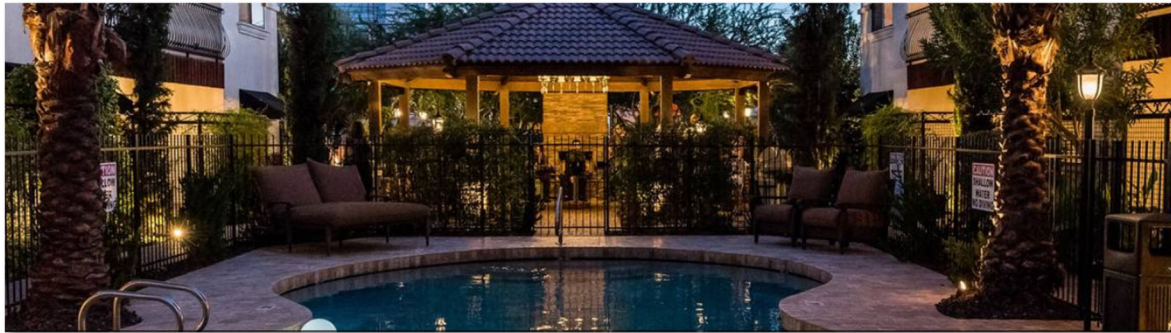
## II. BACKGROUND INFORMATION.

### A. Description of Condominium Property.

The Property is located approximately 300 feet west of the N. Hayden Road and E. Wilshire Drive intersection with an address of 7910 and 7920 E. Wilshire Drive. The Property is currently developed with 12 residential condominium units total. Each condominium unit includes a kitchen with floor plans offering two bedrooms and two bathrooms. The units are approximately 1,100 s.f. in size, allowing up to four persons to reside in each unit. A heavily landscaped common area with a pool, heated spa, gazebo and fireplace is located at the center of the Property.

In 1984, the Property was platted with condominium units<sup>1</sup> and construction was completed approximately the same year. The Property's condominium structure and its current R-3 zoning is compatible with the area, being predominantly developed with multi-family residential uses in the City of Scottsdale's R-3, R-4 and R-5 zoning districts. As shown by the aerial photographs attached as **Exhibit 1**, the Coronado Golf Course is also located to the west of the Property, offering an open space amenity to residents living in close proximity.

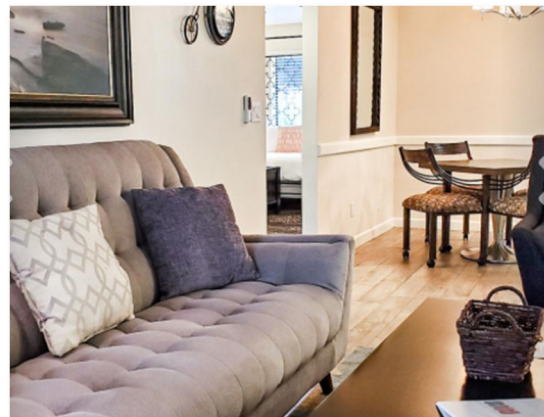
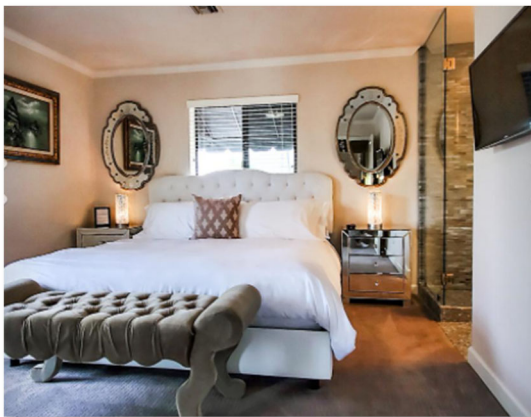
### Photographs of Condominium Internal Courtyard and Pool Area



<sup>1</sup> See Cortese Condominium plat recorded on May 9, 1984 in Book 266 of Maps, Page 50, MCR.

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## Photographs of Condominium Units



### **B. Experience of Condominium Purchaser.**

The Manager of SRII, Michelle Siwek, is a long-time operator in the community and has significant expertise in owning and operating both state-licensed behavioral health residential facilities (where care is administered to residents) and sober living homes (where care is NOT administered to residents). Since 2011, she has provided various residential options and treatment programs for disabled individuals in recovery and has been a longstanding member of the Arizona Recovery Housing Association. Ms. Siwek is the current owner and operator of SRII with 5 locations in Scottsdale, including a residential behavioral health facility, an outpatient clinic, two sober living homes, and a corporate office building with plans to offer detoxification treatment in the future. SRII has Joint Commission accreditation and certification and complies with the highest national standards for safety and quality in behavioral health. As the owner and operator of these facilities, Ms. Siwek is well-versed in distinguishing between the varying levels of treatment offered in detoxification centers and behavioral health residential facilities. In contrast, sober living homes provide no such care, offering only a safe and supportive place for individuals

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to reside in a conventional family setting. *See* Declaration of Michelle Siwek attached hereto as **Exhibit 2**.

### **C. Proposed Use of Property.**

The Property will be purchased by SRII to provide housing to adults who have completed several stages of recovery from substance use disorders and are using the tools they learned in treatment to live independently and reintegrate into the community. The Property will be licensed by the Arizona Department of Health Services (“ADHS”) as a sober living home, meaning that no care services will be provided to the residents. Treatment and care services are not necessary onsite. The individuals residing on the Property will have already received such services and completed necessary programs to progress along their path of recovery and reintegrate into the community. The goal is to provide individuals who have advanced far enough in their recovery to live more independently and practice independent living skills in a mutually supportive family setting. The site will not be licensed as a “health care institution” under Arizona law.

SRII proposes to rent each of the condominium units to two to four adults. Each condominium unit will operate as and emulate a family. In each unit, the residents will have access to a kitchen to cook their own meals and a washer and dryer to perform their own laundry. Cleanliness and upkeep of the unit is the responsibility of the individuals living in the condominium units. No care services will be provided to the residents. There will be no assistance with the self-administration of medication, no laundry services or cleaning services offered, and no full-service kitchen to serve meals to residents. Those responsibilities, once again, are the responsibility of the family living in each unit.

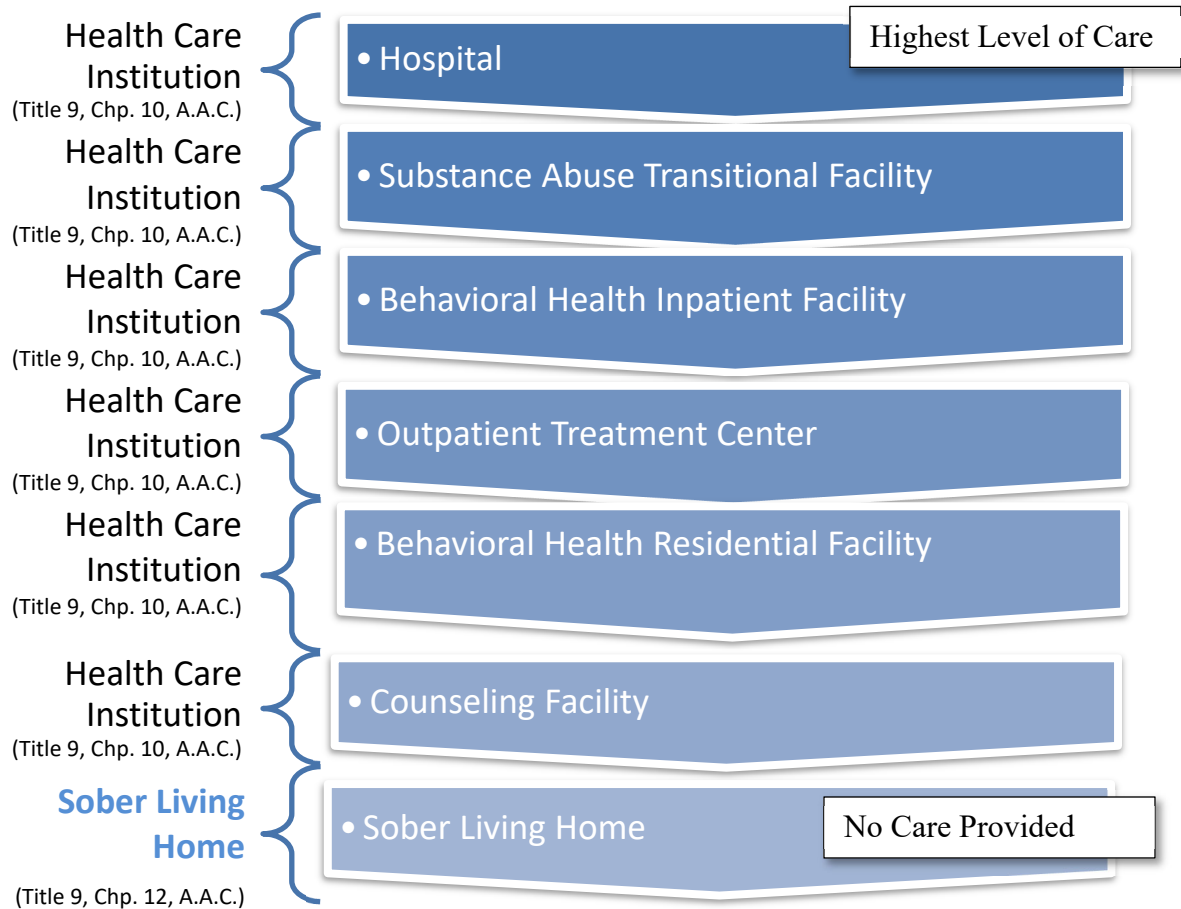
### **D. Differences between Health Care Institution & Proposed Sober Living Units.**

It is important to note that each person recovering from a substance use disorder has an individual path to recovery. Yet, most individuals addicted to substances start their initial path to recovery by seeking treatment from or enrolling in “health care institutions” licensed by ADHS, which provide various levels of care. For purposes of understanding the differences between a health care institution and a sober living home, a flowchart of the health care institution options and associated levels of care is provided below. The flowchart, together with Title 9 of the Arizona Administrative Code, clearly demonstrate that ADHS regulates health care institutions in a different manner than sober living homes due, in part, to the administration of care offered in health care institutions.



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**PATH TO RECOVERY**  
*Compare “Health Care Institution” Definitions in A.A.C. Title 9, Chapter 10<sup>2</sup>*  
*vs. “Sober Living Home” Definition in A.A.C. Title 9, Chapter 12<sup>3</sup>*



<sup>2</sup> See Health Care Institution Definitions in Title 9, Chapter 10 of the Arizona Administrative Code (“A.A.C”), attached hereto as **Exhibit 3**.

<sup>3</sup> See Sober Living Home Definitions in Ariz. Rev. Stat. § 36-2061 and Title 9, Chapter 12 of the A.A.C., attached hereto as **Exhibit 4**.

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## **E. Results of Pre-Application Meeting with City Staff.**

On Thursday, April 22<sup>nd</sup>, SRII held a pre-application meeting with staff to discuss the proposed residential use of each condominium unit on the Property by up to four disabled individuals in their later stages of substance use recovery. At that meeting, City staff opined that, at first impression, the sober living proposal would likely be best defined as a “care home” and, if so, would not be typically permitted in the Medium Density Residential (R-3) zoning district. In support of their opinion, staff also stated that it was the intention of the City to exclude sober living homes from multifamily residential districts during the last Zoning Ordinance amendment addressing such uses. We respectfully disagree with this initial opinion and offer more specific details regarding the operational characteristics of the use proposed herein.

## **III. INTERPRETATION REQUEST.**

### **A. Question.**

Whether the proposed residential use of the 12-unit condominium buildings would be permitted as of right in the Medium Density Residential (R-3) zoning district under the permitted use of “dwelling units” and/or “group home” in Table 5.703?

### **B. Analysis.**

Since the pre-application meeting, our firm has evaluated the Zoning Ordinance definitions and have aligned them with the applicable state statutes and regulations. In summary, the definition of “care home” in the City of Scottsdale Zoning Ordinance neither defines nor applies to SRII’s use of the Property as sober living dwelling units being occupied by a family of two to four disabled individuals in each unit. Below is a summary of our findings and research for the Zoning Administrator’s consideration and interpretation.

Ultimately, SRII is seeking an interpretation from the Zoning Administrator finding that the proposed residential use of the Property is permitted within the Medium Density Residential (R-3) zoning district as either a:

1. “dwelling unit” occupied by a “family,” or
2. a use analogous to a “group home.”

In contrast, the proposed use of the Property does not meet the definition of “care home” for two reasons: (i) the Property will not be licensed as a health care institution under Arizona law, and (ii) no on-site supervisory or other care services will be provided to the residents. Furthermore, the City cannot characterize the proposed use of each condominium unit as a care home prohibited in the R-3 district when the City’s definition of “family” allows up to six adults to reside in a dwelling unit. When the proposed use fits within the cap of six adults in the

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Ordinance's definition of "family," the use must be allowed as of right in all residential zoning districts the same as any other family or single housekeeping unit. To prevent such use in the R-3 zoning district would be discriminatory on its face, imposing a different standard for disabled occupants based solely on them having a disability.

## 1. The proposed use is not a care home.

Section 3.100 of the Ordinance defines a "care home" as a "dwelling shared as a primary residence by no more than 10 adults with a disability that is licensed as a health care institution under Arizona law, and in which on-site supervisory or other care services are provided to the disabled residents." Emphasis added. For purposes of this definition, "a person must live in the dwelling a minimum of thirty (30) consecutive days for this dwelling to be considered a primary residence" and "a care home is a principal, not an accessory, use."

The proposed use of the Property does not meet the definition of a "care home" because the condominium units will not be licensed as a "health care institution" under Arizona law. SRII will obtain a sober living home license from ADHS, however, such license is not a "health care institution." Health care institution licenses are governed by Title 9, Chapter 10 of the Arizona Administrative Code. Sober living home licenses are separate and apart from the health care institution licenses, being set forth in Title 9, Chapter 12 of the Arizona Administrative Code. The differences between a health care institution license and a sober living home license are significant, given the fact that care is administered by professionals in a health care institution. Again, no such care is provided in a sober living home.

The state definition of health care institution includes several services involving the administration of care that would not be provided by SRII as a sober living facility.<sup>4</sup> A.R.S. § 36-401.A(22) defines a "health care institution" as:

*[E]very place, institution, building or agency, whether organized for profit or not, that provides facilities with medical services, nursing services, behavioral health services, health screening services, other health-related services, supervisory care services, personal care services or directed care services and includes home health agencies as defined in section 36-151, outdoor behavioral health care programs and hospice service agencies. Health care institution does not include a community residential setting as defined in section 36-551.*

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<sup>4</sup> The Ordinance does not define "health care institution." Therefore, the statutory definition from Ariz. Rev. Stat. § 36-401.A(22) is provided.

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No medical services<sup>5</sup>, behavioral health services<sup>6</sup>, health screening services<sup>7</sup> or other health related services<sup>8</sup> will be provided at the Property. There will be no supervisory care services<sup>9</sup>, personal care services<sup>10</sup> or directed care services<sup>11</sup> offered to the residents. The two to four residents living in each dwelling unit will operate as a family and will not be monitored or supervised by a doctor, physician or other nursing staff. There will be no assistance with activities of daily living, no general supervision on a daily basis, and no assistance with the self-administration of prescribed medications. Altogether, none of the care services listed in the definition of “health care institution” will be provided at the Property, and SR II will not be seeking a license as a health care institution (or any class or subclass thereof). In fact, the Arizona Administrative Code provides a list of uses requiring a health care institution license from the state in Section R9-10-102 titled “Health Care Institution Classes and Subclasses; Requirements.” Notably, sober living homes are not included in that list.<sup>12</sup>

The City’s definition of “care home” in the Ordinance also includes the requirement that the health care institution provide “on-site supervisory or other care services.” The term “supervisory care services” is defined in both Ariz. Rev. Stat. Section 36-401.A(47) and Section 3.100 of the Ordinance as “general supervision, including daily awareness of resident functioning and continuing needs, the ability to intervene in a crisis and assistance in the self-administration

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<sup>5</sup> “‘Medical services’ means the services that pertain to medical care and that are performed at the direction of a physician on behalf of patients by physicians, dentists, nurses and other professional and technical personnel.” *See* Ariz. Rev. Stat. § 36-401.A(31).

<sup>6</sup> “‘Behavioral health services’ means services that pertain to mental health and substance use disorders and that are either: (a) Performed by or under the supervision of a professional who is licensed pursuant to title 32 and whose scope of practice allows for the provision of these services, (b) Performed on behalf of patients by behavioral health staff as prescribed by rule.” *See* Ariz. Rev. Stat. § 36-401.A(11).

<sup>7</sup> “‘Health screening services’ means the acquisition, analysis and delivery of health-related data of individuals to aid in the determination of the need for medical services.” *See* Ariz. Rev. Stat. § 36-401.A(24).

<sup>8</sup> “‘Health-related services’ means services, other than medical, that pertain to general supervision, protective, preventive and personal care services, supervisory care services or directed care services.” *See* Ariz. Rev. Stat. § 36-401.A(23).

<sup>9</sup> “‘Supervisory care services’ means general supervision, including daily awareness of resident functioning and continuing needs, the ability to intervene in a crisis and assistance in the self-administration of prescribed medications.” *See* Ariz. Rev. Stat. § 36-401.A(47); *see also* Section 3.100 of Ordinance.

<sup>10</sup> “‘Personal care services’ means assistance with activities of daily living that can be performed by persons without professional skills or professional training and includes the coordination or provision of intermittent nursing services and the administration of medications and treatments by a nurse who is licensed pursuant to title 32, chapter 15 or as otherwise provided by law.” *See* Ariz. Rev. Stat. § 36-401.A(38).

<sup>11</sup> “‘Directed care services’ means programs and services, including supervisory and personal care services, that are provided to persons who are incapable of recognizing danger, summoning assistance, expressing need or making basic care decisions.” *See* Ariz. Rev. Stat. § 36-401.A(16).

<sup>12</sup> *See* Health Care Institution Classes and Subclasses in A.A.C. R9-10-102, attached hereto as **Exhibit 3**.



Randy Grant, Zoning Administrator  
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of prescribed medications.” General supervision of the residents will not be provided on-site. There will be no manager living in the individual units to monitor daily resident functioning, to intervene in a crisis and to assist in the self-administration of prescribe medications.

The term “other care services” in the definition of “care home” is not a defined term under our state statutes, regulations or the City’s Ordinance. It would be reasonable to interpret the phrase “other care services” to include all of the care services listed under the definition of “health care institution,” as referenced above in the footnotes on page 8 of this letter.

Again, there will be no care services offered at the Property. Instead, the residents will be provided a safe and supportive environment in a family setting within each unit. At most, the residents will be provided the information and services required in the sober living home regulations in A.A.C. Section R9-12-205, such as:

1. The location of all exits in the home and the route to evacuate in an emergency,
2. The location of the first aid kit,
3. The use of the kitchen in the home, including operation of the appliances, use of the food storage areas, and removal of garbage and refuse,
4. The use of the washing machine and dryer,
5. The dates, time and location of house meetings,
6. The prohibition of possession of alcohol or illicit drugs, and
7. Review and discussion of specific resident requirements and policies specific to the home.<sup>13</sup>

Notably, Title 9, Chapter 12 of the Arizona Administrative Code (applicable to sober living homes) does not use the term “care” throughout the regulations to describe any aspect of or the services provided by a sober living home. In fact, not only are “health care institutions” and “sober living homes” regulated by two different chapters in Title 9 of the Arizona Administrative Code, the sober living home regulations in Title 9, Chapter 12 identify “sober living homes” and “health care institutions” as being two entirely different uses. Specifically, A.A.C. Section R9-12-201.B.3.o.ii states that a sober living home must have policies and procedures established for terminating a residency, including “coordinating the relocation of a resident to a health care institution or another sober living home.”<sup>14</sup> Thus, the state regulations

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<sup>13</sup> See A.A.C. Section R9-12-205 attached hereto as **Exhibit 4**.

<sup>14</sup> Emphasis added. See A.A.C. Section R9-12-201.B.3.o.ii attached hereto as **Exhibit 4**.

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clearly distinguish a health care institution from a sober living home use due to the care services provided in a health care institution.

In conclusion, the proposed use by SRII cannot be deemed a “care home” because: (i) the dwelling units on the Property will not be licensed as a health care institution under Arizona law, and (ii) no on-site supervisory or other care services are being provided which would require such a license by the state.

## 2. The use of the Property is allowed as a “family.”

The proposed use of the Property (two to four disabled individuals living in each dwelling unit) satisfies the definition of “family” and “single house-keeping unit” and is, therefore, permitted in the Medium Density Residential (R-3) zoning district as of right.

A “dwelling unit” is defined in Section 3.100 of the Ordinance as “one (1) or more rooms in a dwelling designed for occupancy by one (1) family for living purposes and having its own cooking and sanitary facilities.” Each of the 12 condominium units on the Property constitutes a dwelling unit designed for occupancy by one family for living purposes.

Section 3.100 of the Ordinance also defines a “**family**” as “one (1) to six (6) adults and, if any, their related dependent children occupying a premise[s] and living as a single housekeeping unit.” In this case, the two to four adults living in each dwelling unit (condominium unit) will be living as a single housekeeping unit. A “**single housekeeping unit**” is defined in the Ordinance as:

*[A] group of one (1) or more persons residing together in a dwelling who share use of and responsibility for common areas, household activities, and responsibilities such as meals, chores, household maintenance, and expenses. This term excludes living situations where an entity or individual other than a resident provides job training or life skill development services on-site, or provides supervisory, medical, personal, or custodial care services to more than six (6) adults residing in the dwelling.*

The two to four individuals living in each condominium unit will reside together and share use of and responsibility for common areas, household activities and the responsibilities listed in the definition above (meals, household maintenance, etc). Job training or life skill development services will not be provided on-site, and none of the care services listed above will be provided to the two to four individuals living as a family in each dwelling.

Based upon the City’s definitions for “dwelling unit”, “family” and “single housekeeping unit” in the Ordinance, the proposed use would constitute a family living in each condominium unit and would be permitted within the Property’s R-3 zoning district as of right. Like any other

Randy Grant, Zoning Administrator  
City of Scottsdale  
May 13, 2020  
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dwelling, when a sober living home fits within the cap of six adults in the Ordinance’s definition of “family,” it must be allowed as of right in all residential districts the same as any other family or housekeeping unit. The City may not impose any additional zoning requirements or prevent residences for six or fewer people with disabilities from locating within the R-3 zoning district or any other district where dwellings are allowed. If the City were to impose additional zoning requirements or prevent this use in the R-3 zoning district, it would be doing so solely on the basis that the occupants have disabilities. Legally, two to four individuals living together in each condominium unit constitutes a family like all other families in Scottsdale, and preventing those individuals from living in a condominium unit in the R-3 zoning district would constitute housing discrimination on its face.<sup>15</sup>

The Joint Statement issued by the Department of Housing and Urban Development and the Department of Justice dated November 10, 2016 addresses the particular issue in this case. Section 13 of the Joint Statement cautions municipalities to adopt, interpret and enforce their zoning ordinances uniformly when applying restrictions to a family of unrelated persons with or without disabilities.

***13. Can a state or local government limit the number of individuals who reside in a group home in a residential neighborhood?***

*Neutral laws that govern groups of unrelated persons who live together do not violate the Act so long as (1) those laws do not intentionally discriminate against persons on the basis of disability (or other protected class), (2) those laws do not have an unjustified discriminatory effect on the basis of disability (or other protected class), and (3) state and local governments make reasonable accommodations when such accommodations may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.*

***Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city’s zoning ordinance defines a “family” to include up to a certain number of unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act***

---

<sup>15</sup> See Declaration of Daniel Lauber attached hereto as **Exhibit 5**.

Randy Grant, Zoning Administrator  
City of Scottsdale  
May 13, 2020  
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*because it treats persons with disabilities less favorably than families and unrelated persons without disabilities.*<sup>16</sup>

The Joint Statement reflects the majority opinion of the courts and an interpretation that, under Scottsdale's zoning, two to four disabled adults living as a single housekeeping unit in each condominium on the Property needs to be permitted as of right in the R-3 zoning district, just like any other family unit in Scottsdale that consists of two to four unrelated adults *without* a disability.

### 3. The proposed use could be analogous to a group home.

A “**group home**” is defined in Section 3.1000 of the Ordinance as a “dwelling shared by more than six (6) adults as their primary residence in which no supervisory or other care is provided.” For purposes of this definition, the Ordinance also requires “a person must live in the dwelling a minimum of thirty (30) consecutive days for this dwelling to be considered a primary residence.”

In this case, each condominium unit is not being shared by more than six adults, but the dwellings will serve as their residence in which no supervisory or other care is provided. Thus, in comparing the “care home” and “group home” definitions in Section 3.100 of the Zoning Ordinance, the proposed use of this property would be more analogous to a group home, and therefore would be permitted as of right in the Medium Density Residential (R-3) zoning district.

### C. Conclusion.

We respectfully request your review and consideration of this supplemental information regarding the proposed use of the Property and the Fair Housing concerns inherent in this request to allow up to four disabled individuals to live as a family in a condominium unit within the Medium Density Residential (R-3) zoning district. Alternatively, we would request that you find the proposed use of the Property to be a group home allowable in the R-3 zoning district as of right.

If you have any questions or need additional information to process this interpretation, please do not hesitate to contact me at [hdukes@swlaw.com](mailto:hdukes@swlaw.com) or at 602.320.8866. You may also contact Senior Urban Planner, Noel Griemsmann, at [ngriemsmann@swlaw.com](mailto:ngriemsmann@swlaw.com). Due to our client's pending purchase of the Property, we would respectfully request receiving an interpretation decision no later than **Thursday, June 10, 2021**. Thank you in advance.

---

<sup>16</sup> Emphasis added. See Joint Statement of the Department of Housing and Urban Development and the Department of Justice titled “State and Local Land Use Laws and Practices and the Application of the Fair Housing Act” dated November 10, 2016, attached hereto as **Exhibit 6**.

# Snell & Wilmer

Randy Grant, Zoning Administrator  
City of Scottsdale  
May 13, 2020  
Page 13

Very truly yours,

Snell & Wilmer L.L.P.

*/s/ Heather N. Dukes*

Heather N. Dukes

Enclosures

Cc: Joseph Padilla, Esq.



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Taylor N. Moran  
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Ryan McCann  
Assistant Planner

# Scottsdale Recovery II, LLC

## Authorization Letter

May 13, 2021

**VIA EMAIL**

Randy Grant, Zoning Administrator  
City of Scottsdale  
Planning and Development Services  
3939 N. Drinkwater Boulevard  
Scottsdale, AZ 85251

**Re: Authorization Letter for Zoning Interpretation Request for Condominium  
Property Located at 7910 and 7920 E. Wilshire Drive (the "Property")**

Dear Mr. Grant:


As the manager of Scottsdale Recovery II, LLC, a Delaware limited liability company, I authorize the law offices of Snell & Wilmer to submit and process the enclosed interpretation request on my behalf.

Sincerely,

Scottsdale Recovery II, LLC, a Delaware limited  
liability company

By: Milano Holdings Arizona, LLC, a Delaware  
limited liability company

Its: Manager

By:   
Michelle Siwek

Its: Manager



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Ryan McCann  
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# Scottsdale Recovery II, LLC

## Exhibit 1 – Aerial Photographs



Context Aerial Photograph of 12-Unit Condominium Development  
7910 and 7920 E. Wilshire Drive







Hayden Rd.

Wilshire Dr.

CORTESE CONDOMINIUMS  
131-23-051  
131-23-053  
131-23-049  
131-23-055  
131-23-048  
131-23-057

WILSHIRE PLUS CONDOMINIUMS  
131-23-060  
131-23-059  
131-23-061  
131-23-062  
131-23-063  
131-23-064

MACALISTER SCOTTSDALE  
131-23-091

131-24-002G  
131-24-002G  
131-23-004B  
131-23-004C

131-22-206  
130-20-0037D  
131-23-0026  
131-22-181

N HAYDEN RD

N HAYDEN

N HAYDEN RD

Apartment

Apartment

E Wilshire Dr

E Wilshire Dr

131-23-091



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# Scottsdale Recovery II, LLC

Exhibit 2 – Declaration of  
Michelle Siwek

## **DECLARATION OF MICHELLE SIWEK**

I, MICHELLE SIWEK, declare as follows:

1. I am over the age of 18 years and have personal knowledge of the facts contained in this Declaration. If called upon to testify, I could and would testify competently as the truth of the facts stated herein.

2. I am the Manager of Scottsdale Recovery II, LLC, a Delaware limited liability company (“SRII”).

3. I have substantial experience owning and operating sober living homes and state-licensed behavioral health residential facilities serving the disabled population of individuals recovering from alcoholism and substance use since 2011.

4. I am the current owner and operator of SRII and own the following 5 locations in Scottsdale:

A. a residential behavioral health facility licensed with the Arizona Department of Health Services (“ADHS”) located at 11024 N. Miller Road (License No. BH5753),

B. an outpatient clinic licensed by ADHS located at 10446 N. 74<sup>th</sup> Street (License No. OTC9512),

C. a sober living home licensed and certified with ADHS located at 13402 N. 60<sup>th</sup> Street (License No. SLH10142),

D. a sober living home licensed and certified with ADHS located at 7838 E. Shea Boulevard (License No. SLH10209), and

E. corporate offices with a potential detoxification treatment center use located at 10227 N. Scottsdale Road.

5. SRII has Joint Commission accreditation and certification and complies with the

highest national standards for safety and quality in behavioral health.

6. The proposed sober living use within the 12 residential condominium units located at 7910 and 7920 E. Wilshire Drive (the “Property”) will emulate a conventional family setting.

7. The disabled residents who will live at the Property will either attend outpatient services, work or attend school and must abide by a curfew, and are responsible for daily tasks such as cleaning, personal hygiene, budgeting and cooking.

8. The household functions as the equivalent of a family and allows the recovering persons to provide one another with continual mutual support as well as mutual monitoring to prevent relapse.

9. The potential recovery of people who are handicapped or disabled by reason of alcoholism or drug abuse is greatly enhanced by the mutual support and mutual monitoring provided by living with other recovering persons.

10. It is often critical that a person in the stages of recovery share a bedroom with another recovering addict for mutual support and monitoring.

11. The quality and nature of the relationship among the residents are akin to that of a family. The emotional and mutual support and bonding experienced by each resident enhances and promotes recovery from drug addiction and alcoholism and is the equivalent of the type of love and support received in a traditional family.

12. It has been found that individuals who decide to live in sober housing programs, such as that offered by SRH, are allowed to engage in the process of recovery at their own pace, and that the effects of the disease are greatly ameliorated as a result. By living with other persons who are in recovery, the residents should never have to face an alcoholic’s or addict’s deadliest enemy: loneliness and isolation.

13. In addition, the residents live at SRII by choice. The choice is usually motivated by the individual's desire not to relapse into drug and/or alcohol use after that individual has bottomed out, i.e. lost jobs, their home or their family. It is also motivated by the desire that one must change their lifestyle, the manner in which they conduct their affairs, and the need to become a responsible, productive member of society.

14. SRII will not provide care or treatment at the Property which would require licensure by the Arizona Department of Health Services as a health care institution.

15. SRII will obtain a sober living license and certification by ADHS.

16. Due in part to the opioid crisis in the State of Arizona and nationwide, the need for sober living homes and licensed behavioral health residential facilities has increased in recent years.


17. Since 2011, both the entities I have owned and/or managed and our disabled residents have not contributed to crime in the areas in which the sober living homes are located.

18. SRII has not received a complaint or a notice of violation from the City of Scottsdale relating to its use of its properties or any alleged nuisances, with the exception of a dead tree in the front yard of 11024 N. Miller Road (which has since been removed).

19. The care, treatment, and services provided by a health care institution (such as a licensed behavioral health residential facility) are drastically different and require professional oversight when compared to the supportive living environment offered in a sober living home, which provides no care, treatment or supervisory services to its residents.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Dated this 13<sup>th</sup> day of May, 2021.

  
Michelle Siwek

---



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# Scottsdale Recovery II, LLC

Exhibit 3 – A.A.C. Title 9, Chapter 10  
Health Care Institutions



## TITLE 9. HEALTH SERVICES

### CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2020 through December 31, 2020.

#### Supp. 20-4

#### Questions about these rules? Contact:

Name: Kathryn McCanna, Branch Chief  
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Health Care Institution Licensing  
150 N. 18th Ave., Suite 450  
Phoenix, AZ 85007  
Telephone: (602) 364-2841  
Fax: (602) 364-4808  
E-mail: [Kathryn.McCanna@azdhs.gov](mailto:Kathryn.McCanna@azdhs.gov)

or

Name: Robert Lane, Chief  
Address: Arizona Department of Health Services  
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150 N. 18th Ave., Suite 200  
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## CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING

## TITLE 9. HEALTH SERVICES

## CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING

*Editor's Note: The heading for 9 A.A.C. 10 changed from "Licensure" to "Licensing" per a request from the Department of Health Services (Supp. 03-4).*

*Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-2).*

*Editor's Note: This Chapter contains rules which were adopted, amended, and repealed under exemptions from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1993, Ch. 163, § 3(B); Laws 1996, Ch. 329, § 5; Laws 1998, Ch. 178 § 17, and Laws 1999, Ch. 311. Exemption from A.R.S. Title 41, Chapter 6 means that the Department of Health Services did not submit these rules to the Governor's Regulatory Review Council for review; the Department may not have submitted notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.*

## ARTICLE 1. GENERAL

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## ARTICLE 2. HOSPITALS

*Article 2, consisting of Sections R9-10-201 through R9-10-233, adopted effective February 23, 1979.*

*Former Article 2, consisting of Sections R9-10-201 through R9-10-250, renumbered as Sections R9-10-301 through R9-10-335 as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days.*

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## CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING

**R9-10-102. Health Care Institution Classes and Subclasses; Requirements****A. A person may apply for a license as one of the following classes or subclasses of health care institution:**

1. General hospital,
2. Rural general hospital,
3. Special hospital,
4. Behavioral health inpatient facility,
5. Nursing care institution,
6. Intermediate care facility for individuals with intellectual disabilities,
7. Recovery care center,
8. Hospice inpatient facility,
9. Hospice service agency,
10. Behavioral health residential facility,
11. Adult residential care institution,
12. Assisted living center,
13. Assisted living home,
14. Adult foster care home,
15. Outpatient surgical center,
16. Outpatient treatment center,
17. Abortion clinic,
18. Adult day health care facility,
19. Home health agency,
20. Substance abuse transitional facility,
21. Behavioral health specialized transitional facility,
22. Counseling facility,
23. Adult behavioral health therapeutic home,
24. Behavioral health respite home,
25. Unclassified health care institution, or
26. Pain management clinic.

- B.** A person shall apply for a license for the class or subclass that authorizes the provision of the highest level of physical health services or behavioral health services the proposed health care institution plans to provide.
- C.** The Department shall review a proposed health care institution's scope of services to determine whether the requested health care institution class or subclass is appropriate.
- D.** A health care institution shall comply with the requirements in Article 17 of this Chapter if:
1. There are no specific rules in another Article of this Chapter for the health care institution's class or subclass, or
  2. The Department determines that the health care institution is an unclassified health care institution.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4). Amended by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

**R9-10-103. Licensing Exceptions**

- A.** A health care institution license is required for each health care institution facility except:
1. A facility exempt from licensing under A.R.S. § 36-402, or
  2. A health care institution's administrative office.
- B.** The Department does not require a separate health care institution license for:
1. A satellite facility of a hospital under A.R.S. § 36-422(F);
  2. An accredited facility of an accredited hospital under A.R.S. § 36-422(G);
  3. A facility operated by a licensed health care institution that is:
    - a. Adjacent to and contiguous with the licensed health care institution premises; or
    - b. Not adjacent to or contiguous with the licensed health care institution but connected to the licensed health care institution facility by an all-weather enclosure and:
      - i. Owned by the health care institution, or
      - ii. Leased by the health care institution with exclusive rights of possession;
  4. A mobile clinic operated by a licensed health care institution; or
  5. A facility located on grounds that are not adjacent to or contiguous with the health care institution premises where only ancillary services are provided to a patient of the health care institution.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws



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# Scottsdale Recovery II, LLC

Exhibit 4 – A.A.C. Title 9, Chapter 12  
Sober Living Homes and  
A.R.S. Section 36-2061

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# VIEW DOCUMENT

The Arizona Revised Statutes have been updated to include the revised sections from the 54th Legislature, 2nd Regular Session. Please note that the next update of this compilation will not take place until after the conclusion of the 55th Legislature, 1st Regular Session, which convenes in January 2021.

## DISCLAIMER

This online version of the Arizona Revised Statutes is primarily maintained for legislative drafting purposes and reflects the version of law that is effective on January 1st of the year following the most recent legislative session. The official version of the Arizona Revised Statutes is published by Thomson Reuters.

### 36-2061. Definitions

In this article, unless the context otherwise requires:

1. "Certifying organization" means an organization that certifies homes as sober living homes and is affiliated with a national organization recognized by the department whose primary function is to improve access to and the quality of sober living residences through standards, education, research and advocacy.
2. "Medication-assisted treatment" means the use of pharmacological medications that are approved by the United States food and drug administration, in combination with counseling and behavioral therapies, to provide a whole patient approach to the treatment of substance use disorders.
3. "Sober living home" means any premises, place or building that provides alcohol-free or drug-free housing and that:
  - (a) Promotes independent living and life skills development.
  - (b) May provide activities that are directed primarily toward recovery from substance use disorders.
  - (c) Provides a supervised setting to a group of unrelated individuals who are recovering from substance use disorders.
  - (d) Does not provide any medical or clinical services or medication administration on-site, except for verification of abstinence.

**TITLE 9. DEPARTMENT OF HEALTH SERVICES**  
**CHAPTER 12. SOBER LIVING HOMES**

Supp. 19-2

This is a new Chapter.

This Chapter contains rule Sections that were filed to be codified in the Arizona Administrative Code between the dates of April 1, 2019 through June 30, 2019

**Questions about these rules? Contact:**

Name: Thomas Salow, Branch Chief  
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Website: <https://www.azdhs.gov/licensing/special/>

**TITLE 9. DEPARTMENT OF HEALTH SERVICES**

**CHAPTER 12. SOBER LIVING HOMES**

Authority: A.R.S. §§ 36-132(A)(1) and A.R.S. 36-136(G)

**ARTICLE 1. LICENSURE REQUIREMENTS**

*New Article, consisting of Sections R9-12-101 through R9-12-107, and Table 1.1, made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).*

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**ARTICLE 2. SOBER LIVING HOME REQUIREMENTS**

*New Article, consisting of Sections R9-12-201 through R9-12-207, made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).*

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CHAPTER 12. SOBER LIVING HOMES

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## CHAPTER 12. SOBER LIVING HOMES

## ARTICLE 1. LICENSURE REQUIREMENTS

**R9-12-101. Definitions**

In addition to the definitions in A.R.S. § 36-2061, the following definitions apply in this Chapter unless otherwise specified:

1. "Abuse" means:
  - a. The same as in A.R.S. § 46-451;
  - b. A pattern of ridiculing or demeaning a resident;
  - c. Making derogatory remarks or verbally harassing a resident; or
  - d. Threatening to inflict physical harm on a resident.
2. "Accept" or "acceptance" means an individual becomes a resident of a sober living home.
3. "Administrative completeness review time-frame" means the same as in A.R.S. § 41-1072.
4. "Applicant" means an individual or business organization requesting a license under R9-12-104 to open a sober living home.
5. "Application packet" means the forms, documents, and additional information the Department requires to be submitted by an applicant.
6. "Business organization" means the same as "entity" in A.R.S. § 10-140.
7. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
8. "Controlling person" means a person who, with respect to a business organization:
  - a. Has the power to vote at least 10% of the outstanding voting securities of the business organization;
  - b. If the business organization is a partnership, is a general partner or is a limited partner who holds at least 10% of the voting rights of the partnership;
  - c. If the business organization is a corporation, association, or limited liability company, is the president, the chief executive officer, the incorporator, an agent, or any person who owns or controls at least 10% of the voting securities; or
  - d. Holds a beneficial interest in 10% or more of the liabilities of the business organization.
9. "Department" means the Arizona Department of Health Services.
10. "Documentation" means information in written, photographic, electronic, or other permanent form.
11. "Drug" has the same meaning as in A.R.S. § 32-1901.
12. "Exploitation" has the same meaning as in A.R.S. § 46-451.
13. "Facility" means the building or buildings used for operating a sober living home.
14. "Health care provider" means a:
  - a. Physician, as defined in A.R.S. § 36-401;
  - b. Registered nurse practitioner, as defined in A.R.S. § 32-1601; or
  - c. Physician assistant, as defined in A.R.S. § 32-2501.
15. "Illicit drug" means:
  - a. A substance listed in A.R.S. § 36-2512 as a schedule I controlled substance;
  - b. A dangerous drug, as defined in A.R.S. § 13-3401, that is not an individual's prescription medication; or
  - c. A prescription medication that is not an individual's prescription medication.
16. "Licensee" means the individual or business organization to which the Department has issued a license to operate a sober living home.
17. "Manager" means an individual designated by a licensee to:
  - a. Act on behalf of the licensee in the onsite management of a sober living home; and
  - b. Support and assist residents of the sober living home.
18. "Modification" means the substantial improvement, enlargement, reduction, alteration, or other substantial change in the facility or another structure on the premises at a sober living home.
19. "Over-the-counter drug" means the same as in A.R.S. § 32-1901.
20. "Overall time-frame" means the same as in A.R.S. § 41-1072.
21. "Premises" means:
  - a. A facility; and
  - b. The grounds surrounding the facility that are owned, leased, or controlled by the licensee, including other structures.
22. "Prescription medication" means the same as in A.R.S. § 32-1901.
23. "Residency agreement" means a document signed by a resident or the resident's representative and a manager, detailing the terms of residency.
24. "Resident" means an individual who is accepted by a licensee under the terms of a residency agreement with the individual to live at the licensee's sober living home.
25. "Resident's representative" means:
  - a. An individual acting on behalf of a resident with the written consent of the resident, or
  - b. The resident's legal guardian.
26. "Sober" or "sobriety" means that an individual is free of alcohol or drugs, except for a drug that is:
  - a. Used as part of medication-assisted treatment,
  - b. The individual's prescription medication, or



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- c. An over-the-counter drug.
- 27. "Staff" means the employees or volunteers who provide monitoring or assistance to residents at a sober living home.
- 28. "Substantive review time-frame" means the same as in A.R.S. § 41-1072.
- 29. "Swimming pool" means the same as "private residential swimming pool" as defined in A.A.C. R18-5-201.
- 30. "Termination of residency" or "terminate residency" means an individual is no longer a resident of a sober living home.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

**R9-12-102. Individuals to Act for Applicant or Licensee**

When an applicant or licensee is required by this Chapter to provide information on or sign an application form or other document, the following shall satisfy the requirement on behalf of the applicant or licensee:

- 1. If the applicant or licensee is an individual, the individual; and
- 2. If the applicant or licensee is a business organization, the individual who the business organization has designated to act on the business organization's behalf for purposes of this Chapter and who:
  - a. Is a controlling person of the business organization,
  - b. Is a U.S. citizen or legal resident, and
  - c. Has an Arizona address.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

**R9-12-103. Application for a License**

- A. An applicant shall submit to the Department a completed application packet to operate a sober living home that contains:
  - 1. An application, in a Department-provided format, that includes:
    - a. The applicant's name;
    - b. The proposed name, if any, of the sober living home;
    - c. The address and telephone number of the proposed sober living home;
    - d. The applicant's address and telephone number, if different from the address or telephone number of the proposed sober living home;
    - e. The applicant's e-mail address;
    - f. The name and contact information of an individual acting on behalf of the applicant according to R9-12-102, if applicable;
    - g. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-12-106(C)(3);
    - h. The maximum number of residents of the proposed sober living home;
    - i. The name, telephone number, and e-mail address of the manager for the proposed sober living home;
    - j. An attestation that the applicant is in compliance with local zoning ordinances, building codes, and fire codes; and
    - k. The applicant's signature and the date signed;
  - 2. Documentation for the applicant that complies with A.R.S. § 41-1080;
  - 3. If applicable, a copy of the applicant's current certificate as a sober living home from a certifying organization approved by the Director;
  - 4. A floor plan for the proposed sober living home, including:
    - a. The location and size of each resident bedroom, and
    - b. The location of each openable window or door from a resident bedroom;
  - 5. If the premises for the proposed sober living home are leased, documentation from the owner of the premises, in a Department-provided format, that the applicant has permission from the owner to operate a sober living home on the premises; and
  - 6. A licensing fee of \$500 plus \$100 times the maximum number of residents of the proposed sober living home in subsection (A)(1)(h).
- B. Upon receipt of the application packet in subsection (A), the Department shall issue or deny a license to an applicant as provided in R9-12-106.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

**R9-12-104. License Renewal**

- A. At least 60 calendar days before the expiration date indicated on a license to operate a sober living home, a licensee shall submit to the Department an application packet for renewal of the license that contains:
  - 1. An application, in a Department-provided format, that includes:
    - a. The applicant's name;
    - b. The address and telephone number of the sober living home;
    - c. The applicant's address and telephone number, if different from the address or telephone number of the sober living home;
    - d. The applicant's e-mail address;
    - e. The license number of the sober living home; and

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- f. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-12-106(C)(3);
  - 2. If applicable, a copy of the licensee's current certificate as a sober living home from a certifying organization approved by the Director; and
  - 3. Except as provided in subsection (B), a licensing fee of \$500 plus \$100 times the maximum number of residents approved for the sober living home during the current licensing period.
- B.** A licensee may submit to the Department the licensing fee in subsection (A)(3) with an additional late payment fee of \$250 within 30 calendar days after the expiration date of the license as a sober living home.
- C.** The Department shall renew or deny renewal of a license to operate a sober living home as provided in R9-12-106.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

**R9-12-105. Changes Affecting a License**

- A.** A licensee shall notify the Department in writing at least 30 calendar days before the effective date of:
- 1. Termination of operation of the sober living home, including the proposed termination date;
  - 2. A change in the individual or business organization controlling the sober living home, including the name, address, telephone number, and e-mail address of the individual or business organization proposing to assume control of the sober living home;
  - 3. A change in the address of the sober living home, including the new address for the sober living home;
  - 4. A change in the name of the sober living home, including the new name of the sober living home;
  - 5. If the licensee is an individual, a legal change of the licensee's name, including the new name of the licensee; or
  - 6. A proposed change in the maximum number of residents in the sober living home or construction or modification of the facility, including:
    - a. A floor plan for the sober living home showing:
      - i. If applicable, the areas in which construction or modification of the facility will occur;
      - ii. The location and size of each resident bedroom; and
      - iii. The location of each openable window or door from a resident bedroom;
    - b. For a proposed change in the maximum number of residents in the sober living home:
      - i. The proposed new maximum number of residents in the sober living home; and
      - ii. If the proposed new maximum number of residents in the sober living home is larger than the current maximum number of residents, a fee of \$100 times the difference between the current maximum number of residents and the new maximum number of residents; and
    - c. For construction or modification of the facility, an attestation that the construction or modification will be in compliance with local zoning ordinances, building codes, and fire codes.
- B.** A licensee shall notify the Department in writing no more than 30 calendar days after the effective date of:
- 1. A change in the name or contact information of an individual acting on behalf of the licensee according to R9-12-102, including the name and contact information of the new individual acting on behalf of the licensee;
  - 2. A change in the licensee's e-mail address, including the new e-mail address; or
  - 3. A change in the manager of the sober living home, including the name, telephone number, and e-mail address of the new manager.
- C.** If the Department receives the notification of termination of operation in subsection (A)(1), the Department shall void the licensee's license to operate a sober living home as of the termination date specified by the licensee.
- D.** If the Department receives the notification in subsection (A)(2) of a change in the individual or business organization controlling the sober living home, the Department shall void the licensee's license to operate a sober living home upon issuance of a new license to operate a sober living home.
- E.** If the Department receives the notification in subsection (A)(3) of a change in the address of the sober living home, the Department shall review, according to R9-12-106, the licensee's application for a new license, submitted consistent with R9-12-103.
- F.** If the Department receives the notification of a change in the name of the sober living home in subsection (A)(4) or of the licensee in subsection (A)(5), the Department shall issue to the licensee an amended license that incorporates the change but retains the expiration date of the existing license.
- G.** If the Department receives the notification in subsection (A)(6) of a proposed change in the maximum number of residents in the sober living home or of construction or modification of the facility, the Department:
- 1. May conduct an inspection of the premises as allowed by A.R.S. § 36-2063; and
  - 2. Shall issue to the licensee an amended license that incorporates the change but retains the expiration date of the existing license if the sober living home is in compliance with A.R.S. Title 36, Chapter 18, Article 4 and this Chapter.
- H.** An individual or business organization planning to assume operation of an existing sober living home shall obtain a new license, as required in A.R.S. § 36-2062(E), before beginning operation of the sober living home.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

**R9-12-106. Time-frames**

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- A. The overall time-frame for a license granted by the Department under this Chapter is set forth in Table 1.1. The applicant or licensee and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- B. The administrative completeness review time-frame for a license granted by the Department under this Chapter is set forth in Table 1.1 and begins on the date that the Department receives an application packet.
1. The Department shall send a notice of administrative completeness or deficiencies to the applicant or licensee within the administrative completeness review time-frame.
    - a. A notice of deficiencies shall list each deficiency and the information or items needed to complete the application.
    - b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is sent until the date that the Department receives all of the missing information or items from the applicant or licensee.
    - c. If an applicant or licensee fails to submit to the Department all of the information or items listed in the notice of deficiencies within 120 calendar days after the date that the Department sent the notice of deficiencies or within a time period the applicant or licensee and the Department agree upon in writing, the Department shall consider the application withdrawn.
  2. If the Department issues a license during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame is set forth in Table 1.1 and begins on the date of the notice of administrative completeness.
1. As part of the substantive review of an application for a license, the Department may conduct an inspection according to A.R.S. § 36-2063 that may require more than one visit to complete.
  2. The Department shall send a license or a written notice of denial of a license within the substantive review time-frame.
  3. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the applicant or licensee has agreed in writing to allow the Department to submit supplemental requests for information.
    - a. The Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies, stating each statute and rule upon which noncompliance is based, if the Department determines that an applicant or licensee, a sober living home, or the premises are not in substantial compliance with A.R.S. Title 36, Chapter 18, Article 4 or this Chapter.
    - b. An applicant or licensee shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of the corrections required in a statement of deficiencies, within 30 calendar days after the date of the comprehensive written request for additional information or the supplemental request for information or within a time period the applicant or licensee and the Department agree upon in writing.
    - c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department sends a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including, if applicable, documentation of corrections required in a statement of deficiencies.
    - d. If an applicant or licensee fails to submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of corrections required in a statement of deficiencies, within the time prescribed in subsection (C)(3)(b), the Department shall deny the application.
  4. The Department shall issue a license if the Department determines that the applicant or licensee and the sober living home, including the premises, are in substantial compliance with A.R.S. Title 36, Chapter 18, Article 4, and this Chapter.
  5. If the Department denies a license, the Department shall send to the applicant or licensee a written notice of denial setting forth the reasons for denial and all other information required by A.R.S. § 41-1076.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

**R9-12-107. Denial, Revocation, or Suspension of a License**

- A. The Department may deny an application or suspend or revoke a license to operate a sober living home if:
1. An applicant or licensee does not meet the application requirements contained in R9-12-103(A) or R9-12-104(A), as applicable;
  2. A licensee does not comply with requirements in A.R.S. Title 36, Chapter 18, Article 4, or this Chapter;
  3. A licensee does not correct the deficiencies according to the plan of correction specified in R9-12-201(J)(1) by the time stated in the plan of correction;
  4. An applicant or licensee provides false or misleading information as part of an application; or
  5. The nature or number of violations revealed by any type of inspection or investigation of a sober living home poses a direct risk to the life, health, or safety of a resident or another individual on the premises.
- B. In determining which action in subsection (A) is appropriate, the Department shall consider the direct risk to the life, health, or safety of a resident in the sober living home based on:
1. Repeated violations of statutes or rules,
  2. Pattern of violations,
  3. Types of violation,

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4. Severity of violation, and
  5. Number of violations.
- C. An applicant or licensee may appeal the Department's determination in subsection (A) according to A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

**Table 1.1. Time-frames (in calendar days)**

Type of approval	Statutory authority	Overall time-frame	Administrative completeness review time-frame	Substantive review time-frame
Application for a license under R9-12-103	A.R.S. § 36-2062	90	30	60
Renewal of a license under R9-12-104	A.R.S. § 36-2062	30	10	20
Changes affecting a license, including modifications	A.R.S. § 36-2062	60	30	30

**Historical Note**

Table 1.1 made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

**ARTICLE 2. SOBER LIVING HOME REQUIREMENTS****R9-12-201. Administration**

- A. A licensee of a sober living home:
1. Has the authority and responsibility for the management of the sober living home, including when the licensee designates another individual or contracts with a person to accomplish an action or perform a service;
  2. Shall establish, in writing, the scope of services to be provided by the sober living home;
  3. Shall designate, in writing, an individual, who may be the licensee, as the manager of the sober living home; and
  4. Shall ensure that the knowledge, skills, and experience of the manager and any other staff of the sober living home are sufficient to carry out the scope of services established according to subsection (A)(2).
- B. A licensee shall ensure that:
1. A manager:
    - a. Is at least 21 years of age;
    - b. Is sober and has maintained sobriety for at least one year;
    - c. Resides on the premises of only the one sober living home;
    - d. Has documentation of current training in cardiopulmonary resuscitation; and
    - e. Is directly accountable to the licensee for:
      - i. The daily operation of the sober living home;
      - ii. Enforcing all policies and procedures, house rules, and other requirements of the sober living home; and
      - iii. All services provided by or at the sober living home;
  2. Policies and procedures are established, documented, and implemented to:
    - a. Prevent or address any concerns or complaints from individuals living in the surrounding neighborhood by:
      - i. Identifying an individual for individuals living in the surrounding neighborhood to contact to discuss a concern;
      - ii. Requiring the identified individual to respond to a concern or complaint, even if the issue cannot be resolved; and
      - iii. Ensuring that requirements for residents and visitors related to parking, noise emanating from the sober living home, smoking, cleanliness of the public space near the sober living home, and loitering in front of the sober living home or near-by homes are established, known to residents, and enforced; and
    - b. Promote the safety of the surrounding neighborhood, to comply with A.R.S. § 36-2062(A)(3); and
  3. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident that cover:
    - a. Recordkeeping;
    - b. Resident acceptance;
    - c. Resident rights;
    - d. Orientation of a resident to:
      - i. The premises of the sober living home,
      - ii. The resident's rights and responsibilities,

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- iii. The prohibition of the possession of alcohol or illicit drugs at the sober living home,
- iv. Services offered by or coordinated through the sober living home,
- v. Drug and alcohol testing practices, and
- vi. Expectations about food preparation and chores;
- e. Drug and alcohol testing conducted by an independent testing facility certified under 42 C.F.R. 493 for the sober living home and other assessments of sobriety, including:
  - i. The frequency of testing or assessment, based on the residents accepted; and
  - ii. The compounds included in the testing panel or, if applicable, an assessment methodology, based on the sober living home's scope of services and residents accepted;
- f. Allowing the acceptance and retention as a resident of an individual:
  - i. Who is receiving and will continue to receive medication-assisted treatment;
  - ii. Who has a co-occurring behavioral health issue, as defined in A.A.C. R9-10-101; or
  - iii. If included in the scope of services established according to subsection (A)(2), has a co-occurring medical condition;
- g. House meetings, including:
  - i. Frequency;
  - ii. Typical duration; and
  - iii. Participation requirements, if applicable;
- h. The provision of services, including:
  - i. Facilitating peer support activities;
  - ii. If applicable, providing other services on the premises to support sobriety or improve independent living;
  - iii. If applicable, coordinating the provision of services to support sobriety provided by other persons; and
  - iv. Referring a resident to other persons for the provision of services to support sobriety;
- i. Residents' records, including electronic records if applicable;
- j. The establishment, updating, and enforcement of house rules, including:
  - i. If applicable, curfews;
  - ii. Requirements related to chores, smoking, and visitors; and
  - iii. Requirements for the storage, security, and use of a resident's prescription medications or over-the-counter drugs;
- k. Management of all monies received or spent by the sober living home, including:
  - i. Accounting for monies received by residents;
  - ii. Prohibiting a requirement for an individual or resident to sign a document relinquishing the resident's public assistance benefits, such as medical assistance, case assistance, or supplemental nutrition assistance program benefits, as a condition of residency; and
  - iii. Providing copy of the record of the resident's account to the resident or the resident's representative upon request;
- l. Specific steps for:
  - i. A resident to file a complaint,
  - ii. The sober living home to respond to a resident's complaint, and
  - iii. The prevention of retaliation against a resident who files a complaint;
- m. How the licensee or the manager will respond to:
  - i. A resident's loss of sobriety; or
  - ii. A resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
- n. The provision of naloxone, including requirements for:
  - i. Informing the residents, the manager, and any other staff of the availability and location of the naloxone on the premises of the sober living home;
  - ii. Providing training to the manager and any other staff on the correct use of naloxone; and
  - iii. Ensuring the naloxone provided is available and not beyond the listed expiration date; and
- o. Termination of residency, including:
  - i. Planning for termination of residency when the services provided by the sober living home are no longer needed by a resident, including assisting the resident to find other housing;
  - ii. Coordinating the relocation of a resident to a health care institution or another sober living home if the resident needs services outside the scope of services provided by the sober living home;
  - iii. Coordinating the relocation of a resident to another sober living home or other housing option if the resident terminates residency; and
  - iv. Addressing factors that may negatively impact the surrounding neighborhood.
- C. A licensee shall:
  - 1. Not act as a patient's representative; and
  - 2. Ensure that a manager, an employee, or a family member of a manager or employee does not act as a resident's representative.
- D. If a manager has a reasonable basis, according to A.R.S. § 46-454, to believe abuse or exploitation of a resident has occurred on the premises, the manager shall:
  - 1. If applicable, take immediate action to stop the suspected abuse or exploitation;
  - 2. Immediately report the suspected abuse or exploitation of the resident according to A.R.S. § 46-454;
  - 3. Document:
    - a. The suspected abuse or exploitation,

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- b. Any action taken according to subsection (D)(1), and
  - c. The report in subsection (D)(2); and
- 4. Maintain the documentation in subsection (D)(3) for at least 12 months after the date of the report in subsection (D)(2).
- E. A manager shall notify:
  - 1. A resident's representative, family member, or other emergency contact designated by the resident according to R9-12-202(C)(2):
    - a. Within one calendar day after:
      - i. The resident's death, or
      - ii. The resident has an illness or injury that requires immediate intervention by an emergency medical services provider or treatment by a health care provider; and
    - b. Within seven calendar days after the manager determines that a resident is:
      - i. Incapable of handling financial affairs, or
      - ii. Not complying with the residency agreement; and
  - 2. The Department, in a Department-provided format, of a resident's death, within one working day after the resident's death, if the resident's death is required to be reported according to A.R.S. § 11-593.
- F. If a sober living home provides or arranges transportation for residents, a manager shall ensure that the vehicle used for transportation:
  - 1. Is in good working order, and
  - 2. Has a seat belt for each occupant of the vehicle.
- G. A manager shall ensure that the following are conspicuously posted in a sober living home:
  - 1. The license of the sober living home;
  - 2. The name and contact information for the individual or business organization controlling the sober living home; and
  - 3. A statement of resident's rights, including:
    - a. The right to file a complaint about the manager or the sober living home,
    - b. How to file a complaint about the manager or the sober living home, and
    - c. The phone number for the unit in the Department responsible for licensing and monitoring the sober living home.
- H. A licensee shall ensure that a personnel record is established for a manager and any other staff of a sober living home that includes the individual's:
  - 1. Name;
  - 2. Date of birth;
  - 3. Contact telephone number; and
  - 4. Documentation of:
    - a. Verification of skills and knowledge sufficient to carry out the sober living home's scope of services;
    - b. Training in the use of naloxone; and
    - c. If applicable:
      - i. Certification in cardiopulmonary resuscitation, and
      - ii. Compliance with subsection (B)(1)(b).
- I. A licensee shall ensure that:
  - 1. The manager or other staff of the sober living home is on the premises within 30 minutes after notification by the Department of the Department's presence at the sober living home; and
  - 2. The Department is allowed immediate access to all:
    - a. Areas of the premises;
    - b. Information in records pertaining to the sober living home or residents, except as prohibited by 42 CFR, Part 2; and
    - c. Staff or residents of the sober living home who are on the premises.
- J. If the Department notifies the licensee of noncompliance with requirements in A.R.S. Title 36, Chapter 18, Article 4, or this Chapter, the licensee shall:
  - 1. Within 14 calendar days after the date of the Department's notice of noncompliance, establish a plan of correction, if applicable, for correction of a deficiency; and
  - 2. Ensure that a deficiency listed on the plan of correction is corrected within 30 calendar days after the date of the plan of correction or within a time period the Department and the licensee agree upon in writing.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

**R9-12-202. Residency Agreements**

- A. Within three calendar days before or at the time of acceptance into a sober living home, an individual requesting to be a resident of the sober living home shall provide proof of sobriety to the manager of the sober living home.
- B. A manager shall not accept or retain an individual as a resident of a sober living home if the individual:
  - 1. Is not at least 18 years of age,
  - 2. Cannot provide proof of sobriety, or
  - 3. Needs more support to maintain sobriety than is within the scope of services for the sober living home.
- C. Before or at the time of an individual's acceptance by a sober living home, a manager shall ensure that there is a documented residency agreement between the individual and the sober living home that includes:

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1. The individual's name;
  2. The name and phone number of an emergency point of contact, which may be a family member or another individual designated by the individual;
  3. Information about the individual's:
    - a. Length of sobriety;
    - b. History of previous recovery activities; and
    - c. Source of referral to the sober living home, if applicable;
  4. Terms of occupancy, including:
    - a. Date of occupancy or expected date of occupancy,
    - b. Resident responsibilities, and
    - c. Responsibilities of the sober living home;
  5. The consequences of a loss of sobriety;
  6. A description of the room for the individual to occupy;
  7. A list of the services to be provided by the sober living home to a resident;
  8. The fees to be charged to the individual for residency in the sober living home;
  9. A list of the services available from the sober living home at an additional fee or charge and the associated fees or charges;
  10. The policy for refunding fees, charges, or deposits;
  11. The policy and procedure for a resident to terminate residency, including terminating residency because services were not provided to the resident according to the residency agreement;
  12. The policy and procedure for a sober living home to terminate residency;
  13. A statement that a resident has a right to file a complaint about the sober living home, manager, or licensee and a description of the complaint process;
  14. A statement that a resident is expected to:
    - a. Comply with the terms of the residency agreement and requirements established for residents according to R9-12-201(B)(2)(a)(iii) or R9-12-201(B)(3)(j);
    - b. Maintain sobriety; and
    - c. Participate in activities to improve life skills, support independent living, and promote recovery:
      - i. Such as a treatment program, a self-help group, or another program to support sobriety and recovery; and
      - ii. That may include job training, school, or looking for a job;
  15. A statement that a sober living home may not require an individual to relinquish the individual's public assistance benefits, such as medical assistance, case assistance, or supplemental nutrition assistance program benefits, as a condition of residency;
  16. A statement that a sober living home must notify a family member or other emergency contact of the individual, according to R9-12-201(E)(1), if the individual:
    - a. Dies while a resident of the sober living home,
    - b. Has an illness or injury that requires immediate intervention by an emergency medical services provider or treatment by a health care provider,
    - c. Appears to be incapable of handling financial affairs, or
    - d. Is not complying with the residency agreement;
  17. The name and contact information for the individual or business organization controlling the sober living home;
  18. The signature of the individual and the date signed; and
  19. The manager's signature and date signed.
- D.** A manager shall:
1. Before or at the time of an individual's acceptance by a sober living home, provide to the resident or resident's representative a copy of:
    - a. The residency agreement in subsection (C), and
    - b. Resident's rights; and
  2. Maintain the original of the residency agreement in subsection (C) in the resident's record.
- E.** A manager may terminate residency of a resident as follows:
1. Without notice, if the resident exhibits behavior that is an immediate threat to the health and safety of the resident or other individuals in a sober living home;
  2. With a seven-calendar-day written notice of termination of residency:
    - a. For nonpayment of fees, charges, or deposit; or
    - b. Under the conditions in subsection (B)(3); or
  3. With a 14-calendar-day written notice of termination of residency, for any other reason.
- F.** A manager shall ensure that a written notice of termination of residency includes:
1. The date of notice;
  2. The reason for termination of residency;
  3. If termination of residency is because the resident needs more support to maintain sobriety than is within the scope of services for the sober living home, a description of why the sober living home cannot meet the resident's needs;
  4. The policy for refunding fees, charges, or deposits; and
  5. The deposition of a resident's fees, charges, and deposits.

## CHAPTER 12. SOBER LIVING HOMES

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

**R9-12-203. Resident Rights**

- A.** A manager shall ensure that:
1. A resident is not subjected to:
    - a. Abuse,
    - b. Exploitation,
    - c. Coercion,
    - d. Manipulation,
    - e. Sexual abuse,
    - f. Sexual assault, or
    - g. Retaliation for submitting a complaint to the Department or another entity; and
  2. A resident or the resident's representative is informed of and given the opportunity to ask questions about:
    - a. The residency agreement,
    - b. The costs associated with residency,
    - c. The resident's rights and responsibilities,
    - d. The prohibition of the possession of alcohol or illicit drugs at the sober living home,
    - e. Drug and alcohol testing and other assessments of sobriety,
    - f. The consequences of loss of sobriety, and
    - g. The complaint process.
- B.** A resident has the following rights:
1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
  2. To receive services that support the resident's sobriety, including, if applicable, continuing to receive medication-assisted treatment while a resident;
  3. To have a secure place to store personal belongings, medications, or other personal items to deter misappropriation by another individual;
  4. To be able to gain access to the sober living home at any time while a resident;
  5. To have access to all areas of the sober living home's premises, except for:
    - a. The bedrooms and secure storage locations of other residents,
    - b. The bedroom and secure storage locations of the manager or other staff, and
    - c. Areas of the sober living home used as the manager's office or for storage of records or supplies for assessment of sobriety;
  6. To have access to meals prepared in the sober living home;
  7. To review, upon written request, the resident's own record; and
  8. To receive assistance in locating another place to live if the resident's record indicates that the resident:
    - a. No longer needs the services of a sober living home, or
    - b. Needs more services and support to maintain sobriety than the sober living home is authorized to provide.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

**R9-12-204. Resident Records**

- A.** A manager shall ensure that a resident record is established and maintained for each resident that includes:
1. The original of the residency agreement in R9-12-202(C);
  2. The date the resident received orientation to the sober living home, as required by R9-12-205(A);
  3. A copy of each drug and alcohol test performed on the resident by an independent testing facility, including the date of the test and the test result;
  4. Any other assessments of sobriety performed on the resident, including:
    - a. The date of the assessment,
    - b. A description of the assessment,
    - c. The result of the assessment, and
    - d. The name of the individual conducting the assessment;
  5. Documentation of the resident's attendance at and participation in treatment, self-help groups, and other supports that promote recovery, including:
    - a. The name or a description of the support towards recovery, and
    - b. The date of the resident's attendance;
  6. A current list of medications taken by the resident and the resident's medical conditions;
  7. An account of monies received from the resident and any expenditures made specific to the resident;
  8. Documentation of any complaints made by or about the resident and the outcome of each complaint;
  9. Documentation of any notification made according to R9-12-201(E) about the resident; and
  10. If applicable, documentation related to termination of residency, including:



## CHAPTER 12. SOBER LIVING HOMES

- a. Whether termination of residency was initiated by the resident or the sober living home,
  - b. The reason for termination of residency,
  - c. Any assistance the resident received in locating another place to live, and
  - d. The date the residency ended.
- B.** A licensee shall ensure that a resident's record is:
1. Protected from loss, damage, or unauthorized use;
  2. Available for review by the resident or the resident's representative, within 24 hours after a request; and
  3. Maintained for at least 12 months after the termination of residency.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

**R9-12-205. Sober Living Home Services**

- A.** Within 24 hours after an individual becomes a resident of a sober living home, a licensee shall ensure that the resident receives orientation to the sober living home and premises, according to policies and procedures, that includes:
1. The location of all exits from the sober living home and the route to evacuate the sober living home in case of an emergency;
  2. The location of the first-aid kit required in R9-12-206(1);
  3. The use of the kitchen of the sober living home, including:
    - a. Operation of the appliances,
    - b. Use of food storage areas, and
    - c. Removal of garbage and refuse;
  4. The use of the washing machine and dryer;
  5. The dates, time, and location of house meetings;
  6. The prohibition of the possession of alcohol or illicit drugs at the sober living home;
  7. Review and discussion of specific resident requirements, as applicable, such as curfews, smoking, visitors, signing in or out of the sober living home, meal preparation schedule, chore schedule, or other house rules;
  8. Review and discussion of requirements related to R9-12-201(B)(2)(a)(iii); and
  9. The information required according to R9-12-201(B)(3)(n).
- B.** A manager shall:
1. Conduct drug and alcohol testing according to policies and procedures;
  2. Assist a resident to identify and participate in programs to support sobriety and recovery;
  3. Provide to a resident information about community resources, such as nearby bus routes, grocery stores, department stores, other places to obtain food or other personal items, schools, libraries or other locations providing access to computers, or other locations providing items or services a resident may need.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

**R9-12-206. Emergency and Safety Standards**

A manager shall ensure that:

1. A first aid kit is available at a sober living home sufficient to meet the needs of residents;
2. Naloxone is available and accessible to the manager, staff, and residents of the sober living home;
3. A smoke detector and, if there is a gas line in the sober living home, a carbon monoxide detector are installed in:
  - a. A bedroom used by a resident,
  - b. A hallway in a sober living home, and
  - c. A sober living home's kitchen;
4. The smoke detector and, if applicable, carbon monoxide detector in subsection (3) are:
  - a. Either battery operated or, if hard-wired into the electrical system of the sober living home, have a back-up battery; and
  - b. In working order;
5. A fire extinguisher that is labeled as rated at least 1A-10-BC by the Underwriters Laboratories:
  - a. Is maintained in the sober living home's kitchen;
  - b. If a disposable fire extinguisher, is replaced when its indicator reaches the red zone; and
  - c. If a rechargeable fire extinguisher:
    - i. Is serviced at least once every 12 months, and
    - ii. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher;
6. An evacuation path is conspicuously posted on each hallway of each floor of the sober living home;
7. A written evacuation plan is maintained and available for use by the manager, any other staff of the sober living home, and any resident in a sober living home;
8. An evacuation drill is conducted at least once every six months; and
9. A record of an evacuation drill required in subsection (8) is maintained for at least 12 months after the date of the evacuation drill.

## CHAPTER 12. SOBER LIVING HOMES

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).

**R9-12-207. Environmental and Physical Plant Requirements**

- A.** A licensee shall ensure that a sober living home:
1. Is free of any plumbing, electrical, ventilation, mechanical, chemical, or structural hazard that may result in physical injury or illness to an individual or jeopardize the health or safety of a resident;
  2. Has a kitchen for use by the manager and residents of the sober living home;
  3. Has a living room accessible at all times to a resident;
  4. Has a dining area furnished for group meals that is accessible to the manager, residents, and any other individuals present in the sober living home;
  5. For each five residents of the sober living home, has at least one bathroom equipped with:
    - a. A working toilet that flushes and has a seat;
    - b. A sink with running water accessible for use by a resident; and
    - c. A working bathtub or shower with a slip-resistant surface;
  6. Has heating and cooling systems that maintain the sober living home at a temperature between 70° F and 84° F at all times, unless individually controlled by a resident;
  7. Has a supply of hot and cold water that is sufficient to meet the personal hygiene needs of residents and the cleaning requirements in this Article;
  8. Has a working washing machine and dryer that is accessible to a resident; and
  9. Has a working telephone that is accessible to a resident.
- B.** If the sober living home has a swimming pool, a licensee shall ensure that:
1. The swimming pool is equipped with the following:
    - a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
      - i. A removable strainer,
      - ii. Two swimming pool inlets located on opposite sides of the swimming pool, and
      - iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
    - b. An operational cleaning system;
  2. The swimming pool is enclosed by a wall or fence that:
    - a. Is at least five feet in height as measured on the exterior of the wall or fence;
    - b. Has no vertical openings greater than four inches across;
    - c. Has no horizontal openings, except as described in subsection (B)(2)(e);
    - d. Is not chain-link;
    - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
    - f. Has a self-closing, self-latching gate that:
      - i. Opens away from the swimming pool,
      - ii. Has a latch located at least 54 inches from the ground, and
      - iii. Is locked when the swimming pool is not in use; and
  3. A life preserver or shepherd's crook is available and accessible in the swimming pool area.
- C.** A licensee shall ensure that:
1. A bedroom for use by a resident:
    - a. Is separated from a hall, corridors, or other habitable room by floor-to-ceiling walls containing no interior openings except doors and is not used as a passageway to another bedroom or habitable room;
    - b. Provides sufficient space for an individual in the bedroom to have unobstructed access to the bedroom door;
    - c. Has at least one openable window or door to the outside for use as an emergency exit;
    - d. Contains for each resident using the bedroom:
      - i. A separate, adult-sized, single bed or larger bed with a clean mattress in good repair; and
      - ii. Clean bedding appropriate for the season; and
    - e. If used for:
      - i. Single occupancy, contains at least 60 square feet of floor space; or
      - ii. Two or more residents, has an area of at least 50 square feet per resident;
  2. A mirror is available to a resident for grooming; and
  3. Each resident has individual storage space available for personal possessions and clothing.
- D.** A manager shall ensure that:
1. A sober living home:
    - a. Is maintained free of a condition or situation that may cause a resident or another individual to suffer physical injury;
    - b. Has equipment and supplies to maintain a resident's personal hygiene that are accessible to the resident;
    - c. Is clean and free from accumulations of dirt, garbage, and rubbish; and
    - d. Implements a pest control program to minimize the presence of insects and vermin at the sober living home;
  2. An appliance, light, or other device with a frayed or spliced electrical cord is not used at the sober living home;

## CHAPTER 12. SOBER LIVING HOMES

3. An electrical cord, including an extension cord, is not run under a rug or carpeting, over a nail, or from one room to another at the sober living home;
4. A resident does not share a bedroom with an individual who is not a resident;
5. A resident's bedroom is not used to store anything other than the furniture and articles used by the resident and the resident's belongings;
6. A resident has a lockable or other secure storage location for medications, valuables, or other personal belongings to deter misappropriation by other individuals that is accessible only by the resident and the manager;
7. If pets or animals are allowed in the sober living home, pets or animals are:
  - a. Controlled to prevent endangering the residents and to maintain sanitation;
  - b. Licensed consistent with local ordinances; and
  - c. For a dog or cat, vaccinated against rabies;
8. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
  - a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or E. coli bacteria;
  - b. If necessary, corrective action is taken to ensure the water is safe to drink; and
  - c. Documentation of testing is retained for at least 12 months after the date of the test; and
9. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to applicable state laws and rules.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 1419, effective July 1, 2019 (Supp. 19-2).



**Zoning Group**

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# Scottsdale Recovery II, LLC

Exhibit 5 – Declaration of  
Daniel Lauber

DECLARATION OF DANIEL LAUBER

I, DANIEL LAUBER, declare as follows:

1. I am over the age of 18 years and have personal knowledge of the facts contained in this Declaration. If called upon to testify, I could and would testify competently as to the truth of the facts stated herein.

2. I am an attorney licensed to practice in the State of Illinois and before the Supreme Court of the United States with over 40 years of experience as a professional city planner and fair housing expert.

3. I make this Declaration in support of the zoning interpretation request submitted by Scottsdale Recovery II, LLC, which seeks confirmation that the proposed use of the condominium property located at 7910 and 7920 E. Wilshire Drive (the “Property”) is permitted as of right in the Medium Density Residential (R-3) zoning district as a family.

4. As set forth in detail on my resume attached hereto as **Exhibit “A,”** my educational background includes a Bachelor of Arts Degree in Sociology earned from the University of Chicago in 1970, a Masters Degree in Urban Planning from the University of Illinois (Urbana) in 1972, and a Juris Doctorate from Northwestern University School of Law in 1985.

5. Since 1985, I have served as a consulting attorney to numerous municipalities, counties, states, and community residence providers regarding land use regulations pertaining to community residences for people with disabilities, compliance with the Fair Housing Act, and reasonable accommodation processes and requirements which are at issue in this matter.

6. I conducted a project under the “Community Residence Location Planning Act” to bring the State of Illinois’ 115 home rule municipalities into at least partial compliance with the Fair Housing Amendments Act of 1988’s zoning requirements for community residences for

people with disabilities.

7. I have served as a consulting attorney and expert witness in lawsuits throughout the country including for the U.S. Department of Justice, as well as administrative and quasi-judicial proceedings regarding these subject matters.

8. I have conducted workshops on zoning for community residences for people with disabilities for the U.S. Department of Housing and Urban Development and at professional conferences of the American Bar Association and the American Planning Association.

9. I wrote the American Planning Association's *Policy Guide on Community Residences* and the American Bar Association's model zoning for group homes.

10. My 1974 Planning Advisory Service Report No. 300, *Zoning/or Family and Group Care Facilities*, written for the American Society of Planning Officials (now the American Planning Association) pioneered the use of spacing distances between community residences for people with disabilities *allowed as of right* in residential zoning districts. Since enactment of the Fair Housing Amendments Act of 1988, the case law has made it abundantly clear that it is facially discriminatory to apply such spacing distances and zoning requirements to community residences that fit within the cap on the number of unrelated individuals living as a single housekeeping unit as set forth in the local zoning code's definition of "family."

11. I conducted one of 50+ studies on the impacts of community residences for people with disabilities on the surrounding neighborhood. Like the other studies, my 1988 study, *Impacts on the Surrounding Neighborhood of Group Homes for Persons With Developmental Disabilities*, found no negative impacts on property values, property turnover rates, or neighborhood safety. Other studies have included recovery residences (then called "halfway houses").

12. I have served as a consultant on zoning for community residences for the City of

Phoenix and the Town of Cave Creek, and as a consultant to the City of Prescott to draft zoning amendments for community residences and a licensing ordinance for structured sober living homes, both in accord with the Fair Housing Act. I have conducted in-depth studies for Phoenix, Cave Creek, Prescott, and other cities around the country, that provide the factual foundation for the zoning approaches they have adopted to regulate community residences for people with disabilities, including sober living homes.

13. In the late 1960s, group homes and community residences began to be formed as part of a broader movement to deinstitutionalize and change the care of people with disabilities. The goal was to provide people with disabilities with as normal a living environment as possible by emulating a biological family to achieve normalization and community integration. The overarching aim was to reintegrate disabled residents into society rather than to isolate them in large-scale institutions where all they learn is how to live in an institution and to spare them the stigma and negative social effects resulting institutionalization.

14. At about the time that group homes were first being established, the Fair Housing Act of 1968 (“FHA”) was enacted to provide for fair housing throughout the United States but was originally limited to prohibiting discrimination on the basis of race, color, religion or national origin.

15. The Fair Housing Amendments Act of 1988 (“FHAA”) extended FHA protections to persons with disabilities, making it unlawful “[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap,” which includes, by federal law, people with an addiction to illegal drugs or alcohol who are not currently using illegal drugs or alcohol, namely people in recovery from a substance abuse disorder.

16. The amendments adopted as part of the FHAA had the effect of guaranteeing the ability of disabled individuals to live in the residence of their choice within the community.

17. At the very beginning of its FAQs on the City's Care Home Ordinance, Attachment 6 to its December 5, 2017 City Council Report, the City of Scottsdale cited a two-page piece that I wrote entitled, "Rational and Legal Local Zoning Under the Fair Housing Act for Community Residences for People With Disabilities," which summarizes the maximum zoning restrictions a jurisdiction can impose on community residences for people with disabilities.

18. Having apparently relied on "Rational and Legal Local Zoning Under the Fair Housing Act for Community Residences for People With Disabilities," the City of Scottsdale had to be aware of the basic legal principle that a proposed family of up to six unrelated disabled adults must be allowed in the Medium Density Residential (R-3) zoning district as of right when families consisting of six adults without a disability are allowed as of right in that same zoning district.

19. Currently cities and counties tend to use the phrase "community residence" for people with disabilities that includes group homes, sober living homes, and small halfway houses capable of emulating a family. For reasons unknown, Scottsdale has chosen to instead create the fairly unique category "care home" and use the term "group home." Both uses, however, are more commonly subsumed within the term "community residence" and treated the same under a zoning code.

20. Based upon the City of Scottsdale's definitions for "dwelling unit", "family," and "single housekeeping unit" in the Zoning Ordinance, the proposed use would constitute a family living in each condominium unit and would be permitted within the Medium Density Residential (R-3) zoning district as a matter of right. Like any other dwelling, when sober adults in recovery from substance abuse disorders live together and fit within the city's cap of six adults in the



Ordinance's definition of "family," it must be allowed as of right in all residential districts, the same as any other family or housekeeping unit of six or fewer unrelated individuals. The City may not impose any additional zoning requirements or prohibit such families with disabilities from locating within the R-3 zoning district.

21. If the City were to impose additional zoning requirements or prevent this use of the Property in the R-3 zoning district, it would be doing so solely on the basis that the occupants are people with disabilities. Legally, four individuals living together as a single housekeeping unit in each of the proposed condominium units constitute a family like all other families of no more than six unrelated individuals functioning as a single housekeeping unit. Preventing those individuals from living in a condominium unit in the R-3 zoning district under Scottsdale's current zoning provisions would, under the majority view of the case law, almost certainly constitute housing discrimination on its face.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Dated this 13<sup>th</sup> day of May, 2021.



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Daniel Lauber, AICP

## EXHIBIT "A"



Daniel Lauber, AICP

Over 40 years experience in planning, law, and fair housing

**Attorney/Planning Consultant. Planning/Communications {1979+} and the Law Office of Daniel Lauber {Nov. 1985+}**

- We help cities and counties bring their zoning provisions for community residences for people with disabilities (group homes, sober homes, small halfway houses) and recovery communities into compliance with the nation's Fair Housing Act and applicable state statutes that comply with the Fair Housing Act. Before drafting zoning amendments, we conduct a thorough report that provides the planning rationale that enables the client jurisdiction to legally require a spacing distance and licensing and/or certification for community residences and recovery communities. We also write licensing ordinances for community residences for which the state does not have a licensing requirement such as sober living homes, recovery residences, and recovery communities.
- We provide consulting services to municipalities, counties, and states on planning, zoning, housing, and fair housing matters.
- We provide other planning and legal services as needed including developing land-use regulations and comprehensive plans for municipalities; site selection; developing affordable housing policy and programs; and public relations and communications. Activities include legal representation, expert testimony, report and plan preparation.
- We conduct Analyses of Impediments to Fair Housing Choice and Assessments of Fair Housing, and prepare Fair Housing Action Plans for cities, counties, consortiums, and states that receive CDBG funds as required by the U.S. Department of Housing and Urban Development. These analyses include an evaluation of the jurisdiction's zoning provisions for community residences for people with disabilities.
- We conduct studies of housing needs and provide expertise on techniques to preserve existing affordable housing and generate new affordable housing.
- We design and conduct random sample surveys of citizens and other populations using sound, scientific methods that produce accurate, representative results.
- We turn local government studies, plans, and zoning codes into clear, understandable, and visually pleasing documents that a lay person can understand.

## Prior Professional Experience

### **Lecturer. Department of Sociology and Anthropology, Loyola University of Chicago {Autumn 1989}**

Taught undergraduate course, Sociology 125 — Chicago: Growth of a Metropolis primarily to juniors and seniors. Course combined sociology, urban planning, and urban history to expand upon the usual course curriculum offered.

### **Researcher. Lawyers Committee for Better Housing, Chicago, Illinois {Summer, 1983}**

Prepared detailed study recommending reforms in the housing receivership process for Illinois municipalities. Prepared for Chicago Mayor Harold Washington's Transition Team.

### **Adjunct Professor of Environmental Science. Division of Science, College of Arts and Sciences, Governors State University, University Park, Illinois {1979–1980}**

Guest lecturer for planning courses; conducted research on effects and regulation of condominium conversions and the use of social impact analysis in municipal planning.

### **Columnist. *Chicago Sun–Times* {1979}**

Created and wrote “CondoWatch” column, first regular newspaper feature on condominium conversion in the United States.

### **Senior Planner. Planning Division, Village of Oak Park, Illinois {1977 – 1979}**

Researched and wrote award-winning Comprehensive Plan 1979 in compliance with 701 Comprehensive Planning Assistance requirements; prepared grant applications and budgets; prepared zoning ordinance revisions and reports; reviewed zoning applications and proposed ordinances; worked with code enforcement personnel; supervised assistant planners; provided staff assistance to Plan Commission and Village Board of Trustees.

### **Senior Planner/701 Program Coordinator. Office of Research and Planning, Illinois Department of Local Government Affairs (predecessor to Department of Commerce and Community Affairs) {1975 – 1977}**

Administered 701 Comprehensive Assistance Program for northeastern Illinois; prepared 701 applications and budgets; provided technical assistance by written report and oral presentation to local governments on planning, administration, risk management, home rule, downtown and economic development, annexation, incorporation, code enforcement; conducted workshops on housing; trained and supervised agency staff; prepared articles and grant applications; prepared chapters of the state land-use plan.

### **Research Associate. Planning Advisory Service, American Society of Planning Officials (predecessor organization to the American Planning Association) {1972 – 1975}**

Researched and wrote Planning Advisory Service reports, magazine articles, and ASPO's comments on federal legislation; answered over 1,500 inquiries from planning agencies and consultants on all aspects of planning and administration.

### **Principal Contributing Consultant. American Bar Association Advisory Commission on Housing and Urban Growth {Spring 1975}**

Researched and wrote zoning hearing examiner portion of “Improving the Administration of Land Use Controls,” in *Housing for All Under Law: New Directions in Housing, Land Use, and Planning Law*, (Ballinger Publishing Company), 1977.

**Consultant.** The Planning Group, Urban Investment and Development Company, Chicago, Illinois (since acquired by JMB Realty) { 1971 – 1972}

Prepared study of open space programs; prepared reports on new town planning concerning: mass transit, governmental districts, annexation and PUD provisions, economic indicators, quality of life, youth needs, buyer profiles; prepare analysis of proposed purchase of industrial park.

## Professional Memberships and Honors

### Board of Directors:

American Planning Association (APA): **President:** 1985–86; Director: 1978–79, 1981–87; 1992–94; 2003–2005

American Institute of Certified Planners: **President:** 1992–94, 2003–2005; Commissioner: 1992–1995; 2002–2005

American Society of Planning Officials: Director: 1976–78

Oak Park Regional Housing Center: 1995–2003

Metro–Help (National Runaway Switchboard): 1977–79

University of Illinois Alumni Association: 1983–85

American Association on Mental Retardation, Region VI Executive Committee, 1988–1991; Legal Advocacy Vice Chairman: 1988–91

### Additional memberships:

American Bar Association: 1983+

Committee on Regulation of Land Use: 1987–1992

Chairman, Group Home and Congregate Living Subcommittee: 1989–1992

Group Home Model Zoning Ordinance Subcommittee: 1987–1989

Committee on Condominiums, Cooperatives and Homeowner Associations, Section of Real Property, Probate, and Trust Law: 1983–85

Chicago Bar Association: 1986+

Constitutional Law and Civil Rights Committee: 2007+

Real Property Law Committee, Subcommittee on Zoning and Land Use, Vice Chair: 1989–1990; member: 1986–2001

Local Government Committee: 1986–2001

Illinois State Bar Association, 1986–2000

Local Government Committee, 1993–1994

American Planning Association, 1979+:

Ad Hoc Committee on National Housing Policy: 1987–1988

National/State Policy Coordinating Committee: 1989–1990

Planners Support Committee: 1994–1995

### Awards:

- ◆ 2009 Best Practices Award from the **Illinois Chapter of the American Planning Association** for the *Analysis of Impediments to Fair Housing Choice in the City of Naperville, Illinois 2007*
- ◆ 1998 **Paul Davidoff Award** from the American Planning Association for demonstrating a sustained social commitment to advocacy planning in support of the needs of society's less fortunate members
- ◆ 1991 **Illinois American Planning Association Chapter** Award of Merit for Program or Project of Unusually High Merit Performed Under Serious Budgetary, Staff, or Political Constraints
- ◆ 1983 **Illinois American Planning Association Chapter** Award of Merit for *Oak Park Comprehensive Plan 1979*
- ◆ 1997 Mid–America Publishers Association Award for “Best Makeover” in book design for *Professional's Job Finder* book
- ◆ 1995 Benjamin Franklin Award: “Most Improved Redesign” for *Government Job Finder* book
- ◆ 1994 National Gold Ink Competition Pewter Award for design and production of the *Non–Profits' Job Finder*, 3rd edition

## Education and Bar Admission

Admitted to the Bar of the Supreme Court of the United States (March 1, 1995)  
Admitted to Illinois Bar (Nov. 1985) and U.S. District Court for Northern District of Illinois (Dec. 1985)  
“Fair Housing Skills Training Program” conducted by The John Marshall Law School, February 1996  
**Juris Doctor, Northwestern University School of Law: June 1985**  
Dean’s List: Autumn 1984, Spring 1983, Autumn 1983  
Student Funded Public Interest Fellowship: Summer 1983  
Chairman, Course Evaluation Committee, Student Bar Association, 1984–1985  
**Masters of Urban Planning, University of Illinois (Urbana): June 1972**  
Research and Teaching Assistant: 1970–1972  
**B.A. (sociology), University of Chicago: June 1970**  
Dean’s List: 1968–69, 1969–70

## Group Homes and Other Community Residences Including Sober Homes and Recovery Communities

(Partial Listing)

### Planning:

*Governor’s Planning Council on Developmental Disabilities* — Conducted and published scientific study of impacts of group homes on property values, neighborhood stability, and safety in the surrounding neighborhoods; Sept. 1986

*Illinois Department of Mental Health and Developmental Disabilities, Division of Developmental Disabilities, Region Two (9-county Chicago region)* (1980–1981) — Managed year-long project on zoning for family and group care homes for the developmentally disabled, consisting of technical assistance, expert testimony, ordinance analysis and preparation, workshops, public education and public relations, site selection, analysis of state legislation

*Philadelphia Department of Mental Health and Mental Retardation* — Advised planning, law, building inspection, and zoning officials on zoning for group homes.

*North Shore Association for the Retarded* (name has since been changed to *Shore Community Services, Inc.*) — Devised and coordinated successful efforts to win zoning approval for group homes for developmentally disabled adults in Evanston, IL; expert witness on effects of group homes (1982)

*Lake County, IL Dept. of Planning, Zoning, and Environmental Quality* — Consultant to the defense in unsuccessful court challenge to location of halfway house for prison pre-parolees.

**Legal** (jurisdictions for which zoning amendments were written are in bold face; also see next section entitled “Consulting: Planning and Law”):

### Government

**Amicus Brief, *City of Edmonds v. Washington State Building Code Council*, 514 U.S. 725 (1995)**: Principle author of the American Planning Association’s Amicus Curiae Brief on behalf of respondents. Decided May 15, 1995 for the respondents. Several observers of the case believe that this brief is one of several that had a significant influence on the outcome.

**West Palm Beach, Florida (2018–2021)** — Consulting attorney to the city on zoning for community residences for people with disabilities and recovery communities. Conducted the 70-page study *Zoning Principles for Community Residences for People With Disabilities and for Recovery Communities in West Palm Beach* (October 2018) to guide the city’s revisions to its zoning treatment of community residences for people with disabilities and recovery communities. Collaborated with city staff to draft amendments to the city’s *Land Development Code* for community residences and recovery communities.

**Oakland Park, Florida (2020)** — Consulting attorney to the city on zoning for community residences for people with disabilities and recovery communities. Conducted the 69-page study *Zoning Principles for Community Residences for People With Disabilities and for Recovery Communities in Oakland Park* (March 2019) to guide the city’s revisions to its zoning treatment of community residences for people with disabilities and recovery communities. Collaborated with city staff to draft amendments to the city’s *Land Development Code* for community residences and recovery communities. Wrote guidelines for implementation and evaluating conditional use applications and FAQs explaining the proposed zoning in plain English.

**Cave Creek, Arizona (2020)** — Consulting attorney to the town on zoning for community residences for people with disabilities. Conducted the 51–page study *Zoning Principles for Community Residences for People With Disabilities in Cave Creek, Arizona* (Sept. 2019) to guide the town’s revisions to its zoning treatment of community residences for people with disabilities. Produced FAQs to explain the proposed zoning in plain English. Collaborated with staff to draft amendments to the town’s *Zoning Ordinance* for community residences and wrote guidelines for implementation and evaluating applications for a “Disability Accommodation Permit.” Testified as expert witness at public hearings.

**Expert Witness on Mandatory Certification of Sober Homes Before the Florida State Senate** (Feb. 11, 2019) — Provided expert testimony on Senate Bill 102 to the Children, Family, and Elderly Affairs Committee explaining the legal basis for requiring certification of sober homes and recovery communities in Florida. At the time, certification was voluntary. Addressed how mandatory licensing does not run afoul of the nation’s Fair Housing Act.

**Pompano Beach, Florida (2018)** — Consulting attorney to the city on zoning for community residences for people with disabilities. Conducted the 64–page study *Pompano Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities* (June 2018) to guide the city’s revisions to its zoning treatment of community residences for people with disabilities and recovery communities. Drafted amendments to the city’s *Land Usage Code* for community residences and recovery communities (possibly the first ordinance to address recovery communities) as well as guidelines for implementation and evaluating special exception applications. Produced draft zoning application form for community residences and recovery communities. Testified as expert witness at public hearings.

**Phoenix, Arizona (2017–2018)** — Consulting attorney to the city on revising its zoning provisions for community residences for people with disabilities. Conducted the 40–page study *Phoenix, Arizona: Principles to Guide Zoning for Community Residences for People With Disabilities* (Feb. 2018) to guide the city’s revisions to its zoning treatment of community residences for people with disabilities.

**Fort Lauderdale, Florida (2018)** — Consulting attorney to the city’s law firm Lewis Stroud & Deutsch on zoning for community residences for people with disabilities. Conducted the 61–page study *Fort Lauderdale, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities* (Feb. 2018) to guide the city’s revisions to its zoning treatment of community residences for people with disabilities. Provided consulting services on zoning amendments drafted by the city’s attorney which were derived in part from the 2017 Delray Beach zoning amendments.

**Delray Beach, Florida (2017)** — Consulting attorney to the city attorney’s office on zoning for community residences for people with disabilities. Conducted the 55–page study *Delray Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities* (2017) to guide the city’s revisions to its zoning treatment of community residences for people with disabilities. Drafted amendments to the city’s zoning code adopted in July 2017. Produced zoning application form and guidelines for submitting conditional use permit applications as well as guidelines for evaluating conditional use permit applications. Testified as expert witness at public hearings.

**Prescott, Arizona (2016)** — Consulting attorney to the city attorney’s office on ordinance to establish licensing for structured sober living homes as permitted by state legislation adopted earlier in the year. Prepared licensing ordinance designed protect the residents of structured sober living homes from abusive practices, require training and oversight of staff, and require each home to establish a policy that provides a safe discharge of residents.

**Prescott, Arizona (2013–2015)** — Consulting attorney to the city attorney’s office on zoning for community residences for people with disabilities. Prepared the 2015 study *Prescott, Arizona: Principles to Guide Zoning for Community Residences for People With Disabilities* to guide the city’s revisions to its zoning treatment of community residences for people with disabilities and drafted language for amendments to the city’s zoning code that the City Council adopted. Following adoption of the zoning ordinance amendments, the U.S. Department of Housing and Urban Development terminated its investigation of Prescott’s zoning treatment of community residences for people with disabilities. The zoning and licensing ordinances, coupled with the insurance industry’s crackdown on scam artists, filtered out the scam artists and reduced the number of recovery residences or sober homes by more than 70 percent.

**Herrin, Illinois (2013)** — Drafted zoning amendments covering community residences for people with disabilities to bring Herrin zoning into compliance with the Fair Housing Act; researched and wrote the study *Principles to Guide Zoning for Community Residences for People With Disabilities in Herrin, Illinois*, June 2013; presented expert testimony to the city’s Zoning Board of Appeals.

**Dublin, Ohio (2014)** — As consulting attorney to the city’s law firm Frost Brown Todd LLC, we prepared a 33–page study, *Dublin, Ohio: Principles to Guide Zoning for Community Residences for People With Disabilities*, that established the basis for zoning code amendments we drafted with the city’s law firm to bring the city’s zoning provisions for community residences for people with disabilities into compliance with the nation’s Fair Housing Act.

**Willow Springs, Illinois (2013)** — Provided legal assistance on zoning for community residences for people with disabilities in compliance with the Fair Housing Act.

**Dallas, Texas (2012)** — Provided legal assistance to the City Attorney’s office with a focus on compliance with the nation’s Fair Housing Act on the drafting of a new ordinance to license community residences not subject to licensing by the State of Texas



**Boulder City, NV (2012)** — Conducted zoning analysis for proposed use to determine whether it was a residential use or institutional use under the city’s zoning code

**Clark County, NV (2006–2008)** — Legal and planning consultant to Clark County in defense and settlement of group home fair housing and zoning federal lawsuit, *Nevada Fair Housing Center, Inc. v. Clark County*

**Boulder City, Nevada (2010)** — Prepared report and amendments to zoning code for community residences for people with disabilities. Conducted joint City Council and Planning Commission workshop.

**Mesquite, Nevada (2010)** — Prepared report and amendments to zoning code for community residences for people with disabilities. Conducted City Council workshop.

**Clark County, Nevada (2005–2006)** — Prepared study and amendments to the county’s zoning code for community residences for people with disabilities. Provided expert testimony at public hearing.

**Open Door Rehabilitation Center (2004–2005)** — Wrote zoning text amendments to provide as of right for community residences for people with disabilities in **Sandwich, Illinois**. Served as expert witness for these text amendments as well as area variances and special use permit for group homes for people with developmental disabilities. Prepared request to Illinois Department of Mental Health and Developmental Disabilities for waiver of license-imposed spacing distance. Provided expert testimony at public hearing.

**City of Trotwood, Ohio (1997)**: Expert consultant in federal court case; wrote zoning ordinance amendments for community residences as part of proposed case settlement

**City of Springfield, IL (1997)**: Expert witness and consultant in federal court case

**City of Altoona, Pennsylvania (1994–1995)** — Legal consultant to draft comprehensive zoning ordinance amendments to regulate group homes, halfway houses, shelters, and other community residences in accord with the 1988 amendments to the federal Fair Housing Act.

**City of East Peoria, Illinois (1993)** — Legal consultant; wrote comprehensive zoning ordinance amendments to regulate group homes, halfway houses, shelters, and other community residences in accord with the 1988 amendments to the federal Fair Housing Act

**Illinois Planning Council on Developmental Disabilities (1990–1991)**: Project to implement Illinois’ Community Residence Location Planning Act which required all 110 home rule municipalities to prepare plans showing how they intend to amend their zoning ordinances for group homes to bring them into compliance with 1988 amendments to the federal Fair Housing Act. Conducted seven workshops for municipal officials; provided technical assistance to city attorneys and planners; wrote zoning amendments for 11 cities; appeared as expert witness before local plan commissions; wrote guidebook and legal analysis; wrote model zoning ordinance provisions; wrote report for Illinois General Assembly including recommendations for state legislative action; prepared press releases; evaluated 99 ordinances for compliance with the Fair Housing Act’s 1988 amendments. **This project received the 1991 award from the Illinois Chapter of the American Planning Association for a “Planning Program of Unusually High Merit Performed Under Serious Budgetary, Manpower, or Political Constraints.”**

**Park District of Alsip (1990–91)**: Co-counsel in successful court defense against claim of violation of Fair Housing Act by group home operator. *Alsip Park District v. D&M Partnership*, Case No. 89 L 51342, Circuit Court of Cook County, IL. August 2, 1991.

**Oxford, Ohio (1989)** — Co-conducted with attorney/planner Brian Blaesser a critical assessment of the city’s zoning ordinance regarding zoning for community residences for people with disabilities; drafted amendments to the city’s zoning ordinance

**Illinois Department of Mental Health and Developmental Disabilities, Division of Developmental Disabilities (1983)** — Provided technical assistance to service providers and municipal and county officials on zoning for group homes, wrote model zoning provisions for local governments, conducted workshops on group home zoning for local officials

## Community Residence Providers

**Story Cottage (2018+)** — Provided assistance to obtain zoning approval from Indianapolis and Carmel, Indiana for group homes for the frail elderly with memory issues. Worked with municipal staffs to recognize that statewide zoning for group homes and their own local zoning provisions for group homes for specified disabilities also apply to group homes for the frail elderly.

**Camelback Ranch (2019+)** — Worked with this operator of sober living homes to obtain zoning approval from Arizona municipalities. Included instances where the proposed sober home was within the designated minimum spacing distance from another community residence, but unbeknownst to local officials, the other community residence did not actually exist. Obtained “reasonable accommodations” to waive requirements for fire sprinkler systems for these sober homes.

**Stepping Stone Recovery (2019+)** — Helped this sober home operator obtain zoning approval from Arizona municipality and be granted a “reasonable accommodation” to waive requirements for fire sprinkler systems for these sober homes. Included an instance where the proposed sober home was within the designated minimum spacing distance from another community residence, but unbeknownst to local officials, the other community residence no longer existed.

*Centered Living Holdings' Recovery Home (2018)* — Served as expert witness and advisor to local attorneys in successful application before Scottsdale, Arizona for a “disability accommodation” to replace an existing recovery residence with a “care home” holding a “behavioral health residential facility” license from the Arizona Department of Health Services. The site was located within the 1,200 foot spacing distance of an existing group home for the frail elderly and the city required that a “disability accommodation” be obtained to locate within that spacing distance.

*St. John Assisted Living Group Home (2017)* — As consulting attorney, obtained the first reasonable accommodation issued by Fort Collins, Colorado under its new zoning provision to enable this group home for the frail elderly to receive zoning approval. The city agreed to waive its zoning provision that required a larger lot size for group homes with more than three residents (and shelters for victims of domestic violence) than would be required for other single-family homes, thus averting a costly lawsuit.

*Forconi Group Home (2017)* — As consulting attorney, provided legal guidance to successfully receive a special use permit from Park County, Wyoming to establish a group home for four adults with developmental disabilities or traumatic brain injuries despite opposition from some neighbors in this largely rural area.

*Independent Advocacy Group (2016)* — Expert witness for a conditional use permit for a group home housing three people with developmental disabilities in Springfield, Illinois.

*Cardinal McCloskey Community Services (2014)* — As consulting attorney and planner, provided assistance to this group home operator to successfully prevent Bedford, NY from objecting under the state’s unique Padavan Law to the location of a proposed group home for four young adults with developmental disabilities. Prepared cover letter, FAQs, and annotated bibliography of property value studies for distribution to prospective neighbors inviting them to a coffee to learn about the proposed group home. Provided guidance to the operator for conducting the coffee and appearing at public hearings. Educated local town staff on the Fair Housing Act and appropriate zoning treatment of group homes.

*Astara House (2014)* — As consulting attorney, provided guidance to the Ziegler Metzger LLP attorney for this recovery community for people in recovery from drug and/or alcohol addiction to successfully receive a special use permit from Bedford, OH.

*The H Group (2012–2014)* — Represented The H Group in successful effort to secure zoning ordinance revisions to allow a community residence for people with developmental disabilities that a southern Illinois city rejected in June 2012. Parties’ agreement settling five housing discrimination complaints filed with HUD reached in March 2014. Provided consulting services on zoning for community residences in additional Illinois communities.

*Our Family Home (2013)* — Provided legal and planning assistance to operator of community residence for elderly with dementia or Alzheimer’s when Montgomery, Ohio sought to impose zoning restrictions illegal under Ohio state law and federal law. Met with neighbors of the proposed group home. Analyzed shortcomings in the zoning treatment of group homes by Montgomery, Ohio. Provided guidance to litigators who achieved successful settlement with the city to allow the community residence as a permitted use and to amend its zoning code to comply with Ohio and federal law.

*LifeCare Homes of America (2011–2013)* — Represented operator of proposed group home for the frail elderly before homeowners’ association regarding restrictive covenants. Persuaded the homeowners’ association to drop its opposition to the group home, stop obstructing architectural approvals, and amend its restrictive covenants to comply with the Fair Housing Act. Obtained opinion from the county verifying that the group home is a permitted use allowed as of right.

*Tranquility House (2011–2012)* — Represented operator of recovery home in application for a special use permit in Blue Island, Illinois.

*Plum Creek Senior Group Home (2011)* — Represented operator of proposed group homes for the frail elderly in negotiations with the City of Park Ridge, Illinois.

*Kings Treatment Center (2008–2009)* — Provided legal representation on zoning matters for group home proposals in Winfield, Kansas

*Habilitative Systems (2009)* — Provided legal representation on zoning matters for group home in Chicago

*Hope House (2008–2009)* — Provided legal representation on zoning and building code matters in Hillside, Illinois

*Sequoia Recovery Services (2007–2009)* — Provided planning and zoning law advice for recovery communities in Pontiac, MI

*Time to Change, Inc. (2006–2007)*— Provided legal and planning assistance to operator to win special use permit to establish a 120-bed community correctional facility in an industrial park in Commerce City, Colorado

*Recovery Resource Center (2003–2005)*: Represented the center in zoning matters in west suburban Cook County, Illinois and completely rewrote the center’s corporate by-laws

*King’s Alcohol/Drug Treatment Center (2005)*: Secured correct interpretation by county officials of zoning and housing code provisions for two recovery communities for young adults in Sedgwick County, KS

*Independent Lifestyles (1996+)*: Represented this operator of group homes for the frail elderly and other people with severe physical disabilities on zoning and hazards reports issues before the City of Wauwatosa, WI (1996) and other Milwaukee-area cities including Franklin, WI (2006)

*Unity House (2003–2005)* — Represented recovery home for men addicted to alcohol or illegal drugs in zoning matters.



*Elgin Villa* (2003–2007) — Represented recovery homes for men addicted to alcohol or illegal drugs in zoning and housing code matters

*Poplar Place* (2004) — Secured corrected interpretation of zoning requirements to allow a group home for the frail elderly in a Milwaukee suburb

*Kevin Spilsbury* (2004) — Represented neighbors responding to zoning proposal for mini-institution with 56 recovering addicts and alcoholics in two adjacent houses in a fenced compound in Clark County, NV

*Chabad of California* (1999–2001): Provided legal guidance in a variety of zoning and building code matters in Los Angeles, CA, regarding residential rabbinical schools and colleges, drug treatment centers, and recovery communities.

*Yellow Brick Road Recovery Community* (2001+): Represented operator in response to \$1,000 ticket from Village of Maywood, IL, for violation of the zoning code. Violation was nonsuited.

*Dungarvin of Wisconsin* (2001–2002): Ended efforts by LaCrosse, WI, to prohibit Dungarvin group home for adults with developmental disabilities from locating in a residential district — without having to file a lawsuit

*Dungarvin of Illinois* (1998–1999): Represented group home for adults with developmental disabilities in its efforts to locate in residential district in Cordova, IL (population: 600). Drafted revisions to the village's zoning code which the village board adopted with some changes that made the client's group home a permitted use.

*Senior Residential Care of America* (1997–1999): Represented this community-based residential facility for 20 frail elderly before the Village of River Hills, WI, in application for special use permit

*Villa Family Live-In Centers, LLC* (1996): Represented this operator of group homes for the frail elderly before the City of Oak Creek, Wisconsin for a special use permit

*Lighthouse Academy and Residential Center* (1995): Represented operator of proposed boarding school for abused, neglected, and abandoned teenagers placed by the Illinois Department of Children and Family Services seeking to locate in the City of Joliet, Illinois

*Lifecare Homes* (1996–97): Represented this operator of group homes for the frail elderly before the City of West Allis, Wisconsin, for an exception to the state's 2,500-foot spacing distance

*Jack Clark's Family Recovering Communities* (1995–1996): Represented this halfway house for individuals recovering from drug and alcohol addictions for a special use permit from the Village of Maywood, Illinois

*Villa Family Live-In Centers LLC* (1996) — Represented operator of group homes for senior citizens with disabilities before local plan commissions and zoning boards in Wisconsin

*Shelter, Inc.* (1992–1993)— Consultant on site acquisition for shelters for abused children

*Berde et al v. Albero* — Consultant to attorneys for intervenors, Protection and Advocacy, Inc., Oakland, California — seeking to prevent use of restrictive covenant to exclude group home

*Dungarvin, Inc.* (1993) — Represented Dungarvin before Lakewood, Colorado, zoning board to obtain special use permit for group home for residents with developmental disabilities.

*Proviso Family Services*: Served as attorney and expert witness in public hearing for special use permit for group home for six women with mental illness. After winning approval of Maywood, Illinois, Plan Commission, the Village Board amended the zoning ordinance to make such group homes a permitted use.

*West Meadowview Civic Association v. Kankakee County Training Center for the Disabled*, Case No. 91–CH–80, 221st Judicial Circuit, Kankakee County, IL (1991). Served as co-counsel for defendant group home operator in challenge to group home based on restrictive covenant. Convinced plaintiff's attorney to drop the lawsuit.

*Foundation for Chemical Dependency Programs* (1990): Represented operator seeking zoning map amendment and special use permit to open halfway house for teen-agers in recovery from drug and alcohol addiction in unincorporated Will County, Illinois. Also handled press relations. Zoning issued by 25–1 vote of County Board despite neighbor filing petition requiring a 3/4 vote for approval. Also handled licensing issues.

*Dungarvin, Inc.* (1991) — Served as attorney to successfully persuade Town of Schererville, Indiana, to withdraw zoning and code objections to proposed group home.

*Martin Luther Homes* — Served as attorney for special use permit hearing for group home for persons with mental illness.

## **Expert Witness:**

*United States v. City of Chicago Heights*, 161 F. Supp. 2nd 819 (N.D. Ill. 2001 — Expert witness for the U.S. Department of Justice on zoning and planning law issues. Deposed in 2000. Identified legal issues that led to district court's summary judgment decision in favor of the United States.

*Tracey P., et al v. Sarasota County*, C.A. No. 8:05–CV–927–JDW–EAJ, U.S. District Court, Middle District of Florida — Expert witness for defendant Sarasota County in federal lawsuit; deposed Dec. 20, 2006; case settled Dec. 2007.

*Rimrock Foundation v. City of Billings, et al*, Cause Number CV 06–162–BLG–CSO— Expert witness for Billings, Montana in federal lawsuit. Produced expert witness report that helped lead to settlement of the case (2008).

*T.W. and Southern Living Centers v. City of Belleville, IL* (1997) — Testified as expert witness on zoning and group home impacts in federal court case in Belleville, IL. Case No. 97–790–WDS (U.S. District Court, Southern District)

*City of Mattoon v. Heritage Enterprises of Charleston, Inc., The Graywood Foundation, Inc., and Mile Stones Midwest, Inc.* (1997–1998): Deposed as expert witness on group home exclusion case in state court in Mattoon, IL (Coles County Circuit Court Cause No. 97–MR–36)

*Ancheta v. Westborough Homeowners Improvement Association* (1997): Expert witness in California state court case involving application of restrictive covenants to group home.

*Staley, Staley and Huggins v. LB Properties* (1992) — Testified as expert witness in successful defense of neighbor effort to overturn ruling by East Peoria Zoning Administrator that group home (RFMS) was a permitted use. Illinois Circuit Court, Case No. 91–CH–64 (May 19, 1992).

*USA v. City of Chicago Heights and RFMS, Inc. v. City of Chicago Heights*, Civil Action No. 89 C 4981, U.S. District Court, N.D. of Illinois. Settled in favor of RFMS, 1990. Served as expert witness to Rosenthal and Schanfield law firm handling Fair Housing Act lawsuit against Chicago Heights for denying special use permit for group home. Resulted in settlement issuing special use permit for group home and \$45,000+ in fines and costs.

*Center for New Horizons* — Served as expert witness before Chicago Plan Commission seeking special use permit to establish a group home for displaced abused boys from the neighborhood; prepared argument portion of brief appealing denial of special use permit. Scheduled to appear as expert witness in court case which was eventually dropped.

*Cook County Legal Assistance (Chicago)* — Expert witness in successful zoning lawsuit to overturn denial of special use permit for day care center.

### Expert witness on proper zoning treatment and impacts of group homes or halfway houses on property values:

- *Helping Hand Center* (2010) — Expert witness before Cook County (Illinois) Zoning Board of Appeals for special use permit
- *Safehaven Group Home* (1995) — Expert witness before Cheltenham, PA, Township Zoning Board
- *Northwest Suburban Aid for the Retarded* (1994) — Expert witness in request for special use permit for group home located within 1,320-foot spacing distance
- *Oxford House–C. et al. vs. City of St. Louis* federal district court (1993) — Testified as an expert witness on behalf of Oxford House, a recovery community for people with alcohol and drug addictions.
- “K” Care, Inc. (1992) — Testified at court-ordered special use permit hearing in Lac du Flambeau, Wisconsin
- *Marshall v. L.B. Properties*, No. 91–CH–64, 10th Judicial Circuit, Tazewell County, Illinois (1992) — Testified in court as expert witness for group home operator in lawsuit that overturned the city’s effort to bar two group homes for adults with developmental disabilities.
- *Martin v. Constance* (1990) — Testified as expert witness in St. Louis federal court suit under Fair Housing Act
- *ARC Community Support Systems* (1990) — Effingham, Illinois, Fair Housing Act lawsuit, settled before trial
- *Grace House* — Deposed as expert witness on behalf of halfway house for alcoholic women in Louisville, Kentucky
- Martin Luther Homes, group home for persons with mental illness, Pontiac, IL
- Group homes for persons with developmental disabilities:
- Grace–Harding Homes, Lawton, OK; Expert witness at trial on restrictive covenant to exclude group home; case decided
- *Knisley v. Morgan County Housing*, No. 85–CH–12, 7th judicial circuit, Morgan County, Sept. 6, 1985. Expert witness for plaintiff Morrissey Construction in Jacksonville, Illinois, lawsuit. Case settled just before trial.
- Residential Management Services, DuPont, IN (around 1990) — Testified as expert witness in state court on behalf of group home operator charged with violating zoning ordinance.
- Corporation for Independent Living, Hartford, CT (around 1990) — Testified as expert witness in state court in successful challenge to attempt by condominium to treat group homes as businesses prohibited by condominium by-laws.
- Clearbrook Center, Rolling Meadows, IL.
- North Shore Association for the Retarded, Evanston, IL.
- Macon County Community Mental Health Board, Decatur, IL (1979).

## Consulting: Planning and Law

(Partial listing; most community residence and fair housing experience is listed in the previous section entitled “Group Homes and Other Community Residences”)

### Planning:

#### Analyses of Impediments to Fair Housing Choice (AI)

Each analysis of impediments analyzed and reported on the client jurisdiction’s housing; land use regulations including zoning for community residences for people with disabilities; demographics; income; actual extent of integration; real estate practices; mortgage lending; housing affordability; relationship between public transportation, employment, and housing; and other factors that affect fair housing choice. The extent of integration is estimated fairly through a “Free Market Analysis” that takes into account actual household income and the actual cost of housing to approximate the proportions of each race and Hispanics of any race that would be expected to live in the jurisdiction and each census tract in a free housing market *not* distorted by housing discrimination.

District of Columbia — Researched and wrote ***Analysis Of Impediments To Fair Housing Choice Washington, D.C.*** with Lawyers’ Committee for Civil Rights Under Law and the Poverty and Race Research Action Council (PRRAC) (2019)

Fairfax County, Virginia — Researched and produced the ***Fairfax County, Virginia Analysis of Impediments to Fair Housing Choice 2016–2020***, 299 pages, 2017.

Houston, Texas — Researched and produced most of the ***2015 Analysis of Impediments to Fair Housing Choice, City of Houston***, Appendix 2: *Analysis of Houston’s Development Controls for Exclusionary Impacts* (pp. 177–199), Appendix 3: *Impacts of Development Regulations and Practices on Housing for People with Disabilities* (pp. 200–223), Appendix 4: *Free Market Analysis* (pp. 224–509), August 2015.

Billings, Montana — Researched and produced the ***Billings, Montana Analysis of Impediments to Fair Housing Choice 2012***, 141 pages, 2012.

District of Columbia — Researched and wrote the ***District of Columbia Analysis of Impediments to Fair Housing Choice 2006–2011***, 195 pages, 2012.

Lakewood, Ohio — Researched and produced the ***Lakewood, Ohio Analysis of Impediments to Fair Housing Choice 2011***, 94 pages, 2011.

Clark County, Nevada — Conducted and published the ***Clark County, Nevada Analysis of Impediments to Fair Housing Choice 2011***, included unincorporated Clark County, Boulder City, North Las Vegas, and Mesquite. 140 pages, 2011.

Murfreesboro, TN — Researched and produced the ***Murfreesboro, Tennessee Analysis of Impediments to Fair Housing Choice 2010***, 92 pages, 2010.

Naperville, Illinois — Conducted and published the ***Analysis of Impediments to Fair Housing Choice in the City of Naperville, Illinois, 2007***, 78 pages, 2007. Received a **2009 Best Practices Award** from the Illinois Chapter of the American Planning Association.

Naperville, Illinois — Researched and produced the 78–page ***Naperville Housing Needs and Market Analysis 2009***. In addition to unearthing demographic and housing market data, research included a random sample survey of residents (65.7% response rate) and one of employees (45% response rate) to identify housing preferences, location of work and home, income, current housing, future housing intentions, commuting issues, and more.

Hillsborough County, Florida — Researched and produced paper on the use of accessory apartments as a tool to produce affordable housing; conducted research on the use of housing density bonuses and inclusionary zoning (2008)

Park Forest, IL — Housing programs and policy

Highland Park, IL — Prepared new subdivision ordinance

Montgomery County (MD) Condominium Conversion Task Force — Conducted presentation on preserving affordable rental housing and provided consulting advice

Philadelphia, PA — Planning Department — Consulted on preserving affordable housing; conducted educational sessions for city officials on zoning for group homes

Plenary and Session Speaker, Community Living Arrangements Conference

Oak Park, IL — Designed and published award–winning *Comprehensive Plan 1979*; designed and prepared 1991 revision

American City Corporation — Conducted workshop on group housing for four city officials from Baltimore, Philadelphia, Cincinnati, and Columbus — Robert Woods Johnson program

Impacts of Landfills — Conducted research for an application for landfill in Texas

American Invsco (Chicago) — Prepared national analysis and summary of local and state laws regulating conversion of rental housing to condominium for property acquisitions division

American Association of Retired Persons/National Retired Teachers Association — Conducted workshops on fighting inflation in housing at NRTA–AARP National Issue Forums, Milwaukee, Wisconsin and Portland, Oregon, 1981

Metropolitan Planning Council (Chicago) — Conducted research and presentation on use of low–equity cooperatives in District of Columbia and Montgomery County (Maryland)

Lincolnshire, IL — Drafted community opinion survey on planning and growth issues

## Legal:

Cardinal Vision Homes (2020+) — Providing legal guidance in Illinois and Florida to obtain zoning approval of small community residence type assisted living homes for elderly people with physical disabilities. Awarded special use permit for 14–person assisted living home in Crest Hill, IL (Feb 2021).

River Forest, IL (2020) — Represented homeowner seeking variations to reduce rear yard setback and lot coverage to enable construction of addition with hydrotherapy pool for family members with disabilities. Village Board unanimously granted the variations as a reasonable accommodation under the Fair Housing Act.

River Forest, IL (2019) — Represented homeowner for a zoning variation before the River Forest Zoning Board of Appeals. The ZBA unanimously recommended granting the variation (April 11, 2019)

Midwest Bank Corporation of Delaware — Represented bank before Hinsdale Plan Commission. Won zoning approval for a drive–in bank facility adjacent to residential neighborhood

Golden Age Retirement Home — Served as attorney and consultant for zoning text and map amendments, special use permit

Maywood, Illinois, Plan Commission — Retained by village to interpret zoning ordinance provisions related to appeal of zoning administrators’ decision

Deer Valley Homeowners Association — Represented neighborhood association in zoning case in Will County, Illinois

Brenner Development Group — Represented residential and commercial developer to receive zoning permits from Hinsdale, Illinois, to build townhouse development

## Expert Witness:

- ◆ *Hanna v. City of Chicago*, Case No. 03 CH 5933, Circuit Court of Cook County, Illinois, Chancery Division; Deposed expert witness for the plaintiff in August 2005. Lawsuit rendered moot when the city rezoned the subject property to its previous designation.
- ◆ *Shirley Berry, et. al. v. Town of Tarboro, et. al.* (Eastern District of North Carolina, U.S. District Court 4:01–CV–140–H(3) (2002–2003)— Expert witness for the plaintiffs on acceptable zoning and planning practices in exclusionary zoning case. Retained by Land Loss Prevention Project. Settled favorably for the plaintiffs in 2003.
- ◆ Perkins Clay Partnership — Testified as an expert witness on appropriate zoning for townhouse development before Hinsdale, Illinois, Plan Commission; advised attorney
- ◆ Lutheran Home Services of Arlington Heights (Illinois) — Testified as expert witness on cost–revenue analysis before Arlington Heights Plan Commission

## Research

*Forbes* magazine, Chicago bureau — Conducted research on real estate and banking practices

Levy and Erens, law firm — Prepared report on laws that restricted use of property

Daniel Edelman, Inc. (Chicago), public relations — Prepared municipal political analyses

Citizens Schools Committee — Prepared successful application for foundation funding



# Professional Publications

(Partial listing in reverse chronological order)

## Law and Zoning (Includes Fair Housing):

"A Real LULU: Zoning for Group Homes and Halfway Houses Under the Fair Housing Amendments Act of 1988," in *The John Marshall Law Review*, Winter 1996, pp. 369–407.

"Three Decades On, Group Home Zoning Still at Issue," "Legal Lessons" column in *Planning* magazine, November 2015, p. 11.

*Community Residence Location Planning Act Compliance Guidebook*, May 1990, 47 pp. Explains how group homes operate, whom they house, the 1988 amendments to national Fair Housing Act, and court decisions under the 1988 amendments. Suggests four zoning approaches that comply, to varying degrees of certainty, with the Fair Housing Act. Identifies zoning approaches that certainly violate the act. Appendix includes executive summary and bibliography from Lauber's 1986 study on the impacts of group homes on the surrounding neighborhood.

*Community Residence Location Planning Act News*, June 1990, 4 pp. and Aug. 1990, 14 pp. The June issue answers questions about the Illinois Community Residence Location Planning Act. The August issue contains model zoning provisions for each of the legal zoning approaches suggested in the compliance guidebook described above. The August issues also includes zoning recommendations for halfway house and hospices and a sample application form for administrative occupancy permits. Detailed commentary explains the why and wherefores of each zoning provision.

*Recommendations to the Illinois General Assembly on Zoning for Community Residences*, Jan., 1991, 44 pp. Prepared for the Illinois Planning Council on Developmental Disabilities, this report identifies proper zoning techniques and reviews the results of a state project to bring the zoning ordinances of 110 home rule municipalities into compliance with the 1988 amendments to the Fair Housing Act.

"Avoid Zoning Pitfalls for Community Residences," in *The Suburban Housing Newsletter*, Summer 1993, pages 1–3.

"Group Think," in *Planning* magazine, October 1995, pp. 11–13.

"Nation's Hottest Zoning Issue: Fair Housing Act Allows Zoning for Group Homes," in *Housing & Human Services Quarterly*, American Planning Association, Fall/Winter 1990–91, pp. 1–3.

"Fair Housing Act Allows Zoning for Group Homes," in *Planning & Zoning News*, March 1990, Vol. 8, No. 5, pp. 18–19. This article offers a preliminary evaluation of how the 1988 amendments to the Fair Housing Act affect zoning for group homes.

*Impacts of Group Homes on the Surrounding Neighborhood: An Evaluation of Research*, IDMH/DD, August 1981, 22 pp.

"Mainstreaming Group Homes" in *Planning*, Dec. 1985, pp. 14–18.

*Toward a Sound Zoning Treatment of Group Homes for the Developmentally Disabled*, May 1985, 103 pp.

*Guide to Chicago Zoning*, Illinois Department of Mental Health and Developmental Disabilities (Illinois Department of Mental Health/Developmental Disabilities), April 1981, variable pagination.

"Zoning Hearing Examiners Rescue Cities, Counties from Administrative Tangles, Rising Court Appeals," in *Innovations*, Illinois Department of Local Government Affairs, Jan. 1977, pp. 10–11.

"Socially-Informed Planning and Decision Making: Some Preliminary Ideas," in *Intergovernmental Planning, Approaches to the "No Growth" vs. "Growth is Good" Dilemma*. Proceedings of the Annual Summer Institute on Zoning and Planning, 1976, Bureau of Urban and Regional Planning Research, University of Illinois, 1976, pp. 29–51.

"The Housing Act & Discrimination," in *Planning*, Feb. 1975, pp. 24–25.

*The Hearing Examiner in Zoning Administration*, PAS Report No. 312, ASPO, 1975, 26 pp.

"Some Tips on the New Housing Act," in *Planning*, Nov. 1974, pp. 21–23.

*Zoning for Family & Group Care Facilities*, PAS Report No. 300, ASPO, March 1974, 30 pp. Frequently reprinted and entered as evidence in court cases. Established first model zoning guidelines for community living arrangements.

*Recent Cases in Exclusionary Zoning*, PAS Report No. 292, ASPO, June 1973, 33 pp. Reprinted as chapters on exclusionary zoning in *Management & Control of Growth: Issues–Techniques–Problems–Trends* (Urban Land Institute, 1975, Vol. I), and in *Land Use Controls: Present Problems and Future Reforms* (Center for Urban Policy Research, Rutgers University, 1974).

## Planning:

*Government Job Finder*, 1997–2000, 3rd edition, Planning/Communications, 325 pages, 1997.

"Racially Diverse Communities: A National Necessity," a chapter in *African Americans in Urban America: Contemporary Experiences*, Wendy Kellogg, ed., Kendall/Hunt Publishing Company, 1996, pages 180–200.

Book review of “Breaking New Ground: Developing Innovative AIDS Care Residences,” in *Journal of the American Planning Association*, Winter 1994, pp. 124–125.

“Racially Diverse Communities: A National Necessity,” a chapter in *Challenging Uneven Development: An Urban Agenda for the 1990s*, Phillip Nyden and Wim Wiewel, eds., Rutgers University Press, 1991, pp. 49–84.

“The More Things Change,” commentary in *Journal of the American Planning Association*, Autumn 1993, page 486.

*The Compleat Guide to Finding Jobs in Government*, Planning/Communications, 1989, 183 pages, ISBN: 0-9622019-0-1. Second printing, 1989.

*Impacts on the Surrounding Neighborhood of Group Homes for Persons With Developmental Disabilities*, Governors’ Planning Council on Developmental Disabilities, Sept. 1986, 36 pp. Two printings.

“Condominium Conversions: A Reform in Need of Reform,” Chapter 16 of *Land Reform, American Style*, Frank J. Popper and Charles Geisler, eds., Rowman and Allanheld, 1984, pp. 273–301.

“Viewpoint,” (revive low-equity cooperative housing programs) in *Planning*, April 1984, p. 18.

*Achieving the Promise of Housing Receiverships*, Lawyers Committee for Better Housing, August 1983, 27 pp.

*The Compleat Guide to Jobs in Planning and Public Administration*, Planning/Communications, May 1982; second edition, 1984, 44 pp.

“Towards a Rational Housing Policy: The Role of Condominium Conversions,” in *Condominium and Cooperative Conversion: The Federal Response*, U.S. Government Printing Office, 1981, pp. 284–316.

“Condo conversion laws: the next generation,” in *Planning*, Feb. 1981, pp. 19–23.

“Condominium conversions — the number prompts controls to protect the poor and elderly,” in *Journal of Housing*, April 1980, pp. 201–209.

*Condominium Conversion Regulations: Protecting Tenants*, PAS Report No. 343, APA, September 1979, 22 pp. (co-author)

“Social Planning, Vancouver,” in *Planning*, March/April 1975, pp. 19–21.

*Job Descriptions for Planning Agencies*, PAS Report No. 302, ASPO, May 1974, 22 pp.

“Oak Park: Integration Takes More Than a Racial Quota,” in *Planning*, April/May 1974, pp. 14–17.

## Other Professional Activities: Webinars, Workshops, Speeches, etc.

(Partial listing)

### Housing and Fair Housing:

“Fair Housing Law Under the Biden Administration,” webinar presenter along with Zachary Best, and Anika Singh Lemar, Planning & Law Division, American Planning Association (Feb. 25, 2021)

“The Color Tax: Origins of the Modern Day Wealth Gap,” webinar presenter along with Bruce Orenstein and Angela Brooks, Housing & Community Development Division, American Planning Association (Feb. 12, 2021)

“The Elusive, Penultimate Social Equity: Stable, Racially Integrated Communities” webinar with Richard Rothstein and Athena Williams, Illinois Chapter of the American Planning Association Virtual State Conference (Sept 18, 2020)

“What an AI Can Do to Integrate Fair Housing into Planning Practices” presentation part of the session “The Role of States and Local Government – The Consolidated Plan and the Analysis of Impediments and Compliance With the Fair Housing Act,” 20-minute presentation at *Implementing the Duty to Affirmatively Further Fair Housing*, sponsored by the Fair Housing Legal Support Center and Clinic, The John Marshall Law School (Chicago, IL Sept. 20–21, 2013)

Speaker with Richard Rothstein, author of *The Color of Law: A Forgotten History of How Our Government Segregated America*. Explained what communities have done and can do to achieve stable, racial integration. (Oak Park, Dec. 7, 2017)

“Achieving and Maintaining Racial Diversity,” a 90-minute presentation at the Tenth Annual Fair Housing Conference of the Fair Housing Center of Southwest Michigan, theme: “Affirmatively Furthering Fair Housing – Moving Forward” (Kalamazoo, MI April 12, 2013)

“The Essential AI: What Belongs in a Competent Analysis of Impediments to Fair Housing Choice,” fair housing training conducted with Michael Allen and Caroline Peattie at *Analysis of Impediments to Fair Housing and Affirmative Marketing*, a day-long training seminar for recipients of Community Development Block Grants sponsored by the U.S. Department of Housing and Urban Development (San Francisco, CA August 18, 2011)

“The Effective Analysis of Impediments,” panel presentation at the *City of Raleigh Fair Housing Board 9th Annual Fair Housing Conference* (Raleigh, NC April 29, 2011)

“Key Elements and Best Practices: Creating a Competent Analysis of Impediments to Fair Housing Choice,” three-hour presentation with Caroline Peattie at *Analysis of Impediments to Fair Housing and Affirmative Marketing*,

a day-long training seminar for recipients of Community Development Block Grants sponsored by the U.S. Department of Housing and Urban Development, Western Center on Law and Poverty, and Legal Aid Foundation of Los Angeles (Los Angeles, CA March 16, 2011)

“Creating an Effective Analysis of Impediments to Fair Housing,” a one-hour presentation at *Race Place and Fair Housing in Texas*, A Statewide Conference at the University of Texas School of Law (Austin, TX October 15, 2010)

“Fair Housing & Economic Opportunity: Updating the AI, Ensuring Compliance & Making Progress Toward Change,” a three-hour panel presentation at *Annual Community and Economic Development Conference and Training* conducted by the National Association for County Community & Economic Development (Ann Arbor, MI Oct. 2, 2010)

“Integrating Fair Housing into Municipal Law: Group Homes, AIs, and the Fair Housing Act,” Teleconference speaker, International Municipal Lawyers Association (IMLA), July 13, 2010.

Speaker and panelist in session “Strategies for Change,” at “A Dream Deferred: Residential Segregation in Oregon,” sponsored by HUD, Fannie Mae Foundation, Fair Housing Council of Oregon, et al. (Portland, OR May 3, 2005)

Plenary Speaker, “Causes of Segregation and How to Overcome,” Forum of the South Orange-Maplewood Community Coalition on Race (New Jersey), Oct. 30, 2001)

Speaker and panelist at the conference “The Struggle for Fair Housing: Weighing Our Progress,” conducted by the Fair Housing Center of West Michigan (Grand Rapids, MI April 29, 2004)

Speaker on preserving racial diversity at the two-day Fair Housing 1968–1998: Promises Kept, Promises Broken,” University of Miami School of Law (Feb. 6–7, 1998)

Plenary session speaker, Annual Town and Community Planning Conference, Iowa State University: evaluated Housing & Community Development Act (Nov. 1977)

“Funding for Limited-Equity Cooperatives: An Approach for Chicago,” American Planning Association Illinois/Wisconsin Conference (1979)

*(Also see “Preservation of Affordable Housing — Policy and Programs” below)*

### **Fair Housing: Community Residences (group homes, small halfway houses, recovery communities):**

*After 30 Years, It’s Time to Comply With the Fair Housing Act, 2019*, American Planning Association–Illinois Chapter Annual Conference (with Greg Jones) (September 27, 2019)

*Innovations in Municipal Regulation of Group Homes, Sober Homes, and Recovery Communities*, webinar presented by Lorman Education (February 21, 2019)

“Planning and the Opioid Epidemic: Session Three,” American Planning Association webinar (March 20, 2018)

“Municipal Regulation of Group Homes and Sober Living Arrangements,” Strafford Publishing webinar (April 18, 2017)

“Healthy and Legal – Zoning for Group Homes in Tennessee,” keynote address at “Farmhouse to Penthouse” the 2013 Fall Conference of the Tennessee Chapter of the American Planning Association (Kingsport, TN Sept. 26, 2013)

“Coming Soon to Your Community: Housing for People With Disabilities,” a 90-minute session at the American Planning Association–Chicago Metro Section Fall Conference (Chicago, October 4, 2013)

“Group Home Zoning: How to Comply With the Fair Housing Act,” a 90-minute presentation at the 2013 Fall Conference of the Illinois State Section of the American Planning Association (Columbia, IL, Sept. 27, 2013)

“Focus on Community Residences/Group Homes,” part of the session “LULUs: Locally Unwanted Land Uses,” American Bar Association Annual Conference, (Chicago, July 31, 2009)

“The Fair Housing Act: Group Homes and Zoning: Fair or Foul?” American Bar Association Annual Conference (Atlanta, August 13, 1991).

“Federal Statutory and Regulatory Changes in Fair Housing Amendment,” Association of State Mental Health Attorney Annual Conference (Kansas City, MO, Oct. 1, 1990)

“Must Zoning Accommodate Group Homes?,” Fair Housing Enforcement: A Focus on Special Issues Affecting the Disabled, Families with Children, and the First Amendment, Fair Housing Legal Support Center, John Marshall Law School (Chicago, April 28, 1995)

“Impact of Zoning on Free Housing Choices,” Third Annual Fair Housing Summit of the Indiana Fair Housing Task Force, April 10, 2000, Muncie, IN

Plenary Session Speaker, “Myths of Fair Housing,” at “Fair Housing Conference,” sponsored by U.S. Department of Housing & Urban Development, Municipality of Anchorage, and Alaska Chapter of the American Planning Association, Anchorage, AK. Conducted plenary session as a two-hour workshop. (April 1998)

Plenary Speech, National Conference on Technology and Politics of Planning (Illinois Planning Council on Developmental Disabilities, Chicago, April 1986)

Featured speaker, “Communities That Care: Housing for Special Populations” Conference, Wright State University Center for Urban and Public Affairs, Miami Valley Regional Planning Commission (Oct. 23, 1987)

"Handicap and Zoning Ordinances," Annual Meeting of the Indiana Consortium of State and Local Human Rights Agencies (Hammond, IN, June 13, 1996)

Speaker on zoning for group homes under the Fair Housing Act at the "Fair Housing 1968–1998: Promises Kept, Promises Broken," University of Miami School of Law (Feb., 6–7, 1998)

Faculty, Illinois Institute for Continuing Legal Education, "Municipal Law: 1987 Update," (May 20 and 28, 1987)  
"Overcrowding and the Definition of Family," Illinois Chapter American Planning Association Annual Conference, June 11, 1998

"Enforcement Panel," *Opening Doors*, 14th Annual Fair Housing Seminar, co-sponsored by Cook County Commission on Human Rights, HUD, Chicago Association of Realtors, and 15 other organizations (June 3, 1994)

"Zoning Issues," 28th Annual Meeting, Wisconsin Association of Residential Facilities (June 2, 1997)

Zoning Institute (American Institute of Certified Planners): Conducted three-hour workshop on zoning for group homes (Oct. 1985)

Annual Zoning and Planning Conference, Governors State University, course on:

Zoning for Group Homes and Halfway Houses (1985)

Speaker, workshops on "Dealing with Community Fears" and "Zoning Issues," Housing Symposium on Creating Housing for People with Special Needs (Evanston Regionalized Housing Plan Committee, May 1986)

Plenary and Session Speaker, Community Living Arrangements Conference (City of Philadelphia, Sept. 1986)

"Zoning for Group Homes and Halfway Houses Workshop," Annual Zoning Institute, San Francisco (American Institute of Certified Planners, Oct. 1985)

Conducted half-day workshops for municipal planners in six-county Chicago area, Illinois Department of Mental Health and Developmental Disabilities (Feb., March, May, 1981)

"Group Homes and Halfway Houses Workshop," Zoning and Planning Workshop at Governors State University (University Park, IL, Oct. 1981)

Speeches or workshops on zoning for group homes and/or impacts of group homes:

- "Group Homes: Impacts and Zoning," Young Adults Institute National Conference (New York, April 29, 1987)
- "Winning Zoning Approval for Group Homes," American Association on Mental Retardation, Great Lakes Region Annual Conference (Sept. 1988)
- "Strategies to Win Community Support and Zoning Approval for Group Homes," workshop at 1988 Community Program Innovations National Conference (Boston, June 1988)
- "Symposium on Housing for the Mentally Ill," Alliance for the Mentally Ill of DuPage County, Illinois (1987)
- "Mentally Ill in Our Communities: Where Do We Go From Here?" Illinois League of Women Voters (1987)
- "More Than a Place to Stay: Housing the Mentally Ill in Our Communities," Panel Speaker, Roosevelt University Public Administration Program, League of Women Voters of Cook County (Nov. 19, 1988)
- "Group Homes: Impacts, Winning Neighborhood Support, and Zoning," 1987 TASH Annual Conference
- Panel Speaker, North Shore Interfaith Housing Council Annual Meeting (Nov. 20, 1988)
- Alliance for Mentally Ill of the South Suburbs (August 17, 1987)
- American Planning Association Upper Midwest Conference (Sept. 18, 1987)
- American Planning Association Mid-Atlantic Regional Conference (Virginia Beach, Virginia, Sept. 1986)
- "Legal Zoning for Group Homes," Chicago Bar Association, Zoning and Land Use Subcommittee (Oct. 20, 1988)

**American Planning Association Annual National Conference — Session speaker and/or moderator:**

- Low- and moderate-income housing (1974)
- Social impact analysis (1977)
- Impact and regulation of condominium conversion (1978, 1979, 1980)
- Preserving affordable housing (1981)
- How to write well (1982)
- Low-equity cooperatives (1985)
- Zoning for group homes and halfway houses (1986)
- "Opening the City to Persons with Disabilities: Transportation Accessibility and Group Homes" (1988)
- Workshop on zoning for group homes under the Fair Housing Act (1990)
- "Achieving and Preserving Racial Diversity," workshop (1992)
- "Planning for Residential Integration" (1995)
- "Zoning for Community Residences" (1996)
- "NIMBYs and Commissioners" (1996)
- "Preserving Racially Diverse Communities" with Professor Gary Orfield (1998)
- "Real Solutions for Affordable Housing" (2004, 2005)



## Other Planning and Zoning:

Faculty, *Doing Your Job: A One-Day Workshop on Local Planning and Zoning*, full-day workshops for planning commissioners, elected officials, and planners, sponsored by the Institute for Public Policy and Administration, Governors State University (University Park, Illinois):

Part I: Rockford, Matteson, Moline, Champaign (1988)

Part II: Rockford, Matteson, Oak Brook Terrace (1989)

Annual Zoning and Planning Conference, Governors State University, course on:

Recent Developments in Zoning Law, and the Zoning Hearing Examiner (1986)

“Socially Informed Planning” — Institute on Zoning and Planning, University of Illinois (Urbana), 1975, 1976

## Guest Lecturer:

Guest Lecturer, “Fair Housing and Group Homes,” Fair Housing Legal Clinic, John Marshall Law School, April 1, 2013

Faculty, “Ethics in Urban Planning,” a mini-course in “Community Planning & Development,” sponsored by the Municipal Art Society Planning Center and Hunter College, New York, NY, October 14, 2003

University of Illinois (Urbana)— social planning (1975); planning in the real world (1981)

Governors State University— socially-informed planning (1976–77, 1979)

## Preservation of Affordable Housing: Policy and Programs

(Partial listing)

“Bringing Sense to American Housing Policy,” Keynote Address, 2005 annual conference of the National Association of Housing Cooperatives, Kansas City, KS, Sept. 15, 2005; published in *Cooperative Housing Bulletin*, Nov./Dec. 2005, Vol. XXI, No. 6, pp. 1, 4, 15

“Sensible and Effective Approaches to Affordable Housing,” three-hour workshop presented at *Planning at the Crossroads Regional Planning Conference*, a nine-state conference of the American Planning Association (Oct. 13, 2004)

Faculty, “Making Real Efforts Toward Affordable Housing in Your Community,” a 90-minute course for the University of Wisconsin’s 32nd Annual *Planning and Zoning for Community Land-Use Management* conducted in Charlotte, NC; Madison, WI; and Albuquerque, NM (Spring, 2002)

American Association of Retired Persons/National Retired Teachers Association — workshops on fighting inflation in housing at NRTA–AARP National Issue Forums, Milwaukee, Wisconsin and Portland, Oregon, 1981

Metropolitan Planning Council (Chicago) — Research and presentation on use of low-equity cooperatives in District of Columbia and Montgomery County (Maryland)

## Expert Witness

- U.S. Senate Subcommittee on Housing and Urban Affairs, Committee on Banking, Housing, and Urban Affairs, June 28, 1979
- U.S. House of Representatives Subcommittee on Commerce, Consumer, and Monetary Affairs, Committee on Government Operations, March 31, 1981
- New Jersey Governor Brendan Byrne, Jan. 31, 1981
- Milwaukee City Council, Dec. 1980
- Montgomery County (Maryland), Condominium Conversion Task Force, Oct. 1979
- Chicago City Council, March and Oct. 1979
- Illinois Joint Legislative Study Committee, April 21, 1980, Feb. 8, 1982
- Illinois House of Representatives, Subcommittee on Real Estate, Feb. 8, 1978
- Skokie (Illinois) Village Board and Plan Commission, 1978
- Oak Park (Illinois) Village Board and Plan Commission, 1978
- Evanston (Illinois) Housing Commission, Plan Commission, City Council, 1978–1981



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# Scottsdale Recovery II, LLC

Exhibit 6 – Joint Statement of HUD  
and Department of Justice dated  
November 10, 2016



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
**OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY**



**U.S. DEPARTMENT OF JUSTICE**  
**CIVIL RIGHTS DIVISION**

*Washington, D.C.*  
*November 10, 2016*

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**JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT AND THE DEPARTMENT OF JUSTICE**

**STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION  
OF THE FAIR HOUSING ACT**

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**INTRODUCTION**

The Department of Justice (“DOJ”) and the Department of Housing and Urban Development (“HUD”) are jointly responsible for enforcing the Federal Fair Housing Act (“the Act”),<sup>1</sup> which prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status (children under 18 living with a parent or guardian), or national origin.<sup>2</sup> The Act prohibits housing-related policies and practices that exclude or otherwise discriminate against individuals because of protected characteristics.

The regulation of land use and zoning is traditionally reserved to state and local governments, except to the extent that it conflicts with requirements imposed by the Fair Housing Act or other federal laws. This Joint Statement provides an overview of the Fair Housing Act’s requirements relating to state and local land use practices and zoning laws, including conduct related to group homes. It updates and expands upon DOJ’s and HUD’s Joint

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<sup>1</sup> The Fair Housing Act is codified at 42 U.S.C. §§ 3601–19.

<sup>2</sup> The Act uses the term “handicap” instead of “disability.” Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of “disability” in the Americans with Disabilities Act

Statement on Group Homes, Local Land Use, and the Fair Housing Act, issued on August 18, 1999. The first section of the Joint Statement, Questions 1–6, describes generally the Act’s requirements as they pertain to land use and zoning. The second and third sections, Questions 7–25, discuss more specifically how the Act applies to land use and zoning laws affecting housing for persons with disabilities, including guidance on regulating group homes and the requirement to provide reasonable accommodations. The fourth section, Questions 26–27, addresses HUD’s and DOJ’s enforcement of the Act in the land use and zoning context.

This Joint Statement focuses on the Fair Housing Act, not on other federal civil rights laws that prohibit state and local governments from adopting or implementing land use and zoning practices that discriminate based on a protected characteristic, such as Title II of the Americans with Disabilities Act (“ADA”),<sup>3</sup> Section 504 of the Rehabilitation Act of 1973 (“Section 504”),<sup>4</sup> and Title VI of the Civil Rights Act of 1964.<sup>5</sup> In addition, the Joint Statement does not address a state or local government’s duty to affirmatively further fair housing, even though state and local governments that receive HUD assistance are subject to this duty. For additional information provided by DOJ and HUD regarding these issues, see the list of resources provided in the answer to Question 27.

## **Questions and Answers on the Fair Housing Act and State and Local Land Use Laws and Zoning**

### **1. How does the Fair Housing Act apply to state and local land use and zoning?**

The Fair Housing Act prohibits a broad range of housing practices that discriminate against individuals on the basis of race, color, religion, sex, disability, familial status, or national origin (commonly referred to as protected characteristics). **As established by the Supremacy Clause of the U.S. Constitution, federal laws such as the Fair Housing Act take precedence over conflicting state and local laws. The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic.** Housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.

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is drawn almost verbatim “from the definition of ‘handicap’ contained in the Fair Housing Amendments Act of 1988”). This document uses the term “disability,” which is more generally accepted.

<sup>3</sup> 42 U.S.C. §12132.

<sup>4</sup> 29 U.S.C. § 794.

<sup>5</sup> 42 U.S.C. § 2000d.

## 2. What types of land use and zoning laws or practices violate the Fair Housing Act?

Examples of state and local land use and zoning laws or practices that may violate the Act include:

- Prohibiting or restricting the development of housing based on the belief that the residents will be members of a particular protected class, such as race, disability, or familial status, by, for example, placing a moratorium on the development of multifamily housing because of concerns that the residents will include members of a particular protected class.
- Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes.
- Imposing restrictions on housing because of alleged public safety concerns that are based on stereotypes about the residents' or anticipated residents' membership in a protected class, by, for example, requiring a proposed development to provide additional security measures based on a belief that persons of a particular protected class are more likely to engage in criminal activity.
- Enforcing otherwise neutral laws or policies differently because of the residents' protected characteristics, by, for example, citing individuals who are members of a particular protected class for violating code requirements for property upkeep while not citing other residents for similar violations.
- Refusing to provide reasonable accommodations to land use or zoning policies when such accommodations may be necessary to allow persons with disabilities to have an equal opportunity to use and enjoy the housing, by, for example, denying a request to modify a setback requirement so an accessible sidewalk or ramp can be provided for one or more persons with mobility disabilities.

## 3. When does a land use or zoning practice constitute intentional discrimination in violation of the Fair Housing Act?

Intentional discrimination is also referred to as disparate treatment, meaning that the action treats a person or group of persons differently because of race, color, religion, sex, disability, familial status, or national origin. A land use or zoning practice may be intentionally discriminatory even if there is no personal bias or animus on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias may be intentionally discriminatory, even if the officials themselves do not personally share such bias. (See Q&A 5.) Intentional discrimination does not require that the

decision-makers were hostile toward members of a particular protected class. Decisions motivated by a purported desire to benefit a particular group can also violate the Act if they result in differential treatment because of a protected characteristic.

A land use or zoning practice may be discriminatory on its face. For example, a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Act because it treats persons with disabilities differently based on their disability. Even a law that is seemingly neutral will still violate the Act if enacted with discriminatory intent. In that instance, the analysis of whether there is intentional discrimination will be based on a variety of factors, all of which need not be satisfied. These factors include, but are not limited to: (1) the “impact” of the municipal practice, such as whether an ordinance disproportionately impacts minority residents compared to white residents or whether the practice perpetuates segregation in a neighborhood or particular geographic area; (2) the “historical background” of the action, such as whether there is a history of segregation or discriminatory conduct by the municipality; (3) the “specific sequence of events,” such as whether the city adopted an ordinance or took action only after significant, racially-motivated community opposition to a housing development or changed course after learning that a development would include non-white residents; (4) departures from the “normal procedural sequence,” such as whether a municipality deviated from normal application or zoning requirements; (5) “substantive departures,” such as whether the factors usually considered important suggest that a state or local government should have reached a different result; and (6) the “legislative or administrative history,” such as any statements by members of the state or local decision-making body.<sup>6</sup>

#### **4. Can state and local land use and zoning laws or practices violate the Fair Housing Act if the state or locality did not intend to discriminate against persons on a prohibited basis?**

Yes. Even absent a discriminatory intent, state or local governments may be liable under the Act for any land use or zoning law or practice that has an unjustified discriminatory effect because of a protected characteristic. In 2015, the United States Supreme Court affirmed this interpretation of the Act in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*<sup>7</sup> The Court stated that “[t]hese unlawful practices include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification.”<sup>8</sup>

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<sup>6</sup> *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977).

<sup>7</sup> \_\_\_ U.S. \_\_\_, 135 S. Ct. 2507 (2015).

<sup>8</sup> *Id.* at 2521–22.

A land use or zoning practice results in a discriminatory effect if it caused or predictably will cause a disparate impact on a group of persons or if it creates, increases, reinforces, or perpetuates segregated housing patterns because of a protected characteristic. A state or local government still has the opportunity to show that the practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. These interests must be supported by evidence and may not be hypothetical or speculative. If these interests could not be served by another practice that has a less discriminatory effect, then the practice does not violate the Act. The standard for evaluating housing-related practices with a discriminatory effect are set forth in HUD's Discriminatory Effects Rule, 24 C.F.R. § 100.500.

Examples of land use practices that violate the Fair Housing Act under a discriminatory effects standard include minimum floor space or lot size requirements that increase the size and cost of housing if such an increase has the effect of excluding persons from a locality or neighborhood because of their membership in a protected class, without a legally sufficient justification. Similarly, prohibiting low-income or multifamily housing may have a discriminatory effect on persons because of their membership in a protected class and, if so, would violate the Act absent a legally sufficient justification.

**5. Does a state or local government violate the Fair Housing Act if it considers the fears or prejudices of community members when enacting or applying its zoning or land use laws respecting housing?**

When enacting or applying zoning or land use laws, state and local governments may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents' protected characteristics. Doing so violates the Act, even if the officials themselves do not personally share such bias. For example, a city may not deny zoning approval for a low-income housing development that meets all zoning and land use requirements because the development may house residents of a particular protected class or classes whose presence, the community fears, will increase crime and lower property values in the surrounding neighborhood. Similarly, a local government may not block a group home or deny a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities or a particular type of disability. Of course, a city council or zoning board is not bound by everything that is said by every person who speaks at a public hearing. It is the record as a whole that will be determinative.

**6. Can state and local governments violate the Fair Housing Act if they adopt or implement restrictions against children?**

Yes. State and local governments may not impose restrictions on where families with children may reside unless the restrictions are consistent with the “housing for older persons” exemption of the Act. The most common types of housing for older persons that may qualify for this exemption are: (1) housing intended for, and solely occupied by, persons 62 years of age or older; and (2) housing in which 80% of the occupied units have at least one person who is 55 years of age or older that publishes and adheres to policies and procedures demonstrating the intent to house older persons. These types of housing must meet all requirements of the exemption, including complying with HUD regulations applicable to such housing, such as verification procedures regarding the age of the occupants. A state or local government that zones an area to exclude families with children under 18 years of age must continually ensure that housing in that zone meets all requirements of the exemption. If all of the housing in that zone does not continue to meet all such requirements, that state or local government violates the Act.

**Questions and Answers on the Fair Housing Act and  
Local Land Use and Zoning Regulation of Group Homes**

**7. Who qualifies as a person with a disability under the Fair Housing Act?**

The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term “physical or mental impairment” includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection, developmental disabilities, mental illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

The term “major life activity” includes activities such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, speaking, and working. This list of major life activities is not exhaustive.

Being regarded as having a disability means that the individual is treated as if he or she has a disability even though the individual may not have an impairment or may not have an impairment that substantially limits one or more major life activities. For example, if a landlord



refuses to rent to a person because the landlord believes the prospective tenant has a disability, then the landlord violates the Act's prohibition on discrimination on the basis of disability, even if the prospective tenant does not actually have a physical or mental impairment that substantially limits one or more major life activities.

Having a record of a disability means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

## **8. What is a group home within the meaning of the Fair Housing Act?**

The term "group home" does not have a specific legal meaning; land use and zoning officials and the courts, however, have referred to some residences for persons with disabilities as group homes. The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. A household where two or more persons with disabilities choose to live together, as a matter of association, may not be subjected to requirements or conditions that are not imposed on households consisting of persons without disabilities.

In this Statement, the term "group home" refers to a dwelling that is or will be occupied by unrelated persons with disabilities. Sometimes group homes serve individuals with a particular type of disability, and sometimes they serve individuals with a variety of disabilities. Some group homes provide residents with in-home support services of varying types, while others do not. The provision of support services is not required for a group home to be protected under the Fair Housing Act. Group homes, as discussed in this Statement, may be opened by individuals or by organizations, both for-profit and not-for-profit. Sometimes it is the group home operator or developer, rather than the individuals who live or are expected to live in the home, who interacts with a state or local government agency about developing or operating the group home, and sometimes there is no interaction among residents or operators and state or local governments.

In this Statement, the term "group home" includes homes occupied by persons in recovery from alcohol or substance abuse, who are persons with disabilities under the Act. Although a group home for persons in recovery may commonly be called a "sober home," the term does not have a specific legal meaning, and the Act treats persons with disabilities who reside in such homes no differently than persons with disabilities who reside in other types of group homes. Like other group homes, homes for persons in recovery are sometimes operated by individuals or organizations, both for-profit and not-for-profit, and support services or supervision are sometimes, but not always, provided. The Act does not require a person who resides in a home for persons in recovery to have participated in or be currently participating in a

substance abuse treatment program to be considered a person with a disability. The fact that a resident of a group home may currently be illegally using a controlled substance does not deprive the other residents of the protection of the Fair Housing Act.

### **9. In what ways does the Fair Housing Act apply to group homes?**

The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. State and local governments may not discriminate against persons with disabilities who live in group homes. Persons with disabilities who live in or seek to live in group homes are sometimes subjected to unlawful discrimination in a number of ways, including those discussed in the preceding Section of this Joint Statement. Discrimination may be intentional; for example, a locality might pass an ordinance prohibiting group homes in single-family neighborhoods or prohibiting group homes for persons with certain disabilities. These ordinances are facially discriminatory, in violation of the Act. In addition, as discussed more fully in Q&A 10 below, a state or local government may violate the Act by refusing to grant a reasonable accommodation to its zoning or land use ordinance when the requested accommodation may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling. For example, if a locality refuses to waive an ordinance that limits the number of unrelated persons who may live in a single-family home where such a waiver may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling, the locality violates the Act unless the locality can prove that the waiver would impose an undue financial and administrative burden on the local government or fundamentally alter the essential nature of the locality's zoning scheme. Furthermore, a state or local government may violate the Act by enacting an ordinance that has an unjustified discriminatory effect on persons with disabilities who seek to live in a group home in the community. Unlawful actions concerning group homes are discussed in more detail throughout this Statement.

### **10. What is a reasonable accommodation under the Fair Housing Act?**

The Fair Housing Act makes it unlawful to refuse to make “reasonable accommodations” to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others may sometimes deny them an equal opportunity to use and enjoy a dwelling.

Even if a zoning ordinance imposes on group homes the same restrictions that it imposes on housing for other groups of unrelated persons, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. What constitutes a reasonable accommodation is a case-by-case determination based on an individualized assessment. This topic is discussed in detail in Q&As 20–25 and in the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

### **11. Does the Fair Housing Act protect persons with disabilities who pose a “direct threat” to others?**

The Act does not allow for the exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. Nevertheless, the Act does not protect an individual whose tenancy would constitute a “direct threat” to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others unless the threat or risk to property can be eliminated or significantly reduced by reasonable accommodation. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (for example, current conduct or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate or significantly reduce the direct threat. See Q&A 10 for a general discussion of reasonable accommodations. Consequently, in evaluating an individual’s recent history of overt acts, a state or local government must take into account whether the individual has received intervening treatment or medication that has eliminated or significantly reduced the direct threat (in other words, significant risk of substantial harm). In such a situation, the state or local government may request that the individual show how the circumstances have changed so that he or she no longer poses a direct threat. Any such request must be reasonable and limited to information necessary to assess whether circumstances have changed. Additionally, in such a situation, a state or local government may obtain satisfactory and reasonable assurances that the individual will not pose a direct threat during the tenancy. The state or local government must have reliable, objective evidence that the tenancy of a person with a disability poses a direct threat before excluding him or her from housing on that basis, and, in making that assessment, the state or local government may not ignore evidence showing that the individual’s tenancy would no longer pose a direct threat. Moreover, the fact that one individual may pose a direct threat does not mean that another individual with the same disability or other individuals in a group home may be denied housing.

**12. Can a state or local government enact laws that specifically limit group homes for individuals with specific types of disabilities?**

No. Just as it would be illegal to enact a law for the purpose of excluding or limiting group homes for individuals with disabilities, it is illegal under the Act for local land use and zoning laws to exclude or limit group homes for individuals with specific types of disabilities. For example, a government may not limit group homes for persons with mental illness to certain neighborhoods. The fact that the state or local government complies with the Act with regard to group homes for persons with some types of disabilities will not justify discrimination against individuals with another type of disability, such as mental illness.

**13. Can a state or local government limit the number of individuals who reside in a group home in a residential neighborhood?**

Neutral laws that govern groups of unrelated persons who live together do not violate the Act so long as (1) those laws do not intentionally discriminate against persons on the basis of disability (or other protected class), (2) those laws do not have an unjustified discriminatory effect on the basis of disability (or other protected class), and (3) state and local governments make reasonable accommodations when such accommodations may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to a certain number of unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act because it treats persons with disabilities less favorably than families and unrelated persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together without violating the Act as long as the restrictions are imposed on all such groups, including a group defined as a family. Thus, if the definition of a family includes up to a certain number of unrelated individuals, an ordinance would not, on its face, violate the Act if a group home for persons with disabilities with more than the permitted number for a family were not allowed to locate in a single-family-zoned neighborhood because any group of unrelated people without disabilities of that number would also be disallowed. A facially neutral ordinance, however, still may violate the Act if it is intentionally discriminatory (that is, enacted with discriminatory intent or applied in a discriminatory manner), or if it has an unjustified

discriminatory effect on persons with disabilities. For example, an ordinance that limits the number of unrelated persons who may constitute a family may violate the Act if it is enacted for the purpose of limiting the number of persons with disabilities who may live in a group home, or if it has the unjustified discriminatory effect of excluding or limiting group homes in the jurisdiction. Governments may also violate the Act if they enforce such restrictions more strictly against group homes than against groups of the same number of unrelated persons without disabilities who live together in housing. In addition, as discussed in detail below, because the Act prohibits the denial of reasonable accommodations to rules and policies for persons with disabilities, a group home that provides housing for a number of persons with disabilities that exceeds the number allowed under the family definition has the right to seek an exception or waiver. If the criteria for a reasonable accommodation are met, the permit must be given in that instance, but the ordinance would not be invalid.<sup>9</sup>

#### **14. How does the Supreme Court's ruling in *Olmstead* apply to the Fair Housing Act?**

In *Olmstead v. L.C.*,<sup>10</sup> the Supreme Court ruled that the Americans with Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community-based settings. An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. By contrast, a segregated setting includes congregate settings populated exclusively or primarily by individuals with disabilities. Although *Olmstead* did not interpret the Fair Housing Act, the objectives of the Fair Housing Act and the ADA, as interpreted in *Olmstead*, are consistent. The Fair Housing Act ensures that persons with disabilities have an equal opportunity to choose the housing where they wish to live. The ADA and *Olmstead* ensure that persons with disabilities also have the option to live and receive services in the most integrated setting appropriate to their needs. The integration mandate of the ADA and *Olmstead* can be implemented without impairing the rights protected by the Fair Housing Act. For example, state and local governments that provide or fund housing, health care, or support services must comply with the integration mandate by providing these programs, services, and activities in the most integrated setting appropriate to the needs of individuals with disabilities. State and local governments may comply with this requirement by adopting standards for the housing, health care, or support services they provide or fund that are reasonable, individualized, and specifically tailored to enable individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. Local governments should be aware that ordinances and policies that impose additional restrictions on housing or residential services for persons with disabilities that are not imposed on housing or

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<sup>9</sup> Laws that limit the number of occupants per unit do not violate the Act as long as they are reasonable, are applied to all occupants, and do not operate to discriminate on the basis of disability, familial status, or other characteristics protected by the Act.

<sup>10</sup> 527 U.S. 581 (1999).

residential services for persons without disabilities are likely to violate the Act. In addition, a locality would violate the Act and the integration mandate of the ADA and *Olmstead* if it required group homes to be concentrated in certain areas of the jurisdiction by, for example, restricting them from being located in other areas.

**15. Can a state or local government impose spacing requirements on the location of group homes for persons with disabilities?**

A “spacing” or “dispersal” requirement generally refers to a requirement that a group home for persons with disabilities must not be located within a specific distance of another group home. Sometimes a spacing requirement is designed so it applies only to group homes and sometimes a spacing requirement is framed more generally and applies to group homes and other types of uses such as boarding houses, student housing, or even certain types of businesses. In a community where a certain number of unrelated persons are permitted by local ordinance to reside together in a home, it would violate the Act for the local ordinance to impose a spacing requirement on group homes that do not exceed that permitted number of residents because the spacing requirement would be a condition imposed on persons with disabilities that is not imposed on persons without disabilities. In situations where a group home seeks a reasonable accommodation to exceed the number of unrelated persons who are permitted by local ordinance to reside together, the Fair Housing Act does not prevent state or local governments from taking into account concerns about the over-concentration of group homes that are located in close proximity to each other. Sometimes compliance with the integration mandate of the ADA and *Olmstead* requires government agencies responsible for licensing or providing housing for persons with disabilities to consider the location of other group homes when determining what housing will best meet the needs of the persons being served. Some courts, however, have found that spacing requirements violate the Fair Housing Act because they deny persons with disabilities an equal opportunity to choose where they will live. Because an across-the-board spacing requirement may discriminate against persons with disabilities in some residential areas, any standards that state or local governments adopt should evaluate the location of group homes for persons with disabilities on a case-by-case basis.

Where a jurisdiction has imposed a spacing requirement on the location of group homes for persons with disabilities, courts may analyze whether the requirement violates the Act under an intent, effects, or reasonable accommodation theory. In cases alleging intentional discrimination, courts look to a number of factors, including the effect of the requirement on housing for persons with disabilities; the jurisdiction’s intent behind the spacing requirement; the existence, size, and location of group homes in a given area; and whether there are methods other than a spacing requirement for accomplishing the jurisdiction’s stated purpose. A spacing requirement enacted with discriminatory intent, such as for the purpose of appeasing neighbors’ stereotypical fears about living near persons with disabilities, violates the Act. Further, a neutral

spacing requirement that applies to all housing for groups of unrelated persons may have an unjustified discriminatory effect on persons with disabilities, thus violating the Act. Jurisdictions must also consider, in compliance with the Act, requests for reasonable accommodations to any spacing requirements.

**16. Can a state or local government impose health and safety regulations on group home operators?**

Operators of group homes for persons with disabilities are subject to applicable state and local regulations addressing health and safety concerns unless those regulations are inconsistent with the Fair Housing Act or other federal law. Licensing and other regulatory requirements that may apply to some group homes must also be consistent with the Fair Housing Act. Such regulations must not be based on stereotypes about persons with disabilities or specific types of disabilities. State or local zoning and land use ordinances may not, consistent with the Fair Housing Act, require individuals with disabilities to receive medical, support, or other services or supervision that they do not need or want as a condition for allowing a group home to operate. State and local governments' enforcement of neutral requirements regarding safety, licensing, and other regulatory requirements governing group homes do not violate the Fair Housing Act so long as the ordinances are enforced in a neutral manner, they do not specifically target group homes, and they do not have an unjustified discriminatory effect on persons with disabilities who wish to reside in group homes.

Governments must also consider requests for reasonable accommodations to licensing and regulatory requirements and procedures, and grant them where they may be necessary to afford individuals with disabilities an equal opportunity to use and enjoy a dwelling, as required by the Act.

**17. Can a state or local government address suspected criminal activity or fraud and abuse at group homes for persons with disabilities?**

The Fair Housing Act does not prevent state and local governments from taking nondiscriminatory action in response to criminal activity, insurance fraud, Medicaid fraud, neglect or abuse of residents, or other illegal conduct occurring at group homes, including reporting complaints to the appropriate state or federal regulatory agency. States and localities must ensure that actions to enforce criminal or other laws are not taken to target group homes and are applied equally, regardless of whether the residents of housing are persons with disabilities. For example, persons with disabilities residing in group homes are entitled to the same constitutional protections against unreasonable search and seizure as those without disabilities.

**18. Does the Fair Housing Act permit a state or local government to implement strategies to integrate group homes for persons with disabilities in particular neighborhoods where they are not currently located?**

Yes. Some strategies a state or local government could use to further the integration of group housing for persons with disabilities, consistent with the Act, include affirmative marketing or offering incentives. For example, jurisdictions may engage in affirmative marketing or offer variances to providers of housing for persons with disabilities to locate future homes in neighborhoods where group homes for persons with disabilities are not currently located. But jurisdictions may not offer incentives for a discriminatory purpose or that have an unjustified discriminatory effect because of a protected characteristic.

**19. Can a local government consider the fears or prejudices of neighbors in deciding whether a group home can be located in a particular neighborhood?**

In the same way a local government would violate the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities (see Q&A 5), a local government violates the law if it blocks a group home or denies a reasonable accommodation request because of neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers themselves do not have biases against persons with disabilities.

Not all community opposition to requests by group homes is necessarily discriminatory. For example, when a group home seeks a reasonable accommodation to operate in an area and the area has limited on-street parking to serve existing residents, it is not a violation of the Fair Housing Act for neighbors and local government officials to raise concerns that the group home may create more demand for on-street parking than would a typical family and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the requested accommodation, if a similar dwelling that is not a group home or similarly situated use would ordinarily be denied a permit because of such parking concerns. If, however, the group home shows that the home will not create a need for more parking spaces than other dwellings or similarly-situated uses located nearby, or submits a plan to provide any needed off-street parking, then parking concerns would not support a decision to deny the home a permit.



## **Questions and Answers on the Fair Housing Act and Reasonable Accommodation Requests to Local Zoning and Land Use Laws**

### **20. When does a state or local government violate the Fair Housing Act by failing to grant a request for a reasonable accommodation?**

A state or local government violates the Fair Housing Act by failing to grant a reasonable accommodation request if (1) the persons requesting the accommodation or, in the case of a group home, persons residing in or expected to reside in the group home are persons with a disability under the Act; (2) the state or local government knows or should reasonably be expected to know of their disabilities; (3) an accommodation in the land use or zoning ordinance or other rules, policies, practices, or services of the state or locality was requested by or on behalf of persons with disabilities; (4) the requested accommodation may be necessary to afford one or more persons with a disability an equal opportunity to use and enjoy the dwelling; (5) the state or local government refused to grant, failed to act on, or unreasonably delayed the accommodation request; and (6) the state or local government cannot show that granting the accommodation would impose an undue financial and administrative burden on the local government or that it would fundamentally alter the local government's zoning scheme. A requested accommodation may be necessary if there is an identifiable relationship between the requested accommodation and the group home residents' disability. Further information is provided in Q&A 10 above and the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

### **21. Can a local government deny a group home's request for a reasonable accommodation without violating the Fair Housing Act?**

Yes, a local government may deny a group home's request for a reasonable accommodation if the request was not made by or on behalf of persons with disabilities (by, for example, the group home developer or operator) or if there is no disability-related need for the requested accommodation because there is no relationship between the requested accommodation and the disabilities of the residents or proposed residents.

In addition, a group home's request for a reasonable accommodation may be denied by a local government if providing the accommodation is not reasonable—in other words, if it would impose an undue financial and administrative burden on the local government or it would fundamentally alter the local government's zoning scheme. The determination of undue financial and administrative burden must be decided on a case-by-case basis involving various factors, such as the nature and extent of the administrative burden and the cost of the requested accommodation to the local government, the financial resources of the local government, and the benefits that the accommodation would provide to the persons with disabilities who will reside in the group home.

When a local government refuses an accommodation request because it would pose an undue financial and administrative burden, the local government should discuss with the requester whether there is an alternative accommodation that would effectively address the disability-related needs of the group home's residents without imposing an undue financial and administrative burden. This discussion is called an "interactive process." If an alternative accommodation would effectively meet the disability-related needs of the residents of the group home and is reasonable (that is, it would not impose an undue financial and administrative burden or fundamentally alter the local government's zoning scheme), the local government must grant the alternative accommodation. An interactive process in which the group home and the local government discuss the disability-related need for the requested accommodation and possible alternative accommodations is both required under the Act and helpful to all concerned, because it often results in an effective accommodation for the group home that does not pose an undue financial and administrative burden or fundamental alteration for the local government.

## **22. What is the procedure for requesting a reasonable accommodation?**

The reasonable accommodation must actually be requested by or on behalf of the individuals with disabilities who reside or are expected to reside in the group home. When the request is made, it is not necessary for the specific individuals who would be expected to live in the group home to be identified. The Act does not require that a request be made in a particular manner or at a particular time. The group home does not need to mention the Fair Housing Act or use the words "reasonable accommodation" when making a reasonable accommodation request. The group home must, however, make the request in a manner that a reasonable person would understand to be a disability-related request for an exception, change, or adjustment to a rule, policy, practice, or service. When making a request for an exception, change, or adjustment to a local land use or zoning regulation or policy, the group home should explain what type of accommodation is being requested and, if the need for the accommodation is not readily apparent or known by the local government, explain the relationship between the accommodation and the disabilities of the group home residents.

A request for a reasonable accommodation can be made either orally or in writing. It is often helpful for both the group home and the local government if the reasonable accommodation request is made in writing. This will help prevent misunderstandings regarding what is being requested or whether or when the request was made.

Where a local land use or zoning code contains specific procedures for seeking a departure from the general rule, courts have decided that these procedures should ordinarily be followed. If no procedure is specified, or if the procedure is unreasonably burdensome or intrusive or involves significant delays, a request for a reasonable accommodation may,

nevertheless, be made in some other way, and a local government is obligated to grant it if the requested accommodation meets the criteria discussed in Q&A 20, above.

Whether or not the local land use or zoning code contains a specific procedure for requesting a reasonable accommodation or other exception to a zoning regulation, if local government officials have previously made statements or otherwise indicated that an application for a reasonable accommodation would not receive fair consideration, or if the procedure itself is discriminatory, then persons with disabilities living in a group home, and/or its operator, have the right to file a Fair Housing Act complaint in court to request an order for a reasonable accommodation to the local zoning regulations.

### **23. Does the Fair Housing Act require local governments to adopt formal reasonable accommodation procedures?**

The Act does not require a local government to adopt formal procedures for processing requests for reasonable accommodations to local land use or zoning codes. DOJ and HUD nevertheless strongly encourage local governments to adopt formal procedures for identifying and processing reasonable accommodation requests and provide training for government officials and staff as to application of the procedures. Procedures for reviewing and acting on reasonable accommodation requests will help state and local governments meet their obligations under the Act to respond to reasonable accommodation requests and implement reasonable accommodations promptly. Local governments are also encouraged to ensure that the procedures to request a reasonable accommodation or other exception to local zoning regulations are well known throughout the community by, for example, posting them at a readily accessible location and in a digital format accessible to persons with disabilities on the government's website. If a jurisdiction chooses to adopt formal procedures for reasonable accommodation requests, the procedures cannot be onerous or require information beyond what is necessary to show that the individual has a disability and that the requested accommodation is related to that disability. For example, in most cases, an individual's medical record or detailed information about the nature of a person's disability is not necessary for this inquiry. In addition, officials and staff must be aware that any procedures for requesting a reasonable accommodation must also be flexible to accommodate the needs of the individual making a request, including accepting and considering requests that are not made through the official procedure. The adoption of a reasonable accommodation procedure, however, will not cure a zoning ordinance that treats group homes differently than other residential housing with the same number of unrelated persons.

**24. What if a local government fails to act promptly on a reasonable accommodation request?**

A local government has an obligation to provide prompt responses to reasonable accommodation requests, whether or not a formal reasonable accommodation procedure exists. A local government's undue delay in responding to a reasonable accommodation request may be deemed a failure to provide a reasonable accommodation.

**25. Can a local government enforce its zoning code against a group home that violates the zoning code but has not requested a reasonable accommodation?**

The Fair Housing Act does not prohibit a local government from enforcing its zoning code against a group home that has violated the local zoning code, as long as that code is not discriminatory or enforced in a discriminatory manner. If, however, the group home requests a reasonable accommodation when faced with enforcement by the locality, the locality still must consider the reasonable accommodation request. A request for a reasonable accommodation may be made at any time, so at that point, the local government must consider whether there is a relationship between the disabilities of the residents of the group home and the need for the requested accommodation. If so, the locality must grant the requested accommodation unless doing so would pose a fundamental alteration to the local government's zoning scheme or an undue financial and administrative burden to the local government.

**Questions and Answers on Fair Housing Act Enforcement of Complaints Involving Land Use and Zoning**

**26. How are Fair Housing Act complaints involving state and local land use laws and practices handled by HUD and DOJ?**

The Act gives HUD the power to receive, investigate, and conciliate complaints of discrimination, including complaints that a state or local government has discriminated in exercising its land use and zoning powers. HUD may not issue a charge of discrimination pertaining to "the legality of any State or local zoning or other land use law or ordinance." Rather, after investigating, HUD refers matters it believes may be meritorious to DOJ, which, in its discretion, may decide to bring suit against the state or locality within 18 months after the practice at issue occurred or terminated. DOJ may also bring suit by exercising its authority to initiate litigation alleging a pattern or practice of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

If HUD determines that there is no reasonable cause to believe that there may be a violation, it will close an investigation without referring the matter to DOJ. But a HUD or DOJ

decision not to proceed with a land use or zoning matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and DOJ encourage parties to land use disputes to explore reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation or conciliation of the HUD complaint. HUD attempts to conciliate all complaints under the Act that it receives, including those involving land use or zoning laws. In addition, it is DOJ's policy to offer prospective state or local governments the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

## **27. How can I find more information?**

For more information on reasonable accommodations and reasonable modifications under the Fair Housing Act:

- HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act, available at <https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0> or <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.
- HUD/DOJ Joint Statement on Reasonable Modifications under the Fair Housing Act, available at <https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0> or [http://www.hud.gov/offices/fheo/disabilities/reasonable\\_modifications\\_mar08.pdf](http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf).

For more information on state and local governments' obligations under Section 504:

- HUD website at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/sect504](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504).

For more information on state and local governments' obligations under the ADA and *Olmstead*:

- U.S. Department of Justice website, [www.ADA.gov](http://www.ADA.gov), or call the ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).
- Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*, available at [http://www.ada.gov./olmstead/q&a\\_olmstead.htm](http://www.ada.gov./olmstead/q&a_olmstead.htm).
- Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>.

For more information on the requirement to affirmatively further fair housing:

- Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, and 903).
- U.S. Department of Housing and Urban Development, Version 1, Affirmatively Furthering Fair Housing Rule Guidebook (2015), *available at* <https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf>.
- Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Vol. 1, Fair Housing Planning Guide (1996), *available at* <http://www.hud.gov/offices/fheo/images/fhpg.pdf>.

For more information on nuisance and crime-free ordinances:

- Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services (Sept. 13, 2016), *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf>.