

Direct Threat To Health Or Safety Exemption of the Fair Housing Amendments Act

Under the Fair Housing Act, housing may not be made available to individuals 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.

However, the legislative history of the Fair Housing Amendments Act indicates a congressional intent that this "direct threat" exemption apply only in rare circumstances, and is to be narrowly construed and invoked only where an overt risk of danger to the health or safety of others exists. The instances in which the courts have had an opportunity to review this direct threat exemption has been limited, but a few cases which have recently been cited provide the multi-housing industry with some guidance as to how this provision may be dealt with by the courts.

In *Palley v. Lane*, an individual who had been approved for supplemental security income benefits based on a diagnosis of blindness, alcohol addiction and drug addiction, applied to the Chicago City Housing Authority for disabled housing.

His application was denied upon the ground that he did not meet the housing authority's standards for desirability due to his criminal arrest and conviction record.

It should be noted that federally subsidized housing programs have the authority to establish tenant selection criteria to determine whether an applicant is qualified for an available unit, as long as all other persons, including those with handicaps, have the same housing criteria applied to them. In this case, the housing authority took the position that the applicant's history of convictions for property and assaultive crimes constituted a direct threat to other tenants, justifying their denial of the application. The applicant had been convicted of possession of cocaine and the unlawful use of a weapon. The court approved this basis of denial of his application for residency because he constituted a direct threat to the health and safety of other residents at the apartment complex. Being that the applicant was a disabled individual did not provide a basis upon which the Fair Housing Amendments Act prohibited his denial for residency at the apartment complex.

In *Roe v. Sugar River Mills Associates*, another federal court was faced with a similar issue to construe the direct threat exemption of the Fair Housing Amendments Act. In this case, an 82 year old resident had complained that Mr. Roe had threatened him with physical violence. Mr. Roe had allegedly accosted this resident using obscene, offensive and threatening language and the resident had complained that this type of conduct directed towards him had caused him to be fearful for his physical safety, resulting in his request to vacate the premises. There were other residents who corroborated this resident's version of the events in question. Mr. Roe eventually was convicted of disorderly conduct and the landlord took the position that his conduct constituted a "direct threat to the health or safety of other individuals." Mr. Roe denied that his conduct was threatening or harassing and argued that his "outbursts" were the product of his mental handicap. He went on to argue that the landlord had a statutory duty to explore whether reasonable accommodations might be undertaken in order to eliminate or sufficiently minimize the impact of his handicap, including its physical manifestations upon other tenants so as to allow him to remain as a tenant at the apartment community. The court first looked to the legislative history of the Fair Housing Amendments Act and found language, which indicated that the

Direct Threat To Health Or Safety Exemption of the Fair Housing Amendments Act

landlord must have "objective evidence which is sufficiently recent to be credible" that a handicapped person constitutes a direct threat. The landlord took the position that such evidence did exist and that, if Mr. Roe constituted a direct threat to the safety of other residents, that there was no requirement for the landlord to provide any "accommodation" to Mr. Roe's handicap in order to minimize the threat he poses to other residents. In contrast, Mr. Roe argued. that the landlord could only take action against him after the landlord had made reasonable efforts to accommodate his handicap, which they had not done in this case. The court in reviewing the legislative history of the Act found in favor of Mr. Roe stating: "The Act requires Defendants (landlord) to demonstrate that no "reasonable accommodation" will eliminate or acceptably minimize the risk he poses to other residents ... before they may lawfully evict him. "Obviously, this conclusion reached by this federal court is very troublesome in that the practicalities of trying to provide such accommodation to a person who has this type of mental handicap seems totally impractical. Also, it should be noted that this author has not located any other case law that has taken this extreme position on this issue.

In conclusion, it is advised that in connection with any physically or mentally handicapped individual, if the landlord is attempting to evict that individual due to the threat of the health or safety of others which he poses, a close analysis of the factual basis for this assertion must be undertaken before legal proceedings are commenced.

By Scott M. Clark, Esq.

3008 N. 44th Street, Phoenix, AZ 85018

602.957.7877

sclark@scottclarklaw.com

<http://www.scottclarklaw.com>

February 1995 / Apartment News