



# Introduction

The scale of residential facilities for people with disabilities ranges from independent living arrangements—frequently termed “supportive housing”—to small group homes with a few residents, and upward to substantially larger institutions housing hundreds of residents. Throughout this book, the authors use the generic term “group homes” to describe the small and mid-range variety of facilities housing people with disabilities. Moreover, the term “group home” generally applies to congregate—as opposed to independent or nuclear-family—living arrangements. Most of the opposition to the establishment of housing facilities for people with disabilities arises in the context of these small and mid-range congregate living facilities, particularly when existing single-family homes are converted to group homes for people with disabilities.

## **Roots of Opposition and the Need for Planning**

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In just one example of a group home siting struggle, neighbors in a single-family residential zone in a very typical suburban town sought out one of the authors of this book to oppose the establishment of a group home in an existing single-family house. The proposed home would house adults with developmental disabilities who needed the supervision of a caregiver. The future residents all had positions of employment in nearby businesses and job coaches.

Readers with a close friend, family member, or coworker with a developmental disability know full well how capable such people are and how otherwise “normal”—whatever that is—they are. Many people, however, have not had that experience. One neighbor, a person with a college degree,

some sophistication, and a successful career, absolutely did not want the nearby home to be occupied by the adults with developmental disabilities. When pressed as to why he would oppose such a home, he explained that he understood the residents would sit out at night in the summertime and make “groaning noises.” He also expressed concerns for the safety of his 13-year-old daughter. That anyone should even think such things is shocking. But this experience is common, and it is all too typical of the ignorance and sometimes outright cruel prejudice and discrimination shown against people with disabilities, young and old alike, and regardless of whether they have physical challenges or developmental disabilities.

In the end, the chief elected official in the town, a woman of great passion and sensibility, was alerted of the incipient uprising in the neighborhood, and she began a process of education. Eventually, the group home was successfully established. Soon thereafter, the group home residents were fully integrated into the neighborhood and the neighbors accepted them as any other “family.” The group home continues to be a positive experience for all concerned.

Community opposition to group homes is deeply ingrained in many neighborhoods and localities. Sometimes neighbors or local political leaders are opposed simply because they do not understand how well their new neighbors will fit in. They know little, if anything, about children and adults with physical and intellectual disabilities because such people have not been their friends, coworkers, or family members. These neighbors have had little or no direct or substantial personal experience with people with disabilities, and they often act out of ignorance. Too often, however, they are acting out of not just ignorance but outright prejudice.

Group homes are not limited to those people with physical and intellectual disabilities. Many of the most difficult controversies arise out of the siting of group homes for people recovering from alcoholism or substance abuse. Group living facilities are integral to the process of recovery, helping residents move back into the mainstream and guiding them to where they can become fully integrated members of the community. Many of the same problems of ignorance and outright discrimination are found in the opposition to group homes for recovering alcoholics and substance abusers, who are—at least under federal law—people with disabilities.

Congregate living arrangements provide supportive housing for all kinds of people and households. From those convicted of crimes living in group residences as alternatives to incarceration, to the homeless, to victims of domestic abuse, to the devout in search of places of sanctuary and prayer, to workers in need of temporary housing, congregate living environments provide an important function for people with a variety of characteristics and life experiences. All of these types of housing raise issues and are deserving of our attention, but this book focuses principally on the intersection of congregate living facilities for people with disabilities as defined in the Americans with Disabilities Act and the FHAA. This book provides strategies for remedying exclusionary zoning practices and discrimination.

Sometimes concern about a group home has at least the veneer of rationality. Neighbors may see the new home as essentially a commercial-type use in a residential setting. Or neighbors may be concerned about the impacts of the group home on traffic in the neighborhood. The reality, of course, is that except for an occasional passenger van—no more intrusive than the large pickup trucks driven by so many people today—there is nothing out of the ordinary in the appearance and use of the home. Most zoning codes allow an unlimited number of people to reside together so long as they are related by blood, marriage, or adoption. In one sense, therefore, having a group home with a half-dozen residents and a caregiver is likely to have less impact on the neighborhood than a large extended family residing together in a single dwelling.

Deinstitutionalization of people with disabilities, discussed further in Chapter 1, has led to some abuses in the siting of facilities where unscrupulous, for-profit providers have “dumped” deinstitutionalized people in neighborhoods with high concentrations of group homes, thereby destabilizing the real estate market. Good local planning and regulation can prevent such abuses by providing criteria for locating group homes where they will be successfully and seamlessly integrated into existing single- and multifamily neighborhoods with otherwise traditional households. Such criteria and regulation must be carefully drawn to avoid stigmatizing people with disabilities by requiring them to seek special treatment. It is a fine line to walk between a strategy of pure, as-of-right locational determinants for group homes and the problematic, site-specific discretionary approval

process, but it can be done to the ultimate benefit of both the residents of group homes and the neighborhood.

Inadequate planning, poor regulation, ill-considered development, and unfounded neighborhood opposition give rise to the most serious problems. And make no mistake about it: there are entire localities that refuse to plan for residential accommodations for people with disabilities and expressly zone them out, excluding them from the community, typically through their ordinance definitions of “single-family residence” and “family.”

The problems of inadequate planning and regulation, exclusionary practices, and outright discrimination ultimately led to the FHAA (FHAA) and the leverage it has provided. The FHAA is by no means a complete or perfect solution to the problem of providing residential opportunities for people who would otherwise be excluded from communities, but it does provide an incentive to local governments and their citizens to “do the right thing”—and punishes them appropriately when they do wrong.

## **Purpose of the Book**

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Discrimination against people with disabilities has been pervasive and perpetual throughout history, and continues with regrettably little abatement today. Particularly in the arena of housing, this population has experienced a degree of isolation and segregation that far exceeds the more widely known and highly publicized forms of housing discrimination such as racial or religious discrimination. Before the rise of the modern welfare state, people with disabilities lived primarily with family members. However, such arrangements often failed to provide the treatment and support necessary for people with disabilities to share in the experience of productive lives in the community or to enjoy a high quality of life. Furthermore, from ancient times through the mid-20th century, the principal method of treatment recommended by the medical and psychological communities for people with mental disabilities was confinement and isolation, treatment methods that have been wholly rejected in modern times.

Historically, people with disabilities have been disenfranchised of their civil and political rights, suffered verbal and physical abuse, and been subjected to forced sterilizations. In the United States, people with disabilities were typically relegated to large, publicly-operated institutions for much of the 20th century, many of which were poorly funded and negligently operated. Residents were often abused and lived in unsanitary and inhumane conditions. These facilities offered little to no treatment or support to those seeking to lead fulfilling lives. Perhaps in the most notorious and shocking example of inhumane treatment, thousands of individuals with disabilities were systematically executed as part of the Nazi regime's effort at racial cleansing in pre-World War II Germany.

While medical and social science has evolved with respect to the proper treatment and the best forms of housing for people with disabilities, discrimination against this population continues to persist throughout the United States and the world. In the United States, independent living arrangements and group living facilities have in large part replaced the institutions of the past, but have given rise to new, or at least modified, forms of discrimination. Whereas broad societal-structural discrimination and poor knowledge about the proper means of treatment were often behind earlier institutionalizations of people with disabilities, persistent fears and a palpable antipathy toward people with disabilities are now common features of debates in neighborhoods and localities when housing facilities for this population are under consideration. Whether justified by concerns about maintenance of community character, preservation of property values, or concern for personal and property protection, these arguments effectively deny people with disabilities fair and equal access to housing and give voice to bias, prejudice, stigma, and discrimination. More often than not, the result of these battles is drawn-out litigation that imposes high costs on local governments and the taxpaying public. Furthermore, a broad national failure to ensure that people with disabilities have adequate housing has been a principal driver of social problems such as homelessness, criminality, and emergency hospitalization, all of which impose high costs on government agencies and society as a whole.

So why a book on zoning regulations and housing for people with disabilities, and why now? The authors started writing this book on the 25th

anniversary of the passage of the FHAA, the principal federal law providing protection to people with disabilities in their quest for fair and equal housing opportunities. In the 1980s, the FHAA was passed, and the medical, psychological, and sociological fields were in the process of recognizing that smaller, more intimate housing arrangements dispersed throughout the community were the most appropriate living arrangements for people with disabilities, for a variety of reasons discussed throughout this book.

These developments triggered unforeseen levels of community conflict and, ultimately, much litigation surrounding local government regulations, particularly zoning. Longstanding social fears and biases directed against people with disabilities have come to the fore as local governments seek to carry out their obligations under the law and housing developments for people with disabilities make efforts to locate in established residential neighborhoods. And in some cases, local governments and their officials have been the driving force behind community fears and biases. Although litigation is seldom the best way to resolve conflicts, one of the positive outcomes of litigation over community-based housing for people with disabilities and the FHAA has been a significant evolution and, ultimately, clarification of the law relating to land use regulations and housing for this population. With 25 years of legal developments in the area of fair housing as a guide, local governments and lawyers can gain a much more informed understanding of the meaning and requirements of the FHAA. This book encapsulates these 25 years of legal developments, and attempts to do so in a digestible manner for practitioners from a variety of backgrounds and with a variety of goals.

## **General Approaches**

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The authors—both planners and land use lawyers—have borne personal and professional witness to local battles involving fair housing issues. Based on these experiences, the authors recognize that there is a great deal of misinformation regarding the positive and negative outcomes of various types of living facilities for people with disabilities. The authors also recognize

that there is much confusion among attorneys, planners, local government officials, neighbors, and even some housing advocates when it comes to the legal obligations and requirements pertaining to housing for this population. It is our experience that, in large part due to this misinformation and confusion, community discussions over housing for people with disabilities have frequently broken down into bitter and unmanageable battles, with both housing advocates and upset neighbors making unreasonable demands and casting one another in a distasteful light.

This book is authored in part as a response to these experiences, and as a guide for those who might face similar experiences in the present and future. It is the authors' hope and expectation that this book's discussion of history, law, planning policy, and political strategy will serve as a resource for all parties involved in developing housing for people with disabilities and that it will contribute to and assist in the formulation of a constructive and respectful dialogue among housing developers, local governments, neighbors, housing advocates, and other parties. This book represents the authors' best efforts to ensure that local governments make the appropriate regulations and accommodations to provide equal and fair housing for people with disabilities, while also respecting the rights and legitimate desires of other residents whose properties or lives may be impacted in some meaningful way by a new housing development in the community.

The book rests on two significant assumptions regarding law and history relating to people with disabilities. The first, which is supported by federal and state law, is that fair housing is a right for all, including those with disabilities. The second, which is based on historical analysis, is that individuals with disabilities have been subjected to serious discrimination in many realms, particularly housing. At the same time, however, this book recognizes that community members have valid interests in preserving the character and safety of their neighborhoods. Therefore, this book's approach is not to advocate any specific position, but instead to provide an overview of the legal obligation to provide fair housing for people with disabilities and the policy rationales standing behind those obligations. Moreover, this book offers tools and suggestions for a wide variety of individual citizens, government agencies, and other organizations to comport their actions and policies with the law, and to provide safe and adequate housing for

this population without offending or upsetting the goals and interests of the broader community.

## Limitations

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Because the book is primarily intended as a discussion of the intersection between land use law (i.e., local zoning matters) and fair housing law, it contains some principal limitations. The authors have limited both the types of housing discussed in the book and the types of people whose housing is addressed in the book. Today, people with disabilities reside in a variety of housing arrangements. As noted at the outset of this Introduction, people with disabilities may live in large institutions or may live independently—or may live in group homes serving up to 20 or potentially more residents. At the same time, a variety of people, including those without disabilities, reside in congregate living arrangements. The authors have made some effort to address housing arrangements for people with disabilities beyond the small to midsize group home, such as supportive independent housing, and the authors have also made some effort to discuss congregate living facilities serving people without disabilities, such as those returning to society from incarceration. However, it is the authors' experience that small to midsize group homes serving people with disabilities tend to evoke some of the greatest community outrage and discrimination. Furthermore, over a quarter century of national experience with the FHAA in the context of congregate living facilities for people with disabilities provides the authors with ample material to give a thorough analysis of the current state of the law pertaining to group homes and housing for people with disabilities, which may be helpful to our readers addressing matters of congregate living facilities for people without disabilities or matters of other forms of housing serving people with disabilities.

This book is also not intended to be a conclusive authority on matters beyond the confluence of the issues of land use law, fair housing law, and antidiscrimination law pertaining to people with disabilities. This book contains discussion and references related to a variety of land use law concepts,



and citations to sources addressing those concepts in far greater detail than would be possible in this type of publication. This book also references a great deal of housing law beyond that which applies specifically to people with disabilities, such as the protections against racial or gender discrimination in the Fourteenth Amendment, Civil Rights Act, and Fair Housing Act. Furthermore, the book addresses a variety of laws pertaining specifically to discrimination against people with disabilities, such as the Americans with Disabilities Act. Our intent is to discuss the intersection of these three areas of law, which necessitates keeping our discussion of some other points of land use, housing, and antidiscrimination law to a minimum. All three areas of law have been covered in depth by other authors and publications, and any reader interested in learning more about the legal issues associated with land use or fair housing should consult sources cited in this book or elsewhere for a more complete coverage of these areas of law.

Moreover, the book's discussions of both zoning and fair housing law are intended to be as generally applicable through the United States as possible. The book may therefore gloss over some of the intricacies contained in (particularly) state zoning and antidiscrimination law, as well as some of the local ordinance provisions protecting people with disabilities from housing discrimination. Although the authors do not present an in-depth analysis of existing state or local laws targeting housing discrimination, the appendices of this book contain a basic presentation of state laws applicable to housing for people with disabilities and a model fair housing ordinance, which will serve as a guide to local governments interested in advancing antidiscrimination goals. However, anyone involved in the development process should be ready to consult state and local statutes, regulations, and case law—or an attorney well versed in state and local land use and housing law—when drafting regulations or participating in an approval proceeding.

All of these limitations give rise to another—and previously hinted-at—limitation, which is that this book was envisioned as a primer on the substantive law and planning issues related to providing housing for people with disabilities. Local government officials should always retain the services of professional planners and lawyers when planning for housing, drafting code sections or amendments, and considering development proposals for housing for people with disabilities. While the authors have made an effort

to include as much relevant law and as many planning strategies as possible, the fact remains that no publication alone can adequately substitute for a knowledgeable lawyer or planner.

## **Intended Audience**

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The book is designed to assist the many stakeholders in the development process for housing for people with disabilities and group living facilities for people without disabilities. First and foremost, this book will serve as a primer and go-to guide for lawyers representing housing developers, local governments, neighbors, and advocacy organizations. The substantive law governing fair housing for people with disabilities is unique in many ways. Federal law plays a heavy-handed role in dictating local governments' rights and responsibilities in the area of fair housing, which often poses a significant challenge to land use and real estate attorneys who are more familiar in the areas of state and local regulation. Furthermore, the laws governing fair housing grant a broad set of rights to a broad set of people, unlike laws in other substantive areas where legal standing is more limited. Second, the authors expect that this book will assist planners and local government officials balancing their obligation to provide fair housing for this population while also serving other people in the community. The book contains many suggestions and examples relating to political strategies and planning measures. It is the authors' belief that knowledge of the law is one of the most powerful weapons that can be used to combat misinformation and discriminatory treatment. By making fair housing law accessible to professionals who are not lawyers, the authors expect that local government officials will make more informed regulatory choices and development actions, and hope that such knowledge will reduce local governments' litigation costs over time.

The authors' third anticipated audience is housing developers themselves. They are perhaps the most important players in the development process, as they are responsible for planning and constructing housing. Frequently, the developers bear the brunt of discrimination, from both

neighbors and regulatory bodies. The discussion of law contained in this book and the planning strategies suggested will undoubtedly be helpful to developers. In the face of such opposition, it is frequently left up to the developer to exercise his or her legal rights or to devise strategies to avoid costly, time-consuming litigation. And when a local governing body is caught between a phalanx of angry neighbors on one side and a developer's onslaught from the flank, it may be incumbent upon the developer to assist the local government in executing a political strategy that approves a housing development while respecting the concerns of the neighboring residents.

Beyond these three parties to the development process, this book will serve as a resource for people who live near a housing development for people with disabilities. The facts—many of which are presented in this book—suggest that most of the fears and concerns about the safety and desirability of such housing are misplaced. This book provides background about the societal benefits that accompany such housing. Furthermore, this book's neutral presentation of the legal and planning aspects of housing for people with disabilities can help ensure that a development proposal respects the legitimate concerns of neighboring property owners and residents. Similarly, the authors expect that this book will serve as a guide for housing advocates and organizations advocating on behalf of people with disabilities, many of which work tirelessly to ensure that people with disabilities have access to high-quality housing and safe neighborhoods. Armed with knowledge of the law and helpful strategies for providing housing for people with disabilities, these advocates can continue to play a positive role in guaranteeing that the rights of people with disabilities are respected and advanced in the arena of housing.

## **Outline of the Book**

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The book is organized into seven chapters. The first chapter addresses the need for group living facilities and housing for people with disabilities. The chapter discusses the extreme and vastly unmet need for adequate housing, and the varied and difficult history of providing housing and care for this

population. Special emphasis is placed on the various types of housing that are available, and the function and importance of such facilities for people with disabilities and society as a whole.

Chapters 2 through 5 go on to discuss a series of legal concepts relating to development of housing for people with disabilities. Chapter 2 provides a historical background and comprehensive overview of the requirements of the FHAA. Indeed, much of the litigation that has surrounded group living facilities in the past 25 years has been related to the FHAA, and that statute is therefore the principal focus of this book. Chapter 2 discusses the circumstances surrounding the passage of the act and the various provisions relating to housing for people with disabilities. Chapter 3 discusses the application of the FHAA and other related federal laws to local zoning. In particular, the central issues of housing discrimination in the local government regulatory context—facial and express discrimination, discriminatory impact, and reasonable accommodation—are addressed. Chapters 4 and 5 outline the procedural issues and defenses under the FHAA and related laws. The analysis of enforcement issues in Chapter 4 should be helpful to attorneys and others. Chapter 5 details the defenses available to local government regulators faced with challenges from housing developers. It will be particularly helpful to local regulators seeking to understand their rights with respect to regulation of housing for people with disabilities.

Chapters 6 and 7 address local policy issues of providing housing for this population. Chapter 6 discusses at length the various planning measures that can and should be employed both before and during the consideration of development proposals for the construction of group living arrangements. In particular, location strategies, neighborhood and community outreach methods, and the choice pertaining to whether to aggregate or separate group living arrangements are discussed. Chapter 7 moves on to review regulatory strategies for group living facilities, with particular attention paid to the various local code components that should be reviewed and considered regarding housing for people with disabilities. Chapter 7 also discusses the extent to which local governments can and should incorporate discretionary reviews and conditional use provisions into their codes with respect to group living arrangements.

Finally, the book contains five appendices that will be useful for local government officials, lawyers, planners, and group home developers. The authors have provided a guide to dealing with the political challenges of local approvals (in the form of a short article by one of the authors), as well as a digest of cases that address FHAA and similar claims against local governments. Furthermore, the authors have offered a list of applicable state laws for reference by lawyers and planners who are facing the challenge of providing for group homes. The authors have also drafted a model ordinance to serve as a resource for local government officials interested in adopting fair housing legislation to support antidiscrimination goals.