

## Common Area Rules: Even If Condo Association Rules Appear Neutral, They May Be Attacked Under the Federal Fair Housing Act



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All condominium associations should be aware of the Federal Fair Housing Act (“FFHA”). Condominium associations should also know that the FFHA was created to prevent various types of housing discrimination, including that based upon race, color, religion, sex, national origin, disability and familial status. However, what many associations do not know is that even associations do not know is that even if their rules and regulations do not specifically single out one of the protected groups listed above, they may still be subject to litigation for violating the FFHA.

That brings us to the recent California court case of Caldera v. Aliso Villas Condo. Ass’n., 2016 U.S. Dist. LEXIS 15076. This case is a cautionary tale for associations around the country. It proves the point that just because your rules are not discriminatory on their face does not mean that they do not violate the FFHA. In this case, the court denied the Aliso Villas Condominium Association’s motion to dismiss indicating that the Association may have violated the FFHA under a theory of disparate treatment.

The facts of Caldera are fairly straightforward. The Caldera household consists of a husband, wife, and their two minor children. The Calderas live in and own a unit in the Aliso Villas Condominium. The Association had several rules that were neutral on their face. These rules included (1) no ball playing in the buildings, garages and other structures, (2) no playing in parking lots, driveways or cul-de-sacs, (3) in the interest of safety, it is recommended that recreational activities not be conducted on streets, sidewalks or other common areas. Additionally, there was a sign at the playground that children under 14 must be accompanied by an adult at all times.

Despite the fact that none of these rules directly mentions any of the protected groups under the FFHA, the Calderas sued under the FFHA claiming discrimination based upon familial status. Under the FFHA, the definition of familial status is “one or more individuals (who have not attained the age of 18 years) being domiciled with...a parent or another person having legal custody of such individual or individuals.” The Calderas sued under the theory of disparate treatment. Their first claim was that the adult supervision requirement violated 42 USC § 3604 by discriminating against persons in the terms, conditions or privileges of sale or rental of a dwelling or in the provisions of services or facilities in connection herewith, because of...familial status... Surprisingly, the court did not dismiss the case because adult supervision rules have been found to be overly broad, not valid, and discriminatory on the basis of familial status.

The Calderas’ second claim against the Association was that the Association violated 42 USC § 3617 which states: “It shall be unlawful to coerce, intimidate, threaten, retaliate, or interfere with

any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605 or 3606 of this title.” All the Calderas needed to show was that they were engaged in an activity protected by the FFHA, that there was a connection between the activity and the adverse action and that they were damaged. Once again, the court sided with the Calderas and allowed their claims to move forward. This was because (1) the Calderas received notices about their children playing in the common area, (2) the on-site security guard had previously had arguments with parents and (3) the children were now frightened by the security guard.

As you can see, none of the rules created by that Association clearly jump out as being discriminatory. To the contrary, the rules appear to be in place to promote safety and prevent the possibility of injury liability. Unfortunately, this Association’s attempt to avoid injury liability may have unintentionally opened up a new exposure to liability. When was the last time your association reviewed and updated its rules? Cases like Caldera should remind condominium associations to regularly review their rules to make sure that they are in compliance with the most recent case law and in order to prevent potential litigation.