

Fall, 2004

Community Association LawLetter

FEDERAL GOVERNMENT CLARIFIES FAIR HOUSING ACT PROHIBITION ON DISABILITY DISCRIMINATION

The United States Department of Housing and Urban Development (“HUD”) and Department of Justice (“DOJ”) have issued a joint statement on the provisions of the Fair Housing Act (“Act”) which require housing providers to make reasonable accommodations to individuals with disabilities.

One type of disability discrimination prohibited by the Act is the refusal to make “reasonable accommodations” in rules, policies, or practices or services when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, including public and common use spaces. A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service. The joint statement issued by HUD and DOJ provides the following guidance:

- To show that the requested accommodation may be necessary, there must be an identifiable relationship between the requested accommodation and the individual’s disability.

- A request for an accommodation may be denied if the accommodation would impose an undue financial and administrative burden on the housing provider, or it would fundamentally alter the nature of the provider’s operation.

- Where a housing provider believes that an alternative accommodation would be equally effective in meeting a request for an accommodation and meeting the individual’s disability needs, an individual is not obligated to accept an alternative accommodation suggested by the housing provider if the individual believes it will not meet disability-related needs and the preferred accommodation is reasonable.

- Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

- A housing provider is entitled to obtain information necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability.

- If a person’s disability is obvious or known to the provider, and if the need for the accommodation is also readily apparent

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DISTRICT OF COLUMBIA APPEALS COURT REJECTS BUSINESS JUDGMENT RULE IN REVIEWING DECISIONS OF CONDOMINIUM AND COOPERATIVE BOARDS

Decisions of condominium and cooperative board of directors in the District of Columbia must be “reasonable” and are not entitled to judicial deference based on the “business judgment rule”, according to two recent decisions of the District of Columbia Court of Appeals.

In *Willens v. 2720 Wisconsin Avenue Cooperative Association, Inc.* the appeals court ruled that the “business judgment rule” does not apply where there is a breach of fiduciary duty.

A housing cooperative was subject to a mortgage referred to as a “wrap note”, which was a debt of the cooperative. The cooperative apportioned the debt among all members, who were required to sign a promissory note for the balance due on the member’s proportionate share of the wrap note to be paid in monthly installments. Both the wrap note and the individual promissory notes were to mature in 2004. Two co-op members exercised their right to prepay their shares of the wrap note and were not required to sign promissory notes.

Loan Payment Obligations

In 1996, the cooperative re-negotiated the wrap note and paid it off at less than the remaining balance. As a result, the Board decided to terminate the note payment obligations of the members whose promissory notes were still outstanding which, in effect, forgave the last six years worth of note payments that the members otherwise would have owed. In the case of the co-op members who had already paid their full share of the wrap note, there were

no debts to forgive but the board decided not to pay them any rebate. These co-op members sued the cooperative and the board of directors for breach of contract and breach of fiduciary duty.

The trial court ruled in favor of the cooperative, concluding that since the board deliberately and carefully considered numerous options and determined what was best for the cooperative as a whole, the “business judgment rule” precluded the claims of the co-op members. Under the “business judgment rule”, if the decision of a corporation is made on an informed basis, in good faith, and with the belief that the action taken is in the best interest of the corporation, the court will not substitute its own judgment for that of a corporation.

Board Action Must Be Reasonable

On appeal in *Willens*, the District of Columbia Court of Appeals concluded that the trial court incorrectly relied on the “business judgment rule.” The court ruled that implicit in the fiduciary duties of the directors of a corporation is the duty of loyalty to all of its members and when there is a breach of the duty of loyalty, the “business judgment rule” does not apply. The court also ruled that the “business judgment rule” does not apply when members of the Board have an interest in their decision. In these situations, the appeals court ruled, the proper standard of review is whether the decision made by the Board was reasonable. Therefore, the trial court was directed to determine whether the board’s action was reasonable and whether the directors had adhered to their fiduciary obligation.

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BUSINESS JUDGMENT RULE

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Two months after the *Willens* decision, in *Bolandz v. 1230-1250 Twenty-Third Street Condominium Association, Inc.*, the District of Columbia Court of Appeals rejected the “business judgment rule” in the context of an unauthorized architectural change to a condominium unit and ruled that the standard for review of a condominium board’s decision is whether the decision was reasonable under the circumstances.

Unauthorized Balcony Enclosure

In *Bolandz*, the owner of a District of Columbia condominium unit had repeatedly complained to the condominium management about a persistent “water ponding” problem on the unit’s open-air balcony. This interfered with his use of the balcony and had caused interior damage to his unit. When the situation had not been remedied by the condominium after several years, the unit owner undertook to rectify the problem himself by installing windowed French doors to enclose his balcony without board approval. No other unit in the condominium contained such an enclosure.

The condominium bylaws and rules required board approval for any changes to balconies. The board of directors held a hearing and decided to order the unit owner to remove the door from his unit. The board also assessed a fine of \$5.00 per day and banned the owner from the condominium recreational facilities.

The owner filed suit against the condominium for breach of contract and breach of fiduciary duty to have the board’s decision overturned.

Despite its misgivings as to the reasons the board used to support its decision, the trial court ruled that since the

hearing held by the board was fair and its decision fell under the authority conferred by its bylaws, the court was obligated to adhere to the “business judgment rule” and could not substitute its judgment for that of the board.

The District of Columbia Court of Appeals rejected the “business judgment rule” and ruled that courts have the power to review the regulatory actions of condominium boards under a standard of “reasonableness.” The appeals court reasoned that, though the trial court expressed its doubts about the reasonableness of the board’s decision to disapprove the enclosure of the balcony, the court improperly deferred to the judgment of the board without basing its ruling on whether the board’s decision was reasonable.

The District of Columbia Court of Appeals rejected the ‘business judgment rule’ and ruled that courts have the power to review the regulatory actions of condominium boards under a standard of ‘reasonableness’.

Therefore, the appeals court returned the case to the trial court to decide “whether the board’s decision was a substantively reasonable one or not.”

FAIR HOUSING ACT

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or known, then the provider may not request any additional information about the

disability or the disability-related need for the accommodation.

A request for an accommodation may be denied if the accommodation would impose an undue financial and administrative burden on the housing provider, or it would fundamentally alter the nature of the provider's operation.

- If a disability is not obvious, a housing provider may request reliable disability-related information that: (1) is necessary to verify that a person meets the Act's definition of disability; (2) describes the needed accommodation; and (3) shows the relationship between the person's disability and the need for the requested accommodation.

NEW MARYLAND COMMUNITY ASSOCIATIONS LAWS TAKE EFFECT OCTOBER 1

Several new Maryland laws which directly impact community associations become effective October 1, 2004.

The new laws:

- establish uniform standards for condominiums, homeowners associations, and housing cooperatives to make association books and records available for inspection and copying by owners;

- allow condominiums, homeowners associations, and housing cooperatives to provide meeting notices and deliver information to owners by electronic transmission where certain conditions are met and permits an owner to submit a vote or proxy electronically where it is verified that the action is authorized by the owner; and

- provide that an association may not prohibit or unduly restrict the display of one portable, removable United States flag.

THOMAS SCHILD LAW GROUP represents condominiums, cooperatives, and homeowners associations in Maryland and Washington, D.C. Since 1985, the firm has advised community associations on all aspects of association operations including covenant enforcement, assessment collections, developer warranties, maintenance and management contracts, and association document interpretation. Thomas Schild Law Group also represents community associations in court litigation and administrative hearings.

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