

Harassment in the Community: HUD Rules and Your Association's Liability

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When community association boards hear the acronym "FHA," their thoughts likely turn to emotional support animals or other reasonable accommodation obligations under the Fair Housing Act. Only rarely would "personal" disputes between owners come as readily to mind. However, that calculus should have changed on October 14, 2016, when the U.S. Department of Housing and Urban Development adopted new rules that place affirmative requirements on associations to prevent harassment occurring within the community. Despite these rules being in place for over a year, many association boards are unaware of these rules, what the board members and managers need to be on the lookout for, and what action an association is required to take if it learns of certain owner, employee, or vendor behavior.

In short, the HUD rules, located at 24 CFR 100, require a community association, as a "housing provider" under federal law, to prevent harassment against residents within its community, from both other residents and third-party vendors.

HUD "clarifies" two kinds of harassment for which an association may incur liability: Quid Pro Quo Harassment and Hostile Environment Harassment. If these sound familiar from an employment seminar you attended, they are. HUD expanded what used to be considered employment-related issues and applied the same standard to housing providers such as community associations.

Quid Pro Quo Harassment

Quid pro quo harassment typically occurs when benefits are explicitly or implicitly conditioned on sexual factors; where a person in a real or perceived position of power (manager, officer, contractor) makes an unwelcome request or demand to engage in conduct where the receiving party's submission to the request or demand is made a condition related to the receipt of housing benefits.

Hostile Environment Harassment

This category of harassment involves:

1. Unwelcome Conduct;
2. That is based on a person's membership in a protected class (including race, color, religion, national origin, sex, disability, and familial status);
3. Which is sufficiently severe that it interferes with the complaining party's living environment to the point it is abusive. In order to determine whether harassment is sufficiently severe or pervasive to create an objectively hostile environment, the standard is that an environment exists that a reasonable person would find hostile or abusive and the victim must subjectively perceive the environment to be abusive.
4. And, most importantly, the association knows about the

conduct, or should have known about it, and the board takes ineffective steps to correct it.

The rules do not require the complaining party suffer psychological or physical harm; it simply requires that the harassment occurred. A single incident is enough to create liability.

Association boards are responsible for the prevention of Quid Pro Quo and Hostile Environment Harassment. This responsibility extends to discriminatory conduct by a third-party (that means resident-to-resident, by a board member, from a vendor or a manager), that an association knew or should have known was happening, and the association failed to take prompt steps to end the discriminatory practice.

The potential liability for third-party actions (e.g. actions of association contractor to a resident) should not be minimized. The person who is the victim of the alleged misconduct does not need to report the actions for the association to be liable. If the association knew or should have known about the conduct, that would be enough to require affirmative action. If a board member overheard or was told of the misconduct through a third party, that is sufficient to trigger the need for action.

So what should community associations do to protect themselves against a claim?

1. The implementation of proper procedures for managers and directors (attend a course to understand obligations).
2. The adoption of anti-harassment rules that encourage residents to report the conduct and provide clear instruction for reporting.
3. The investigation of all claims of harassment promptly and in good faith.
4. Take action, including informing the complaining and responding parties of the board's findings.

These new HUD rules present a legal minefield for associations, where any misstep or failure to know the rules or properly implement and follow policies may lead to significant legal problems. This is a summary, and not a comprehensive overview, of these complex issues. Any questions regarding these HUD rules should be directed to an experienced community association law attorney.



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