INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION



Work Session: Occupancy Limits in Housing

Title: What Is a Family?
The Perils of Single-Family Zoning and Occupancy Limitations

by

Presenter: Roger A. Horner

Presenter's Title: City Attorney

Presenter's Office: City of Brentwood, Tennessee

© 2007 International Municipal Lawyers Association. This is an informational and educational report distributed by the International Municipal Lawyers Association during its 2007 Annual Conference, held October 28-31, 2007 in Nashville, Tennessee. IMLA assumes no responsibility for the policies or positions presented in the report or for the presentation of its contents.

WHAT IS A FAMILY?

Or

"*The Perils of Single-Family Zoning*

and Occupancy Limitations"

Presented to International Municipal Lawyers Association
October 30, 2007
By: Roger A. Horner, City Attorney
City of Brentwood, Tennessee

WHAT IS A FAMILY?
Or "The Perils of Single-Family Zoning and Occupancy Limitations"

What is a family? Must a family consist only of people who are related by blood or through adoption? Can any group of people who share a home be considered a family? Does "family" take on a different meaning when considered in the context of local zoning laws? Is it fair to establish occupancy limits for persons who are not related to each other, when any number of related persons may live together?

Most municipalities that impose zoning restrictions distinguish between properties that are to be used primarily for residential purposes and properties that may be used for other purposes, such as commercial or institutional uses. In areas where residences are allowed, there may be a further distinction between properties zoned for "single-family residences" and properties zoned for other types of residences. Frequently, there is more of an emphasis on the type of structure that may be built in a "single-family" neighborhood than on the persons who live inside the structures. However, if a group of unrelated individuals occupies a single-family residence, some would argue that the intent of the zoning regulations has been violated, even if those regulations contain no specific limitations on the occupants of such a residence. When asked to determine if a certain group of unrelated persons may legally live together in a single-family residence, a zoning compliance officer or city attorney might have difficulty in giving a definitive answer.

When zoning regulations do attempt to define "family," the definition may be in vague terms, such as: *"one or more persons living as a single housekeeping unit."* Regulations which limit certain areas to single-family residences based on such a definition leave open questions such as:

- What constitutes a "single housekeeping unit?"
- How many persons can live in the same home and still be considered one family?
- Should local government differentiate between homes inhabited by persons who are related to each other and homes inhabited by unrelated persons who function as a family?

This paper will attempt to sort through the issues involved in defining "family" in the context of zoning, along with the related topic of establishing occupancy limits for dwelling units. As discussed later, these issues must include consideration of compliance with federal and state regulations regarding housing for persons with disabilities.

"Functional families" vs. "traditional families":

For purposes of this discussion, "traditional families" are groups consisting of persons related by blood or marriage, but which may also include

adoptive and foster children[1]; while "functional families" are groups which include unrelated persons but which live as a single housekeeping unit.

There is a divergence of opinion as to the rights of functional families vs. traditional families. The matter has been argued in cases in both federal and state courts, although in the courts of a number of states, there are no reported cases dealing directly with this issue.

U.S. Supreme Court. In the groundbreaking case of *Village of Belle Terre v. Boraas*[2], the United States Supreme Court (in 1974) upheld a zoning ordinance which allowed no more than two unrelated persons to be part of a single-family dwelling. The ordinance did not limit the number of related persons allowed to live together. In upholding the ordinance, the court rejected a civil rights challenge brought after a property owner was cited for leasing a house to six unrelated college students.

An Ohio municipality sought to take single-family occupancy restrictions a step further by prohibiting related persons who did not fall into certain defined categories from sharing a home. In *Moore v. City of East Cleveland, Ohio*[3], the Supreme Court (in 1977) struck down East Cleveland's ordinance in a challenge brought by a grandmother who faced criminal charges when she allowed a grown son and two grandsons (who were first cousins) to live in her home. The court distinguished the Belle Terre ordinance it had upheld, which affected only unrelated individuals, from the ordinance enforced by East Cleveland, which, the court said, "in contrast, has chosen to regulate the occupancy of its housing by slicing deeply into the family itself.[4]" The City's expressed purposes for its regulations were to prevent overcrowding, minimize traffic and parking congestion, and avoid an undue financial burden on the local school system. The court held that these legitimate goals were served marginally, at best, by the ordinance. Finding that "when the government intrudes on choices concerning family living arrangements, this Court must examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation,[5]" the Court held that East Cleveland's ordinance could not survive such an examination.

State courts. Despite the 1974 *Village of Belle Terre* Supreme Court decision, the door was not closed on challenges to ordinances that treat functional families differently from traditional families. Some state courts have interpreted their state constitutions as giving functional families the same rights as traditional families. For example, the Michigan Supreme Court struck down a zoning ordinance which prohibited more than two unrelated persons from sharing a residence.[6] The ordinance had been challenged by members of a religious community who formed a household in observance of their faith. The household consisted of a husband and wife, several children and six unrelated adults.

The Court of Appeals of New York has found typical single-family zoning provisions to be facially invalid where they have the effect of restricting the size of a functional family but not the size of a traditional family. (In one New York case, four unrelated men, ages 22 to 25, shared a house so they could all remain in the town where they had grown up.[7] In another case from New York, charges had been brought against five unrelated elderly women who shared a home.[8]) The New Jersey Supreme Court, in a case involving two families who chose to live together for religious reasons, ruled that it is not a proper function of zoning to regulate the "internal composition" of "housekeeping units."[9] In California, an ordinance allowing no more than five unrelated occupants was ruled in violation of the right to privacy under the state constitution, after being challenged by members of a household in which 12 unrelated adults lived as an "alternate family" in a 10 bedroom home.[10]

On the other hand, courts in other states have upheld single-family zoning ordinances which limit the number of unrelated persons who can live together but exempt traditional families from such density requirements. For example, the New Hampshire Supreme Court upheld a zoning ordinance which required 300 square feet for each occupant whenever unrelated persons shared a home.[11] There was no such square footage requirement for related persons living together. One of the houses in question in the case could legally accommodate four unrelated persons under the town's zoning ordinance, but was generally occupied by seven to ten college students on a semester rental basis. The court found that there was a "clear interest . . . in preserving the integrity of the biological or legal family," but no governmental interest in "keeping together a certain group of unrelated persons.[12]"

In a 2007 case, the Supreme Court of Iowa dealt with a zoning ordinance, which allowed an unlimited number of related persons to live together while limiting the number of unrelated persons in single-family zones.[13] The ordinance was passed to stem the flow of Iowa State University students into residential areas. A landlord association brought a declaratory judgment action against the City of Ames, claiming the ordinance violated the equal protection clauses of the federal and the Iowa state constitutions. The court found the ordinance to be rationally related to the City's interest in providing quiet neighborhoods, agreeing that "governing bodies have a legitimate interest in promoting and preserving neighborhoods that are conducive to families – particularly those with young children."[14]

Courts in a total of 18 states have upheld zoning laws that give preference to traditional families. Those states, in addition to New Hampshire and Iowa (see above) are Colorado,[15] Connecticut,[16] Delaware,[17] Georgia,[18] Hawaii,[19] Indiana,[20] Louisiana,[21] Maine,[22] Massachusetts,[23] Missouri,[24] Nebraska,[25] Ohio,[26] Pennsylvania,[27] South Dakota,[28] Texas[29] and Utah.[30]

Subtle differences in reasoning and in the wording of state constitutional provisions have led to a variety of outcomes in the state courts in regard to functional families and occupancy limits. While decisions from courts in one state do not control what can or cannot be done in another state, they do provide some degree of guidance and precedent until the issue is decided by the courts of one's own state or revisited at the federal level.

Constitutional issues:

Both federal and state constitutional provisions have been used as the basis for challenges to ordinances establishing residential occupancy limits. Local governments considering enacting or enforcing occupancy limits should examine the degree to which the right of privacy has been recognized and the extent to which that right might extend to personal living arrangements. Equal protection and due process issues should also be taken into consideration.

Privacy rights. The constitutions of seven states explicitly provide for a right to privacy. (Alaska, Arizona, California, Florida, Hawaii, Montana and Washington.) As an example, the Florida state constitution includes the following language: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein.[31]" Such a constitutional right to privacy would indicate that zoning preferences for traditional families might be invalidated. The California Supreme Court ruled that the right to privacy guaranteed by the California constitution "comprehends the right to live with whomever one wishes or, at least, to live in an alternate family with persons not related by blood, marriage, or adoption.[32]" However, constitutional privacy rights may not always be seen by state courts as applying to one's choice of housing companions. Washington's state constitution includes a clause that seems to grant an express right of privacy, but the Washington Supreme Court has ruled that the provision protects against unreasonable searches and seizures, rather than serving as a "more general right of privacy.[33]"

Where state constitutions do not specifically guarantee privacy rights, courts may still interpret constitutional provisions as providing such a guarantee. The New Jersey Supreme Court found that a right of privacy is included within the New Jersey constitution, although such a right is not mentioned by name. This finding led to the court's conclusion "that municipalities may not condition residence upon the number of unrelated persons present within the household.[34]" Cases from other state courts have found a constitutional right to privacy in opinions dealing with matters other than functional families or housing occupancy limits. For instance, the Tennessee Supreme Court has found that "[t]he right to privacy is not specifically mentioned in either the federal or the Tennessee state constitution, and yet there can be little doubt about its grounding in the concept of liberty reflected in those two documents.[35]" The Tennessee Court of Appeals has observed that the right to privacy under the Tennessee Constitution "is in fact

more extensive than the corresponding right to privacy provided by the Federal Constitution.[36]" Thus, a zoning ordinance limiting the number of unrelated persons who may live in the same home might be seen as intruding on such persons' privacy rights, even if there is no specific constitutional reference to a right to privacy. State courts which have not rendered decisions on such ordinances may nonetheless offer guidance on the right to privacy in other decisions.

Due process/equal protection. In the *Village of Belle Terre* decision discussed earlier, the challenged ordinance allowed a biological family plus no more than two unrelated occupants per home. The house in question was leased to eight college students. The U. S. Supreme Court upheld the ordinance, finding that it "involves no 'fundamental' right guaranteed by the Constitution.[37]" The court dismissed a claim that the ordinance violated the Equal Protection Clause, and treated the ordinance as an example of "economic and social legislation" which would be upheld if it is "reasonable, not arbitrary" and "bears a 'rational relationship to a (permissible) state objective.[38]'"

Although challenges to functional family restrictions and occupancy limitations frequently include allegations of equal protection violations, the state courts have generally either dismissed such allegations or not focused on them. However, some ordinances have been successfully challenged in the face of state due process rights. In *Charter Township of Delta v. DiNolfo*[39], the Michigan Supreme Court considered a zoning ordinance limiting the occupation of single-family residences to an individual, or a group of two or more persons related by blood, marriage, or adoption, and not more than one other unrelated person. The court concluded that the ordinance was constitutional under federal law. Nonetheless, the decision chastised the township for failing to demonstrate a justification for its disparate classification of unrelated persons, and held that the ordinance accordingly could "only be termed arbitrary and capricious under the Due Process Clause of the Michigan Constitution.[40]" Similarly, when the Town of Oyster Bay, New York allowed only two unrelated persons, 62 or older, to occupy a single-family home, its ordinance was found to lack any reasonable relation to a legitimate governmental purpose and thus, in violation of the state due process clause.[41] The New Jersey Supreme Court held that the City of Plainfield's definition of "family" that excluded groups of more than four unrelated persons was both overinclusive and underinclusive, and prohibited "a plethora of uses which pose no threat to the accomplishment of the end sought to be achieved.[42]"

On the other hand, in considering Lincoln, Nebraska's ordinance defining "family" as any number of related individuals living together as a single housekeeping unit and not more than two additional individuals, the Nebraska Supreme Court held that the regulation did not involve a fundamental right or suspect classification. Accordingly, Nebraska's due process clause would be satisfied if the ordinance was found to be "a valid exercise of the police power . . .

rationally related to a legitimate state interest.[43]" Because the property owner challenging the ordinance failed to demonstrate that the definition of "family" was not rationally related to the City's legitimate objectives, the court found his due process rights under the Nebraska constitution were not violated.

Even though housing occupancy restrictions may themselves satisfy due process requirements, the procedures used to enforce such restrictions must also take the due process rights of both property owners and residents into consideration. In the recent decision in *Lozano et al. v City of Hazleton,*[44] the federal district court for the Middle District of Pennsylvania struck down an ordinance aimed at addressing illegal immigration. The ordinance included a requirement that apartment dwellers obtain an occupancy permit, which required proof of citizenship or lawful residency. The court stressed that tenants had a property interest in their apartments for the term of their lease, and landlords had an interest in the apartments as well as the rights to income on the property. In finding that the ordinance's procedures failed to satisfy due process requirements, the court says:

> First and foremost, the Ordinance does not provide any notice whatsoever to a tenant who is the subject of a challenge. An ordinance which could cause people to lose their residences but provides them no notice before eviction certainly does not meet the requirements of due process. Thus, the determination can be made without the challenged individual's participation at all.

Lozano et al. v City of Hazleton, -- F. Supp. 2d --, 2007 WL 2163093, 47 (M.D. Pa. 2007).

Strict scrutiny vs. rational basis. When zoning laws are challenged, courts often apply one of two tests, depending on whether fundamental rights (such as a constitutional right to privacy) are implicated:

> *(1) Strict scrutiny: If a fundamental right <u>is</u> interpreted to apply to unrelated persons who wish to live in the same home,* any legislation regulating such right would normally be reviewed under a strict scrutiny analysis. Under such an analysis, "the legislation must be justified by a 'compelling state interest' and must be narrowly drawn to advance that interest.[45]" (Courts also apply the strict scrutiny test if a "suspect classification," such as race or national origin, is involved.)
>
> *(2) Rational basis: If a fundamental right is <u>not</u> interpreted to apply to unrelated persons who wish to live in the same home,* courts would be more likely to apply a "rational basis test." The ordinance would be deemed valid "if it bears a real and substantial relationship to the public's health, safety, morals or general welfare and it is neither unreasonable nor arbitrary.[46]" Under the rational basis test, "the zoning ordinance is valid

unless the relationship between the classification and the purpose behind it is so weak the classification must be viewed as arbitrary or capricious.[47]"

Under strict scrutiny, limitations on functional families would require a local government to "connect the dots" between the purpose of the regulations and the methodology used to carry out that purpose. The rational basis test, on the other hand, would not require such regulations to be narrowly tailored.[48] The U. S. Supreme Court, in applying the rational basis standard, has held that "[i]f the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality.[49]" The Iowa Supreme Court has declared that "[c]ity counsel members are permitted to legislate based on their observations of real life.[50]" Along the same line, the U. S. Supreme Court observed that "every line drawn by a legislature leaves some out that might well have been included. That exercise of discretion, however, is a legislative, not a judicial, function.[51]"

Without definitive guidance from a state's courts as to the type of occupancy limits that would pass muster, a zoning ordinance might limit the size of functional families in the interest of preventing overcrowding, traffic congestion, noise and other environmental problems. Such an ordinance would assume that this interest outweighs any rights under which a larger group of unrelated persons might otherwise be allowed to live together. However, most would agree that it would not be appropriate to put corresponding limitations on the size of a traditional family.

The U. S. Supreme Court has supported the notion of allowing no more than two unrelated persons to occupy a single-family residence. While it is not known how many of the state courts or today's U. S. Supreme Court would deal with this issue, local governments which impose strict limitations on the number of unrelated occupants in a household should be prepared for the burden of justifying such limitations in the face of a legal challenge.

Statutory concerns:

In addition to possible constitutional concerns, local governments enacting or enforcing housing restrictions for functional families will want to be sure that such restrictions do not run afoul of any statutes. At the federal level, the Fair Housing Act (FHA), enacted by Congress in 1968, prohibits housing practices that discriminate against persons based on race, color, religion or national origin. A 1974 amendment to the FHA prohibits discrimination based on sex. The FHA was again amended (as discussed further below) to provide protection for disabled persons. Many states have fair housing laws that supplement the federal Fair Housing Act. For example, the Delaware Fair Housing Act prohibits discrimination on the basis of a person's marital status. As a result, a landlord association (in an unreported case) successfully challenged an ordinance which

regulated housing for college students, but allowed more options for married students than unmarried students.[52]

Group homes for persons with disabilities Federal law, along with some state statutes, requires zoning regulations to accommodate housing needs for persons with disabilities. Zoning ordinance provisions that otherwise restrict the size of a household which includes unrelated persons must be adapted to permit group homes for disabled persons.

In 1988, the Fair Housing Amendments Act (FHAA) was passed, adding handicapped persons as a protected class of persons. The FHAA defines discrimination to include "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations are necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling.[53]" The FHAA was the basis for a 1995 United States Supreme Court ruling in *City of Edmonds v. Oxford House, Inc.*[54] Oxford House operated a group home in a neighborhood zoned for single-family residences in Edmonds, Washington. The group home was established to house 10 to 12 adults recovering from alcoholism and drug addiction. The City of Edmonds cited the owner and a resident of the house for violating the City's zoning code. The Supreme Court's decision held that a zoning ordinance limiting the number of unrelated persons who may live together in a single residence but not limiting the number of related persons is not exempt from the FHAA's requirement that municipalities make "reasonable accommodations" for handicapped housing. The FHAA does exempt "reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.[55]" However, under the *Edmonds* case, the maximum occupant restrictions did not apply to all persons, and were not exempt from the FHAA's requirements for nondiscrimination against the handicapped.[56]

Some state laws contain more specific provisions for housing accommodations for persons with disabilities. For example, Tennessee state law provides for housing rights for the disabled as follows:

> *For the purposes of any zoning law in Tennessee, the classification "single family residence" includes any home in which eight (8) or fewer unrelated mentally retarded, mentally handicapped or physically handicapped persons reside, and may include three (3) additional persons acting as houseparents or guardians, who need not be related to each other or to any of the mentally retarded, mentally handicapped or physically handicapped persons residing in the home.*[57]

Examples of similar laws from other states are shown in Appendix A. Although many of these laws were enacted before the FHAA's provisions on housing for the handicapped, compliance with their requirements would arguably constitute "reasonable accommodations," as mandated by the FHAA to afford handicapped persons "equal opportunity to use and enjoy a dwelling.[58]" However, the housing

protections provided by some states apply only to multi-family dwellings, which could possibly lead to an argument that disabled persons in those states lack an equal opportunity to use and enjoy the same dwellings that other persons enjoy.

Federal law does not require local governments to allow persons known to be dangerous to live in group homes. While protecting the handicapped from housing discrimination, the FHAA specifically does not require "that a dwelling be made available to an individual 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." Similarly, the Tennessee statute on group homes provides that "'mentally handicapped' does not include persons who are mentally ill and, because of such mental illness, pose a likelihood of serious harm . . . . , or who have been convicted of serious criminal conduct related to such mental illness.[59]" Statutes from other states, such as California, Connecticut and Idaho, refer to certification or licensing procedures and compliance standards set by state agencies, which would presumably lessen the likelihood of threats from truly dangerous persons.

Persons recovering from alcoholism fall within the protections granted by federal law as discussed herein, as do persons recovering from drug addiction *if* they are no longer using illegal drugs. Courts have also interpreted the FHA as meaning that individuals recovering from drug or alcohol addiction are handicapped.[60] However, in defining "handicap," the FHA states that the term "does not include current, illegal use of or addiction to a controlled substance.[61]" State law protections may also extend to recovering alcoholics and drug addicts. Tennessee law defines "mental illness" as "a psychiatric disorder, alcohol dependence, or drug dependence.[62]"

In keeping with the requirements of state and federal law regarding protection of persons considered as handicapped or disabled, zoning regulations should allow group homes for handicapped persons. Some state laws provide for these uses as a matter of right, just as persons constituting a "traditional family" have a right to live in a single-family residence. In these states, no special permit should be required to operate a noncommercial group home, other than those normally required under local building codes. Other states, such as Minnesota, may allow local governments to require a conditional use or special use permit for a group home.[63]

While federal law is not specific about the number of disabled persons who should be allowed to share a group home, most state laws addressing the issue set the number at six, eight or ten. (Minnesota allows state licensed residential facilities for up to 16 persons as a permitted multifamily residential use.) The state statutes generally allow two, three or an unspecified number of houseparents, guardians or staff persons to live in the group home. Arguably, cities which abide by their state's numerical mandate will meet the FHA's requirement of "reasonable accommodations."

Enforcement:

Zoning regulations can become meaningless if there is no practical way to enforce them. When it is established that a violation exists, a codes official might typically send the violator a notice and provide a reasonable time for the violation to be corrected. If the violation continues, a citation is normally issued and the violator must appear in court. The maximum fine for violations of municipal ordinances in some states may not be a sufficient threat to force violators to comply with the law. However, statutes or case law may provide that each day a violation continues may be considered as a separate offense, for which an additional fine may be imposed.[64] If fines do not result in compliance, injunctive action could be a possibility.

It might be a challenge to verify allegations that a home is being used for something other than a single-family residence, or that occupancy limits are being violated. While complaints by neighbors of excessive activity and an inordinate number of cars at a home may be indicative of a zoning ordinance violation, sufficient proof may be difficult to establish. When this is the case, determining whether a citation is appropriate can pose a dilemma. When property owners or residents do not voluntarily respond to a codes official's inquiries or a request to make an inspection, a search of the premises should not be carried out without a properly issued warrant.[65] Laws in some states provide the means for obtaining an administrative inspection warrant. Codes officials and municipal attorneys will want to make sure that the legal findings and procedures specified for obtaining a warrant are followed to the letter, or otherwise will be at risk that the evidence and information found during the inspection will be suppressed.

Finally, it should be established whether property owners, residents or both should be charged with violations of the types of zoning regulations discussed herein. Codes officials will most likely benefit from having the authority to cite either owners or residents. Ordinances establishing the regulations should clearly establish which party or parties (property owners or residents) may be held responsible for violations. As discussed earlier, the due process rights of all parties who will be affected by enforcement of an ordinance should be honored.

Conclusion:

Many municipalities have placed a high priority on maintaining a low density residential character in at least some of their neighborhoods. The people who choose to make their homes in these neighborhoods benefit by living in a less crowded environment. Even in higher density environments, there may be a desire to control overcrowding by establishing limits on the number of residents who may live in a housing unit. However, an emphasis on single-family residences and occupancy limitations can produce interpretive challenges.

Zoning regulations may provide insufficient guidance for determining the combinations of people that satisfy the definition of "family." In these situations, drafters of zoning provisions may wish to provide clarification as to who may live in a single-family residence, or how many occupants can live in various types of dwelling units. To be more effective, such provisions should be enforceable against a property owner allowing a residence to be used in violation of the zoning ordinance, as well as a resident living in a residence in violation of the zoning ordinance. Zoning provisions limiting the combinations of people allowed to occupy a residence should be drawn within federal and state constitutional restraints, as interpreted by case law, and should acknowledge the rights of persons with disabilities, as defined by state and federal statute. Local governments should keep a close eye on continuing developments in this area of the law and adjust their zoning regulations as needed to ward off potential challenges.

---

[1] However, some courts have upheld the enforcement of single-family zoning against families that included foster children. See, for example, *Carroll v. Washington Township Zoning Commission*, 408 N.E.2d 191 (Ohio, 1980).
[2] 416 U.S. 1 (1974).
[3] 431 U.S. 494 (1977).
[4] *Id.* at 498.
[5] *Id.* at 499.
[6] *Charter Township of Delta v. Dinolfo*, 351 N.W.2d 831 (Mich. 1984).
[7] *McMinn v. Town of Oyster Bay*, 488 N.E..2d 1240 (N.Y. 1985).
[8] *Baer v. Town of Brookhaven*, 537 N.E.2d 619 (N.Y. 1989).
[9] *State v. Baker*, 405 A.2d 368 (N.J. 1979), see also *Borough of Glassboro v. Vallorosi*, 568 A.2d 888 (N.J. 1990).
[10] *City of Santa Barbara v. Adamson*, 27 Cal. 3d 123 (Cal. 1980).
[11] *Town of Durham v. White Enterprises, Inc.*, 348 A.2d 706 (N.H. 1975); see also *Fischer v. New Hampshire State Building Code Review Board*, 914 A.2d 1234 (N.H. 2006).
[12] *Town of Durham v. White Enterprises.* at 709.
[13] *Ames Rental Property Association v. City of Ames*, 736 N.W.2d 255 (Iowa 2007).
[14] *Id.* at 260.
[15] See *Rademan v. City & County of Denver*, 526 P.2d 1325 (Colo. 1974).
[16] See *Dinan v. Board of Zoning Appeals of Town of Stratford*, 595 A.2d 864 (Conn. 1991).
[17] See *Hayward v. Gaston*, 542 A.2d 760 (Del.1988).
[18] See *Macon Ass'n for Retarded Citizens v. Macon-Bibb County Planning and Zoning Commission*, 314 S.E.2d 218 (Ga.1984); *Lacey v. State*, 507 S.E.2d 441 (Ga. 1998).
[19] See *Marsland v. International Soc. for Krishna Consciousness*, 657 P.2d 1035 (Haw. 1983).
[20] See *Dvorak v City of Bloomington*, 796 N.E.2d 236 (Ind. 2003).
[21] See *City of Kenner v. Normal Life of Louisiana, Inc.*, 483 So.2d 903 (La. 1986); *Zoning Bd. of City of Hammond v. Tangipahoa Ass'n for Retarded Citizens*, 510 So.2d 751 (La. App. 1987).
[22] See *Penobscot Area Housing Development Corp. v. City of Brewer*, 434 A.2d 14 (Me. 1981).
[23] See *City of Worcester v. Bonaventura*, 775 N.E.2d 795 (Mass. App. Ct. 2002).
[24] See *City of Ladue v. Horn*, 720 S.W.2d 745 (Mo.App. 1986).
[25] See *State v. Champoux*, 566 N.W.2d 763 (Neb.1997).

[26] See *Carroll v. Washington Township Zoning Commission*, 408 N.E.2d 191 (Ohio, 1980). But also see *Saunders v. Clark County Zoning Dept.*, 421 N.E.2d 152 (Ohio 1981); *City of Westerville v. Kuehnert*, 553 N.E.2d 1085 (Ohio App. 1988).
[27] See *Owens v. Zoning Hearing Bd. of Borough of Norristown*, 468 A.2d 1195 (Pa. Cmwlth. 1983); also *Farley v Zoning Hearing Bd, of Lower Merion Tp.*, 636 A.2d 1232 (Pa. Cmwtlh. 1994) and *Lantos v Zoning Hearing Bd. of Haverford Tp.*, 621 A.2d 1208 (Pa. Cmwlth. 1993). But also see *Hopkins v. Zoning Hearing Board of Abington Township*, 423 A.2d 1082 (Pa. Cmwlth. 1980), finding "family" definition was unconstitutional as applied to husband and wife who sought to use their house as home for three mentally retarded children.
[28] See *City of Brookings v. Winker*, 554 N.W.2d 827 (S.D. 1996).
[29] See *Barr v. City of Sinton*, 2005 WL 3117209 (Tex. App. 2005) (review granted Dec. 15, 2006.)
[30] See *Anderson v. Provo City Corp*., 108 P.3d 701 (Utah, 2005).
[31] FLA. CONST. art.I, § 23.
[32] *City of Santa Barbara v. Adamson*, 27 Cal. 3d 123 (Cal. 1980).
[33] *Bedford v. Sugarman*, 772 P.2d 486, (Wash, 1989).
[34] *State v. Baker*, 405 A.2d at 375
[35] *Davis v. Davis*, 842 S.W.2d 588 (Tenn. 1992).
[36] *Campbell v. Sundquist*, 926 S.W.2d 250, 261 (Tenn.Ct.App.1996).
[37] *Village of Belle Terre*, 416 U.S. 1, 6 (1974).
[38] *Id.* at 8 (quoting *F. S. Royster Guano Co. v. Virginia*, 253 U.S. 412 and *Reed v. Reed*, 404 U.S. 71.
[39] 351 N.W.2d 831 (1984).
[40] *Id.* at 843.
[41] *McMinn v. Town of Oyster Bay*, 488 N.E..2d 1240 (N.Y. 1985).
[42] *State v. Baker*, 405 A.2d at 371.
[43] *State v. Champoux*, 566 N.W.2d 763, 772.
[44] -- F. Supp. 2d --, 2007 WL 2163093 (M.D. Pa. 2007).
[45] *Campbell v. Sundquist*, 926 S.W.2d 250 (Tenn. Ct. App. 1996); *Hawk v. Hawk*, 855 S.W. 2d 573 (Tenn. 1993).
[46] *Smith v. State*, 6 S.W.3d 512 (Tenn.Crim.App.,1999).
[47] *Ames Rental Property Association v. City of Ames*, 736 N.W.2d 255 (Iowa 2007).
[48] *Id.* at 260.
[49] *U.S. R.R. Retirement Bd. v. Fritz*, 449 U.S. 166 (1980).
[50] *Ames Rental Property Association v. City of Ames*, 736 N.W.2d 255 (Iowa 2007).
[51] *Village of Belle Terre*, 416 U.S. at 8.
[52] *Newark Landlord Ass'n v. City of Newark*, 2003 WL 21448560 (Del. Ch. 2003).
[53] 42 U.S.C.A. § 3604.
[54] 514 U.S. 725 (1995).
[55] 42 U.S.C.A. § 3607.
[56] It should be noted that the protection provided by the FHAA as interpreted by the *Edmonds* case applies to handicapped persons and does not benefit unrelated persons who are not handicapped.
[57] TENN. CODE ANN. § 13-24-102. Note: The Tennessee statutes specifically exclude from protection any residence for handicapped persons operated on a commercial basis. (TENN. CODE ANN. § 13-24-104).
[58] 42 U.S.C.A. § 3607.
[59] TENN. CODE ANN. § 13-24-101. Also see *Tenn. Code Ann.* § 33-6-501, which establishes a test for whether a person poses "a likelihood of serious harm," reducing the possibility of a determination based on subjective judgment or inadequate information.
[60] See for example, *United States v. Southern Management Corp.*, 955 F.2d 914 (4th Cir.1992); *Elliot v. City of Athens*, 960 F.2d 975 (11th Cir.1992).
[61] 42 U.S.C.A. § 3602.
[62] TENN. CODE ANN. § 33-1-101.

[63] See MINN. STAT. § 462.357, Subd. 8, providing that "[a] township, municipal or county zoning authority may require a conditional use or special use permit in order to assure proper maintenance and operation of a facility, provided that no conditions shall be imposed on the facility which are more restrictive than those imposed on other conditional uses or special uses of residential property in the same zones, unless the additional conditions are necessary to protect the health and safety of the residents of the residential facility."
[64] See *Town of Nolensville v. King*, 151 S.W.3d 427 (Tenn. 2004).
[65] See *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523 (1967).

Additional source material consulted in the preparation of this memorandum includes:

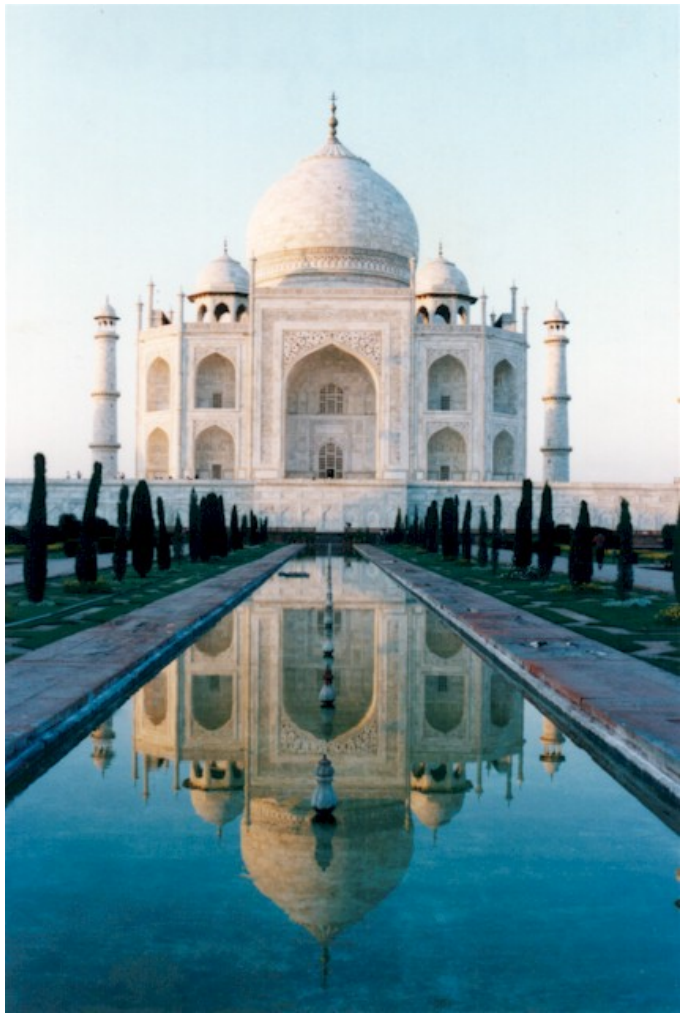
- Cholewa, *Single-Family Residential Zoning – Toward a Legislative Definition of "Functional Family,"* 36 MUNICIPAL ATTORNEY 6 (1995).
- 6 E. C. YOKLEY, ZONING LAW AND PRACTICE at § 35-64 (4th ed. 1980 & Supp. 1998).
- Annotation, *Validity of Ordinance Restricting Number of Unrelated Persons Who Can Live Together in Residential Zone*, 12 A.L.R.4th 238 (1982).
- 83 AM. JUR. 2D *Zoning and Planning* §§ 173, 174, 175 (2005).
- TENNESSEE FAIR HOUSING COUNCIL, ERADICATING NIMBY: AN ATTORNEY'S GUIDE TO LEGAL ISSUES REGARDING NEIGHBORHOOD LIVING FOR INDIVIDUALS WITH DISABILITIES (2003).
- Lubow, *Not Related by Blood, Marriage, or Adoption: A History of the Definition of "Family" in Zoning Law*, 16-WTR J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 144 (2007).

The author is grateful to Denon Carr for his research assistance.

What Is a Family?

The Perils of
Single-Family Zoning and
Occupancy Limitations

Today’s houses are getting bigger!











Average New Single Family House

- 1950 – 983 square feet
- 1970 – 1,500 square feet
- 2005 – 2,349 square feet

Bigger houses means . . .



- Greater chances that single-family homes will at some point be used for more than one family.
- How many occupants should be allowed in the same house?

“Stacking” by landlords

- ***“Morristown cracks down on illegal apartment 'stacking‘; 12 to face fines from $500 to $1,250 for tenant overcrowding”*** **(from Morris Co. NJ Daily Record, 9/08/05)**
- ***Crowding May Put Landlords In Jail; Fairfax Tries to Stop Housing Violations*** **(from Washington Post, 12/06/05)**



Unscrupulous landlords in Farmingville [NY] are making thousands of dollars in cash every month by cramming single-family homes with tenants, many of them day laborers from Mexico and Honduras. Fifty-eight men, each paying $200 a month, live in one house. (From newsday.com, 7/15/05)

Zoning Ordinances and Families:

- Many zoning ordinances designate certain areas for “single family residences.”
- Controls the type of structure that can be built in that area.
- Does it also control who can live in that structure?

What is a “family?”

- Zoning ordinances sometimes define family in vague terms, such as:

  “one or more persons living as a single housekeeping unit”



Is this a family?

Unanswered Questions:

- What constitutes a “single housekeeping unit?”
- How many persons can live in a home and be considered one family?
- How should we deal with homes inhabited by unrelated persons who function as a family?

“Traditional Families” vs. “Functional Families”

- “Traditional families” – persons related by blood or marriage, or through adoption or foster care.
- “Functional families” – groups which include unrelated persons but which live together as a single housekeeping unit.
- Can we treat “functional families” differently from “traditional families”?

“Functional families” in the U.S. Supreme Court

- *Village of Belle Terre v. Boraas, (1974)* Court ruled against property owner cited for renting to 6 unrelated college students. Upheld ordinance allowing no more than 2 unrelated persons to occupy single-family dwelling.

“Traditional families” in the U.S. Supreme Court

- *Moore v. City of East Cleveland* (1977)

  Mrs. Moore’s son and two grandsons (first cousins) lived with her. Court struck down ordinance under which grandmother was prosecuted for allowing one of the grandsons to stay in her home.

“Functional families” vs. “traditional families” in the state courts

- Mixed results in state courts, based on state constitutions.
- No reported case law from courts of 28 states.

OK to treat “functional families” different from “traditional families”?

NO:

- MICHIGAN
- NEW YORK
- NEW JERSEY
- CALIFORNIA

MICHIGAN

- Zoning ordinance that prohibited more than 2 unrelated persons in same residence was challenged by members of a religious community. MI Supreme Court found ordinance violated state constitution. *(Delta v. Dinolfo, 1984)*

NEW YORK

State court struck down ordinances in cases involving:

- 4 unrelated men, ages 22 – 25, sharing house so they could remain in the town where they grew up. *(McMinn v. Oyster Bay, 1985)*
- 5 unrelated elderly women sharing a home *(Baer v. Brookhaven, 1989)*

NEW JERSEY

- 2 families living together for religious reasons. NJ Supreme Court: Not a proper function of zoning to regulate the "internal composition" of "housekeeping units." *(State v. Baker, 1979)*

CALIFORNIA

- 12 unrelated adults lived as an “alternate family” in a 10 bedroom home. Ordinance allowing no more than 5 unrelated occupants was ruled in violation of right to privacy under state constitution. *(Santa Barbara v. Adamson, 1980.)*

OK to treat “functional families” different from “traditional families”?

YES:

Colorado	Iowa	New Hampshire
Connecticut	Louisiana	Ohio
Delaware	Maine	Pennsylvania
Georgia	Massachusetts	South Dakota
Hawaii	Missouri	Texas
Indiana	Nebraska	Utah

NEW HAMPSHIRE

- Ordinance required 300 sq. ft. per person when unrelated persons shared home. Town went after owner of home rented to 7 to 10 college students. NH Supr. Court: “Clear interest in preserving integrity of biological or legal family.” *(Durham v. White Enterprises, 1975)*

MASSACHUSETTS

- Court upheld ordinance prohibiting “lodging houses” against owners of condos rented to unrelated college students. *(City of Worcester v. Bonaventura, 2002.)*

LOUISIANA

- “The essential ingredient of a single family residence is not that it consists of only one living unit, but rather that it houses a number of persons related by blood, marriage, or adoption.” (*Zoning Bd. of City of Hammond v. Tangipahoa Ass'n for Retarded Citizens, 1987*)

COLORADO

- 2 married couples and 2 more unrelated persons lived as a “communal family.” Court upheld enforcement of single-family zoning ordinance. *(Rademan v. Denver, 1974)*

OHIO

- Court upheld “family” definition that excluded foster children. *(Carroll v. Washington Township Zoning Commission, 1980)*

MISSOURI

- Unmarried couple lived together with children from both marriages. Enforcement of “one-family residential” zoning was upheld. MO Ct. of Appeals: “To approximate a family relationship, there must exist a commitment to a permanent relationship and a perceived reciprocal obligation to support and to care for each other.” *(City of Ladue v. Horn, 1986)*

SOUTH DAKOTA

- Four unrelated college students resided in half of a two-family dwelling, in violation of ordinance allowing no more three unrelated adults to live in a unit. Court held ordinance did *not* violate due process or equal protection clauses of S.D. constitution. *(City of Brookings v. Winker, 1996.)*

IOWA

- Landlord association challenged ordinance allowing no more than 3 unrelated persons to live together. Court found ordinance was rationally related to City's interest in providing quiet neighborhoods. *(Ames Rental Property Assoc. v. City of Ames, 2007)*

Potential Constitutional Issues

- Right to privacy (specific or implied)
- Due process
- Equal protection

THE RIGHT TO PRIVACY

Explicitly provided for in state constitutions of:

- Alaska
- Arizona
- California
- Florida
- Hawaii
- Montana
- Washington

THE RIGHT TO PRIVACY
An example from Florida

"Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein."

THE RIGHT TO PRIVACY - IMPLIED

- New Jersey Constitution – Provides guarantee of the natural and unalienable right of individuals to pursue and obtain safety and happiness
- NJ Supr. Ct.: "We would be remiss if we did not note that the right of privacy is also included within the protection offered by that provision." *(State v. Baker, 1979)*

Tennessee's Right to Privacy

- "A fundamental right . . . more extensive than [under] Federal Constitution." *(Campbell v. Sundquist, 1996)*
- State Constitution indicates "strong historic commitment by the citizens of this State to individual liberty and freedom from governmental interference in their personal lives."

Equal Protection

- *Village of Belle Terre v. Boraas* – US Supr. Ct. dismissed equal protection claim where ordinance allowed biological family plus no more than 2 unrelated occupants.
- State courts have generally dismissed equal protection claims or not focused on them.

Due Process (as basis for invalidating functional family limits)

- *Delta v. DiNolfo* (Michigan) – Town failed to demonstrate justification for treating unrelated occupants differently. Ordinance was arbitrary and capricious under MI due process clause.
- *McMinn v. Oyster Bay* (NY) – Limit of 2 unrelated persons, 62 or older, lacked reasonable relation to legitimate governmental purpose.

Due Process (not a basis for invalidating functional family limits)

- *State v. Champoux* (Nebraska) – Limit of related individuals plus two others did not involve fundamental right or suspect classification, so due process was satisfied since challenger did not show ordinance was not rationally related to a legitimate state interest.

Due Process – another concern

Lozano v. City of Hazleton – Fed. dist. court invalidated ordinance that failed to provide notice to tenants who could lose their residences.

Does right to privacy (or other fundamental rights) extend to "functional families?"

IF YES:

Courts apply "strict scrutiny."

IF NO:

Courts look for "rational basis."

STRICT SCRUTINY ANALYSIS

- "Legislation must be justified by a 'compelling state interest' and must be narrowly drawn to advance that interest." *(Campbell v. Sundquist, TN, 1996)*
- Right of privacy "should be abridged only when there is a compelling public need." *(Santa Barbara v. Adamson, Cal., 1980)*

RATIONAL BASIS TEST

- Law is valid “if it bears a real and substantial relationship to the public’s health, safety, moral or general welfare and it is neither unreasonable nor arbitrary.” *(Smith v. State, TN, 1999)*
- “The zoning ordinance is valid unless the relationship between the classification and the purpose behind it is so weak the classification must be viewed as arbitrary or capricious.” *(Ames Rental Property Association, Iowa, 2007)*

Possible reasons for limiting size of “functional families”

- Contain growth
- Prevent traffic congestion
- Prevent noise pollution
- Public safety
- Avoid school system overcrowding
- Reduce water and energy usage
- Sewer system impacts
- Other environmental impacts

Statutory concerns

- Federal Fair Housing Act
- Fair Housing Amendments Act
- State fair housing laws
  - Example – Delaware FHA prohibits discrimination based on marital status.
  - Other protections may be granted to disabled persons, elderly, homes with foster children

GROUP HOUSING FOR THE DISABLED – FEDERAL LAW

- Fair Housing Act requires “reasonable accommodations . . . to afford” handicapped persons “equal opportunity to use and enjoy a dwelling.”
- Under FHA, courts have required cities to allow group homes for handicapped persons.

GROUP HOUSING FOR THE DISABLED – STATE LAW

- “Single-family residence” in some states includes a home with 6 to 10 mentally or physically handicapped persons
- Laws may also specify number of houseparents/staff persons who must be allowed to stay
- Other states permit group homes in multi-family areas

Federal (and some state laws) provide housing discrimination protection to persons with:

- Psychiatric disorders
- Alcoholism
- Drug addiction (*if* no longer using illegal drugs)

BUT no protection for persons who would constitute a direct threat to the health or safety of others.

The final word on group homes

- State law may provide for group homes for the disabled as a matter of right, just as a “traditional family” has a right to live in a single-family residence.
- If so - No special permit requirements for a noncommercial group home.



Things to ponder when drafting an ordinance on single family residences

Who can occupy a single-family residence?

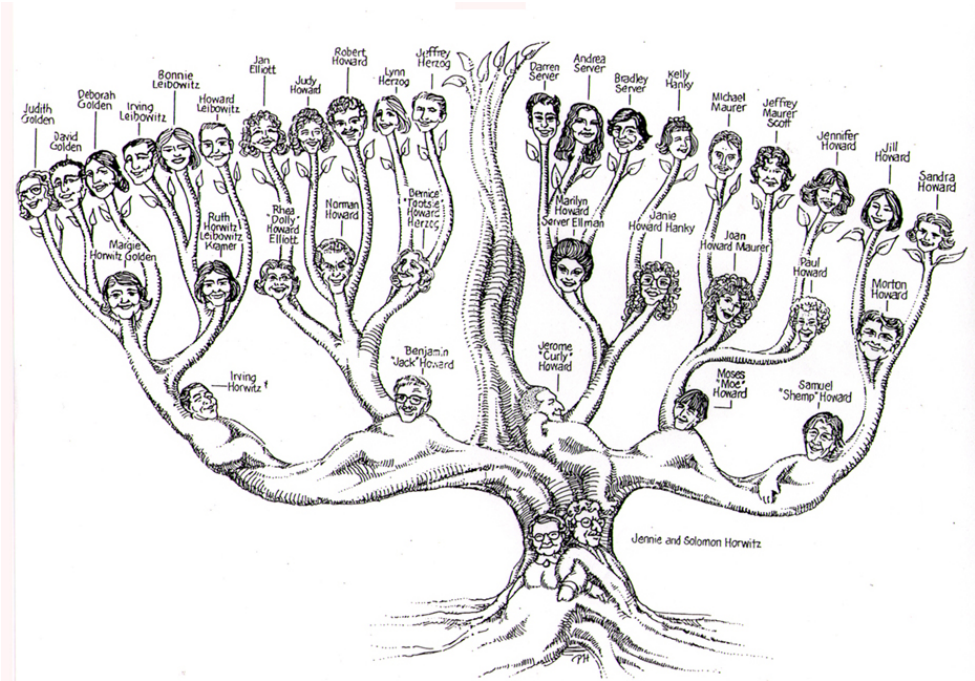
- Presumably, one individual



- OR a “traditional family” – presumably any number of persons related by blood, marriage or adoption



BUT . . . What does "related" mean?



- For single-family residences – first cousins or closer, perhaps?

Who can occupy a single-family residence?

- ☑ An individual
- ☑ A “traditional family” made up of related persons
- ☑ Group home for some number of mentally retarded, mentally handicapped or physically handicapped persons, PLUS houseparents or guardians
- ❑ What about other groups that include *“unrelated”* persons?

Consider designating somebody as the *“primary occupant(s)”*

- Primary occupant(s) can be an individual or a “traditional family.”
- At least one primary occupant must have legal right to occupy, such as a deed or lease.

So you've designated the primary occupant(s) . . . Now what?

- How many unrelated persons can live with the primary occupant(s)?
- What about children of unrelated occupants?
- Consider requiring a household with unrelated occupants to function as a "single housekeeping unit."

“Single housekeeping units”:

- Have common kitchen facilities.
- Provide unrestricted access to the entire dwelling to all occupants.
- Share household expenses and responsibilities.

Who is considered an occupant?

You might be a permanent occupant if:

- You occupy a dwelling for more than _____ days in any 12-month period.
- Receive mail at the dwelling.
- Use the dwelling's address to:
  - Register to vote.
  - Register a vehicle or apply for a drivers license.
  - Register to attend school or to be a home school student.

Other ideas for preventing overcrowding

- Minimum square footage per occupant when home includes unrelated persons
- Maximum number of persons per bedroom when home includes unrelated persons

*****

Cobb County, GA: 50 sq. ft. of sleeping space per occupant, excluding bathrooms, closets, hallways and garages.

NOT a single-family residence IF:

- It’s a boarding/rooming house.
- It’s a fraternity house.
- It’s an apartment house.
- One or more rooms are rented to unrelated tenants.
- Separate portions are designated for or used as separate housekeeping units, *except . . .*

What about in-law quarters?

- Separate quarters for persons related by blood, marriage or adoption to the primary occupants. Consider allowing, *but*:
  - Must be connected by interior passageways.
  - May not be rented to unrelated tenants.
  - No more than one meter for the same type utility service.

DISASTER STRIKES!!!



- *Tennessean*, 9/2/05: **Locals open their homes to Katrina's displaced**
  'A small sacrifice,' say those who welcome refugees

Exceptions for emergencies

- Under what circumstances?
- Who can grant exceptions?
- For how long?

ENFORCEMENT

- Who can be charged with violations?
  - Property owners?
  - Residents?
- Limit on fines may be low.
- Can each day a violation continues be considered a separate offense?
- Injunctive action.

ENFORCEMENT
How to establish violations?

- Consider use of administrative inspection warrants if law permits and sufficient information can’t be obtained by other means.
- Follow statutory procedures closely!

APPENDIX A

State Housing Laws for Persons with Disabilities

Alabama:

§ 11-52-75.1. Regulation as to housing of mentally retarded or mentally ill persons in multi-family zone.

a) It is the express intent of the Legislature to abolish and prohibit any zoning law, ordinance, or regulation which prevents or prohibits mentally retarded or mentally ill persons from living in a natural residential environment zoned "multi-family." Zoning ordinances shall not exclude a group home from a "multi-family" residential area solely because the persons residing in the group home are not blood related, and no such group home shall be located within 1,000 feet of another group home as measured between lot lines. The group home shall be required to meet all other zoning and licensing requirements of local and state governmental agencies.

(b) For the purpose of any zoning law, ordinance or regulation in force in the State of Alabama and its political subdivisions, the classification of "multi-family" shall not exclude a group home in which 10 or less unrelated persons who are mentally retarded or mentally ill may reside, and said home may, in addition thereto, include two additional persons who need not be related by blood or marriage to each other or to any of the mentally retarded or mentally ill persons living in the home.

(c) Notwithstanding the provisions of this section, nothing herein contained shall be construed to affect any such group home previously established and existing on the date of the enactment of this section.

(Ala. Code 1975 § 11-52-75.1)

California:

§ 5116. Property used for care of six or fewer handicapped persons or dependent or neglected children as residential use for zoning purposes

Pursuant to the policy stated in Section 5115, a state-authorized, certified, or licensed family care home, foster home, or group home serving six or fewer mentally disordered or otherwise handicapped persons or dependent and neglected children, shall be considered a residential use of property for the purposes of zoning if such homes provide care on a 24-hour-a-day basis.

Such homes shall be a permitted use in all residential zones, including, but not limited to, residential zones for single-family dwellings.

(West's Ann.Cal.Welf. & Inst.Code § 5116)

Connecticut:

§ 8-3e. Regulation of community residences for mentally retarded persons, child-care residential facilities and community residences for persons receiving mental health or addiction services

a) No zoning regulation shall treat the following in a manner different from any single family residence: (1) Any community residence that houses six or fewer mentally retarded persons and necessary staff persons and that is licensed under the provisions of section 17a-227, (2) any child-care residential facility that houses six or fewer children with mental or physical disabilities and necessary staff persons and that is licensed under sections 17a-145 to 17a-151, inclusive, or (3) any community residence that houses six or fewer persons receiving mental health or addiction services and necessary staff persons paid for or provided by the Department of Mental Health and Addiction Services and that has been issued a license by the Department of Public Health under the provisions of section 19a-491, if a license is required.

(b) Any resident of a municipality in which such a community residence or child-care residential facility is located may, with the approval of the legislative body of such municipality, petition (1) the Commissioner of Mental Retardation to revoke the license of such community residence on the grounds that such community residence is not in compliance with the provisions of any statute or regulation concerning the operation of such residences, (2) the Commissioner of Children and Families to revoke the license of such child-care residential facility on the grounds that such child-care residential facility is not in compliance with the provision of any general statute or regulation concerning the operation of such child-care residential facility, or (3) the Commissioner of Mental Health and Addiction Services to withdraw funding from such community residence on the grounds that such community residence is not in compliance with the provisions of any general statute or regulation adopted there under concerning the operation of a community residence.

(C.G.S.A. § 8-3e)

Delaware:

§ 4923. Residential facilities for persons with disabilities

(a) For purposes of all county zoning ordinances a residential facility licensed or approved by a state agency serving 10 or fewer persons with disabilities on a 24-hour-per-day basis shall be construed to be a permitted single family residential use of such property.

(b) For the purposes of this section, the term "persons with disabilities" includes any persons with a handicap or disability as those terms are defined in the Delaware Fair Housing Act (Chapter 46 of Title 6).

(9 Del.C. § 4923)

Idaho:

§ 67-6530. Declaration of purpose

The legislature declares that it is the policy of this state that mentally and/or physically handicapped or elderly persons are entitled to live in normal residential surroundings and should not be excluded there from because of their disability or advanced age, and in order to achieve statewide implementation of such policy it is necessary to establish the statewide policy that the use of property for the care of eight (8) or fewer mentally and/or physically handicapped or elderly persons is a residential use of such property for the purposes of local zoning.

§ 67-6531. Single family dwelling

(a) For the purpose of any zoning law, ordinance or code, the classification "single family dwelling" shall include any home in which eight (8) or fewer unrelated mentally and/or physically handicapped or elderly persons reside; and which is supervised.

(b) Resident staff, if employed, need not be related to each other or to any of the mentally and/or physically handicapped or elderly persons residing in the home.

(c) No more than two (2) of such staff shall reside in the dwelling at any one time.

§ 67-6532. Licensure, standards and restrictions

(a) The department of health and welfare may require such residences to be licensed and set minimum standards for providing services or operation. Such

licensure may be under the residential or assisted living facility rules, or under the intermediate care facilities for mentally retarded or related conditions rules, or under rules specifically written for such residences.

(b) No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential facility which serves eight (8) or fewer mentally and/or physically handicapped or elderly persons and is supervised as required in section 67-6531, Idaho Code, which is not required of a single family dwelling in the same zone.

(c) No local ordinances or local restrictions shall be applied to or required for a residential facility which serves eight (8) or fewer mentally and/or physically handicapped or elderly persons and is supervised as required in section 67-6531, Idaho Code, which is not applied to or required for a single family dwelling in the same zone.

(I.C. §§ 67-6530 – 67-6532)

Minnesota:

462.357. Official controls; zoning ordinance

Subd. 8. Permitted multifamily use. Except as otherwise provided in subdivision 7 or in any town, municipal or county zoning regulation as authorized by this subdivision, a state licensed residential facility serving from 7 through 16 persons or a licensed day care facility serving from 13 through 16 persons shall be considered a permitted multifamily residential use of property for purposes of zoning. A township, municipal or county zoning authority may require a conditional use or special use permit in order to assure proper maintenance and operation of a facility, provided that no conditions shall be imposed on the facility which are more restrictive than those imposed on other conditional uses or special uses of residential property in the same zones, unless the additional conditions are necessary to protect the health and safety of the residents of the residential facility. Nothing herein shall be construed to exclude or prohibit residential or day care facilities from single family zones if otherwise permitted by a local zoning regulation.

(M.S.A. § 462.357)

Missouri:

4. For the purpose of any zoning regulation adopted under the provisions of sections 64.010 to 64.160, the classification of single-family dwelling or single-family residence shall include any home in which eight or fewer unrelated

mentally or physically handicapped persons reside, and may include two additional persons acting as houseparents or guardians who need not be related to each other or to any of the mentally or physically handicapped persons. The classification of single-family dwelling or single-family residence shall also include any private residence licensed by the division of family services or department of mental health to provide foster care to one or more but less than seven children who are unrelated to either foster parent by blood, marriage or adoption. A zoning regulation may require that the exterior appearance of the home and property be in reasonable conformance with the general neighborhood standards and may also establish reasonable standards regarding the density of such individual homes in any specific single-family dwelling or single-family residence area. Should a single-family dwelling or single-family residence as defined in this subsection cease to operate for the purposes specified in this subsection, any other use of such dwelling or residence, other than that allowed by the zoning regulations, shall be approved by the county board of zoning adjustment. Nothing in this subsection shall be construed to relieve the division of family services, the department of mental health or any other person, firm or corporation occupying or utilizing any single-family dwelling or single-family residence for the purposes specified in this subsection from compliance with any ordinance or regulation relating to occupancy permits except as to number and relationship of occupants or from compliance with any building or safety code applicable to actual use of such single-family dwelling or single-family residence.

(V.A.M.S. 64.090)

Tennessee:

§ 13-24-101. Purpose of part; persons excluded from "mentally handicapped" definition

(a) It is the purpose of this part to remove any zoning obstacles which prevent mentally retarded, mentally handicapped or physically handicapped persons from living in normal residential surroundings.

(b) As used in this part, "mentally handicapped" does not include persons who are mentally ill and, because of such mental illness, pose a likelihood of serious harm as defined in § 33-6-501, or who have been convicted of serious criminal conduct related to such mental illness.

§ 13-24-102. Classification as single family residences

For the purposes of any zoning law in Tennessee, the classification "single family residence" includes any home in which eight (8) or fewer unrelated mentally retarded, mentally handicapped or physically handicapped persons reside, and may include three (3) additional persons acting as houseparents or

guardians, who need not be related to each other or to any of the mentally retarded, mentally handicapped or physically handicapped persons residing in the home.

§ 13-24-103. Priority over conflicting revisions

This part takes precedence over any provision in any zoning law or ordinance in Tennessee to the contrary.

§ 13-24-104. Family residences operated on commercial basis

This part does not apply to such family residences where in handicapped persons reside when such residences are operated on a commercial basis.

(T.C.A. §§ 13-24-101 – 13-24-104)

Note: The above listing should not be construed as an exhaustive listing of all state statutes providing housing for disabled persons. The currency, accuracy and completeness of the text shown above should be verified prior to reliance thereon. Readers interested in states not listed above should review applicable statutes to determine any protections granted for persons with disabilities.