



September 13, 2013

Hayden J. Mathieson
Director, Substance Abuse and Mental Health
Florida Department of Children and Families
1317 Winewood Blvd.
Building 1, Room 202
Tallahassee, FL 32399

Dear Mr. Mathieson,

The Florida League of Cities and its 410 member cities appreciate the Department of Children and Families studying the possible regulation or licensure of sober homes, but are troubled by the results presented in the *Recovery Residence Report, Fiscal Year 2013-2014, General Appropriations Act, the Office of Substance Abuse and Mental Health* (Report).

The 2013-2014 General Appropriations Act directed the Department of Children and Families to determine whether sober homes should be licensed or registered. The Department posted a survey on its website asking the public to respond, held public hearings, and has summarized all of the comments received through this public input process in the Report. While we appreciate the efforts of the Department in compiling the Report, the Florida League of Cities believes that the Report is flawed and does not adequately address the issues associated with these establishments in Florida. We also believe the Report does not provide the requisite policy recommendations to the Legislature as to how to address the issue of regulating sober homes.

The Department heard testimony from a number of cities across the state through the public hearing process and has received written responses to the draft Report from two cities. These two cities, Lake Park and Delray Beach, addressed a number of issues with the Report including flawed survey questions, an erroneous estimate of the number of sober homes in the state based on anecdotal data, the use of outdated and irrelevant sources that are not Florida-specific, and a failure to provide any meaningful policy recommendations to the Legislature. The Florida League of Cities believes that further study and analysis is needed before this Report is submitted to the Legislature.

We look forward to working with the Department on this very important issue.

Sincerely,

Casey Cook
Legislative Advocate
Florida League of Cities

Critique of the Report

Recovery Residence Report

Fiscal Year 2013-2014 General Appropriation Act

The Office of Substance Abuse and Mental Health

Dale S. Sugerman, Ph.D.
Town Manager
Town of Lake Park, Florida
September 11, 2013

The purpose of this report is to provide a critique and response to the undated *Recovery Residence Report, Fiscal Year 2013-2014 General Appropriation Act, The Office of Substance Abuse and Mental Health* which was apparently released to the public on or about September 5, 2013 by the Florida Department of Children and Families. The commentary provided herein is solely the work of the author and is not reflective of, nor does it carry with it an endorsement of the agency for which the author works.

Critique of Section III- Methodology

The Florida Department of Children and Families (the Department) writes in their undated report that it posted a series of questions on its website. The first question was “*Should recovery residences be regulated?*” This question missed one-half of the original assignment from the General Appropriations Act which also asked for the development of a plan “*to determine whether to establish a licensure/registration process...*” [emphasis added]. The Department’s website did not ask if recovery residences should be required to submit to a registration process (as opposed to a licensure process). Failure to ask this question leaves the resultant collection of the data in question.

The second question dealt with how many recovery residences operate in Florida and what is the methodology that might have been used by the submitter to arrive at that number? Rather than posing the question as close-ended, the question should have been an open-ended question; that is, is it known how many recovery residences operate in the State of Florida? Further, the website series of questions also asked the closed-ended question about the methodology being used to arrive at the number of recovery residences identified, rather than asking what might be the best methodology for determining how to identify the number of recovery residences in the State of Florida. Failure to ask this question leaves the resultant collection of the data in question.

The third question was a multi-part question asking about the “*feasibility, cost and consequence of licensing, regulating, registering or certifying recovery residences and their operators*”. Each of these items deserves their own individual answer and should have been asked as a separate question. Failure to ask these as separate questions leaves the resultant collection of the data in question.

An additional question appearing on the website asked about the appropriate level of government from which to administer the regulation of recovery residences. The Department failed to ask the question about the appropriate level of government to administer a registration process [emphasis added]. Failure to ask this question leaves the resultant collection of the data in question.

Critique of Section V- Number of Recovery Residences Operating in Florida

In this section the Department writes “*Regional Department substance abuse and mental health staff, FARR, FLC, and the FAC were asked to identify the number of recovery residences operating in their respective areas. However, despite the requests made to external organizations, there has been no response that assists the Department identify [sic] the number of recovery residences at the time of writing*”.

If there is currently no method for licensing, regulating, or registering recovery residences in the State of Florida, it would stand to reason that asking groups, organizations, or local governmental jurisdictions to identify the number of recovery residences is like asking the rhetorical question of how many angels can fit on the head of a pin? The answer to the question is truly unknown and will remain unknown until a process for licensing, regulating, or registering recovery residences by some state-wide agency or organization can be put into place.

Further, in this section, the Department writes “*In 2011, it was estimated that there were around 400-500 such residences in Palm Beach County. This then applied to [sic]*” as a percentage of the population was then projected statewide, resulting in a range of 5,704 to 7,130 recovery residences”.

This anecdotal evidence does not hold up to any valid and empirical scrutiny. An immediate question that comes to mind is who provided this 2011 estimate and upon what evidence was it based? Other anecdotal evidence seems to suggest that there are currently 400-500 such recovery residences in and around the Delray Beach area alone (despite the fact that there is currently no solid methodology for taking measurements; since no licensing, regulating, or registration process is in place).

Anecdotally, one could offer that in 2013 the number of recovery residences in the State of Florida ranges from a low of 5,704 to a high of 57,040 (the actual number cannot be known because there is no method in place for measuring the number of recovery residences in the state). Unless and until an actual methodology of providing a true count for the number of recovery residences is established, failure to do so leaves the resultant anecdotal count of the number of recovery residences in the state by the Department in question.

Finally, the Report from the Department did not indicate any consideration or allowance for any rate of growth in the number of residential recovery homes, such as are being experienced by local governments throughout the state.

Critique of Section VI- Survey of Legal Authority

Case Law

Out of all of the cases cited in this section, none of them are on point as they might relate to a registration process only. All of the cases cited deal with the regulation of recovery residences. Failure to review the case law for the topic of registration of recovery residences leaves the resultant collection of the data in question.

Critique of Section VII- Benefits and Concerns with Operation

This section of the report is a rather limited review of the literature on the subject of recovery residences. First, it is extremely limited because of the small number of studies researched. Some of the research reviewed is more than 15 years old and the sample sizes of virtually all of the studies reviewed were small. None of the studies cited were conducted in the State of Florida.

For the most part, each of the studies cited selected just one side of the issue and did not point out any of the limitations of the research identified in the original studies.

16 years ago, Jason, Ferrari, et al. (1997) looked at 11 recovery residences in the State of Illinois. The Department's Report failed to mention that while 48 individuals were interviewed in this study, 42 individuals actually left the program early and 42 were evicted from the program (p. 333), thereby reducing the sample size below a level of statistical validity. The Department's Report failed to mention that the original study included some significant limitations to their research, including that the "data are exploratory, based only on men from a single Midwestern state. No information regarding their volume, pattern, or style of abuse was collected. [Therefore], it is not possible to generalize to male Oxford House residents across the United States..." (p. 335) [emphasis added]. Further, "Another major limitation in this study involves the fact that the Oxford Houses included in this study had only recently opened in the state of Illinois [emphasis added] (p. 355).

Jason, Roberts, & Olson (2005) also looked at recovery residences in the State of Illinois. Their study was limited to just 64 individuals from randomly selected homes in the northern section of the state. Of the 64 individuals interviewed only 25 residents were aware of the recovery residence. The limitation of such a study is the sample size used and the specific geographical location of the sample.

Ferrari, Aase, Mueller, & Jason (2009) reported on landlords of self-governed recovery homes. Their research indicates that “landlords of community-based recovery homes are an under-researched group” (p. 349) [emphasis added]. While the Department’s Report does its best to represent the statistical reporting from this study, many of the numbers are misreported (pp. 352-353). In addition, the Department’s Report fails to identify many of the limitations of this study, including the disclosure that the authors believed that “a self-selection bias [was] highly possible [in this study] as landlord participant contacts were provided by Oxford House, Inc.; participants only included those willing to respond to the survey; and because the entire sample evidenced high community service orientations that may not be representative of all landlords” (p. 353). Additionally, the authors believed that “the sample size [in their study] was not as large as [desired], which limited [the] number of meaningful comparisons that it was possible to make” (p. 353).

This section of the Report fails to cite a number of recent, relevant studies on the subject assigned by the Legislature; a few of which are herein mentioned. Gorman, Marinaccio, & Cardinale (2010) suggest that “the facilities and operators of individual sober living homes vary greatly, but it is often argued that the location of the home in a single-family neighborhood is critical to fostering addiction recovery by avoiding the temptations other environments can create” (p. 607). Further, “because of the vast diversity in location and structure, the sober living model can be easily abused by landlords seeking to maximize rents. Because nearly any single family home can become a ‘sober living home’, by adopting that label, some single family homes house upwards of twenty or thirty individuals under the guise of ‘sober living’; in reality, they provide little in the way of actual treatment” (p. 607). Gorman, Marinaccio, & Cardinale (2010) go on to write “this makes regulation of sober living homes by public agencies difficult, as they are forced to differentiate between legitimate homes and those abusing the system. Complications are compounded by various state licensing provisions that regulate facilities providing care for the disabled or for those recovering from addiction” (p. 607).

Gorman, Marinaccio, & Cardinale (2010) add a nuance to the trend of the opening of recovery residence facilities which was not reported by the Department of Children and Families. In 2007 the American Legislative Exchange Council, in their report *A Plan to Reduce Prison Overcrowding and Violent Crime* wrote about sober homes that “such facilities have increased over the past several years, and may increase dramatically in the near future, given the government’s plans to reduce prison overcrowding and federal court-ordered reductions in prison populations (as cited in Gorman, Marinaccio, & Cardinale, 2010, p. 610).

Commenting on the lack of strong evidence in the field of understanding the impact of recovery residences on communities, Taniguchi & Salvatore (2012) reported that “siting of drug and alcohol treatment facilities is often met with negative reactions because of the assumption that these facilities increase crime by attracting drug users (and possibly dealers). This assumption, however, rests on weak empirical footings that have not been subjected to strong empirical analysis” (p. 95) [emphasis added]. Their study suggested that “paying attention to both the density and proximity of facilities in and around neighborhoods, results showed that the criminogenic impact of treatment facilities depended largely on neighborhood socio-economic status” (p. 95).

Summary

The Florida State Legislature directed the Department of Children and Families to develop a plan to determine whether sober homes should be licensed or registered. The Department was charged with identifying the number of sober homes operating in Florida, identifying benefits and concerns in connection with the operation of sober homes, and the impact of sober homes on effective treatment of alcoholism and on sober house residents and surrounding neighborhoods. The Department was also

charged with examining the feasibility, cost and consequences of licensing, regulating, registering, or certifying sober homes and their operators.

Based upon the undated Report released on or about September 5, 2013, the Department of Children and Families has failed to accomplish any of these assignments from the Legislature. The methodology of data collection was lopsided; at best. The questions asked of respondents were such that the resultant collection of the data can easily be questioned as to its reliability and validity. Anecdotal evidence of the number of recovery residences currently operating in the state is also not supported by any valid criteria. The review of the literature on the subject is pointed in one particular direction, is extremely limited in scope, has little or no relevance for what is happening in the State of Florida, and does not discuss any of the limitation found in the original research. Finally, recent relevant qualitative and quantitative studies on the topic of sober homes (recovery residences) were left out of the Report.

Further study and analysis is therefore recommended.

REFERENCES:

- Gorman, Matthew M.; Marinaccio, Anthony; Cardinale, Christopher (2010). Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug Alcohol Addiction. *The Urban Lawyer*, 43(3), 607-614.
- Taniguchi, Travis A.; Salvatore, Christopher (2012). Exploring the relationship between drug and alcohol treatment facilities and violent and property crime: A socioeconomic contingent relationship. *Security Journal*, 25(2), 95-115.

Annette Culp/D20/DCF
09/13/2013 04:39 PM

To Elizabeth Hockensmith/D20/DCF@DCF
cc
bcc
Subject Fw: Re:DCF's Draft Sober Home Plan for Comment by Sept
12

Annette C. Culp
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----- Forwarded by Annette Culp/D20/DCF on 09/13/2013 04:39 PM -----



Carol Hyden
<CHyden@fadaa.org>
09/13/2013 08:35 AM

To SAMH@DCF
cc "auniquetransition@yahoo.com"
<auniquetransition@yahoo.com>
Subject FW: Re:DCF's Draft Sober Home Plan for Comment by Sept
12

TO: Dept. of Children and Families

I am forwarding these comments that were sent from the director of One Unique Transition in Tampa.

Carol Hyden
Exec. Asst.
FADAA

From: M DeBellotte-Torres [mailto:auniquetransition@yahoo.com]
Sent: Thursday, September 12, 2013 5:47 PM
To: Carol Hyden
Subject: Re:DCF's Draft Sober Home Plan for Comment by Sept 12

Dear Carol,

I was not successful opening the document at the computer that I am on because my software is not the most current version. I want to meet the deadline for comments but cannot access it. Below are my comments.

"The underlying concern about creating a regulating body for Sober Living, Transitional Communities, Re-Entry and Recovery Homes in Florida is that regulations may begin to limit the availability of housing. In fact, some of the more effective

methods to working with this population including peer to peer coaching is often a part of these housing structures. Many who have been successful in this transition to a more conventional way of living are very passionate about supporting those who are working the process. Unfortunately, this means that often they themselves have criminal history and long history of drug use. The concern is that a regulatory body run by Division of Children and Family may create limits that will burden the community by closing many of the smaller privately run homes that are significantly supported by people who have, "walked the walk" and made it through that seek to give back.

Solutions that seek to create training, accountability and monitoring for such persons to effectively work in the field and give back would be a win-win."

Regards,

Margaret DeBellotte-Torres, BA
Director of One Unique Transition
402 E Palm Ave
Tampa, FL 33602
704-277-8714



Recovery Residence Report
Fiscal Year 2013-2014 General Appropriations Act
The Office of Substance Abuse and Mental Health

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I. SUMMARY

This report seeks to lay out options for the Legislature to consider as it relates to the licensure/regulation of “sober homes” or “recovery residences”.

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In this document the Department attempts to illustrate the challenging legal and constitutional questions raised by the prospect of regulating housing providers that provide sober housing opportunities for a “protected class” under the Americans with Disabilities Amendments Act and the Fair Housing Amendments Act. The policy question to be decided by the Legislature is how do we provide protection to the residents of these unregulated homes, some of which exploit and abuse the very residents that they are created to protect?

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It is worth noting from our numerous field meetings and public workshops that most of the interested parties, including sober house operators and local governments, agree with the need for some kind of oversight of the unregulated homes. Many are already licensed under an existing treatment provider as part of their continuum of care. The exponential growth of unregulated “sober homes” and the corresponding challenges they create must be addressed by the Florida Legislature. It has been illustrated to the Department that many such homes are acting as for-profit entities, collecting rent, accepting patient referrals, managing treatment schedules, and conducting drug testing without any of the protections afforded to clients of their licensed counterparts. In many instances doctors are lending their licenses to the homes so that insurance can be charged (often times at exorbitant rates) for these services by connecting them with IOP treatment. The Federal Government has allowed the States to regulate treatment facilities and to provide consumer protection standards as well as standards for medical care and insurance, but numerous attempts by local governments to impose the same regulations, standards, and accountability for these homes that are operating under the label of “sober house”, despite what is actually occurring within some of the houses, have been ruled as unconstitutional.

All interested parties have stated that they wish to continue to encourage like-minded individuals to seek out and to live together in a democratically run sober environment free from government intrusion, however, all interested parties have also stated grave concerns with what is actually occurring in some of these “sober homes” that are being advertised as safe havens but are actually being run by unscrupulous operators.

II. INTRODUCTION

The 2013-2014 General Appropriations Act (GAA) directed the Department of Children and Families (Department) to develop a plan to determine whether sober homes should be licensed or registered:

From the funds in Specific Appropriations 370 through 380, the department shall develop a plan to determine whether to establish a licensure/registration process relating to residential facilities that provide managed and peer-supported, alcohol-free and drug-free living environments for persons recovering from drug and alcohol addiction, commonly referred to as sober homes. This plan shall identify the number of sober homes operating in Florida, identified benefits and concerns in connection with the operation of sober homes, and the impact of sober homes on effective treatment of alcoholism and on sober house residents and surrounding neighborhoods. The department shall also examine the feasibility, cost, and consequences of licensing, regulating, registering, or certifying sober homes and their operators. The department shall consult with interested parties, including, but not limited to, the Florida Alcohol and Drug Abuse Association, local governments, stakeholders in the chemical abuse treatment community, and

operators of sober houses. The plan shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2013.¹

III. METHODOLOGY

Sober homes are also known as sober living homes, recovery residences, or alcohol and drug free housing. These terms are considered synonymous and used interchangeably.² For the purposes of this report, the Department has used the term recovery residence.

The Department held both public meetings to receive commentary, and established an online survey to collect public feedback. The Department also consulted with interested parties, including but not limited to, the Florida Alcohol and Drug Abuse Association (FADAA), Florida Association of Recovery Residences (FARR), the Florida League of Cities (FLC), the Florida Association of Counties (FAC), substance abuse treatment providers, local governments, owners and operators of recovery residences, and concerned citizens.

¹Ch. 2013-040, L.O.F.

² When citing other sources, an attempt is made to use the terminology used by the original authors.

The Department posted the following questions on its website:³

- Should recovery residences be regulated?
- How many recovery residences operate in Florida? What is your methodology for arriving at this number?
- What would be the feasibility, cost and consequence of licensing, regulating, registering, or certifying recovery residences and their operators?
- If there were to be a regulating body, what is the appropriate level of government for it to operate at?
- What should be included in any regulatory framework for a recovery residence?
- Are there any other issues that need to be addressed?

Public comment is included in this report, both in summary and raw form. To protect the anonymity of the public, the Department recorded respondent's names by initials.⁴

IV. What is a Recovery Residence?

Researchers have proposed the following essential characteristics of a recovery residence:

- An alcohol and drug-free living environment for individuals attempting to establish or maintain abstinence.
- No treatment services offered on site, but attendance at self-help groups such as Alcoholics Anonymous and Narcotics Anonymous may be either mandated or strongly encouraged.
- Compliance with house rules.⁵
- Residents are responsible for paying rent and other costs.
- No limitations on length of stay as long as residents comply with house rules.⁶

³ See, www.myfloridafamilies.com

⁴ However, in compliance with the Sunshine Law, the Department has the full name of people who provided it. This information will be made available as a result of a public records request.

⁵ Such as maintaining abstinence, paying rent and other fees on time, participating in house chores and meetings.

⁶ Polcin, D. L., Korcha, R. A., Bond, J., & Galloway, G. (2010). Sober Living Houses for Alcohol and Drug Dependence: 18-Month Outcomes. *Journal of Substance Abuse Treatment*, 38, 356-365; Polcin, D.L., Korcha, R.A., Bond, J., Galloway, G.P., & Lapp, W. (2010). Recovery from Addiction in Two Types of Sober Living Houses: 12-Month Outcomes. *Addiction Research and Theory*, 18(4), 442-455.

These characteristics help distinguish recovery residences from other housing options. For example, unlike most halfway houses, which receive government funding and limit the length of stays, recovery residences are financially self-sustaining through rent and fees paid by residents and there is no limit on length of stay for those who abide by the rules.⁷ Furthermore, unlike “wet housing” where residents are allowed to consume alcohol or other drugs and “damp housing” that discourages but does not exclude individuals for consuming, recovery residences are abstinence-based environments where consumption of alcohol or other drugs results in eviction.⁸

The Alcohol and Drug Abuse Division of Hawaii’s Department of Health recommended the following definition in a recent Task Force report:

[A] “Clean and sober home” means a dwelling that is designed to provide a stable, independent environment of alcohol and drug free living conditions to sustain recovery and that is shared by unrelated adult persons who are attempting to maintain a life of sobriety.⁹

The Massachusetts Department of Public Health’s Bureau of Substance Abuse Services considered Alcohol and Drug Free Housing as a form of group housing that offers an alcohol and drug free living environment for individuals recovering from alcohol or substance use disorders and where, as a condition of occupancy, residents agree not to use alcohol or other substances.¹⁰ More specifically, Alcohol and Drug Free Housing (ADF) refers to:

...the variety of group housing arrangements, however designated or legally structured, that provide an alcohol and drug free living environment for people in recovery from substance use disorders. ADF Housing is also referred to as sober housing, alcohol and substance free housing, clean-and-sober housing, alcohol-free or sober-living environments, three-quarter way houses, re-entry homes and other similar names. ADF Housing includes both transitional and permanent housing models which may be operated by a variety of entities, including state and federal government agencies, licensed mental health and addiction treatment agencies, for-profit and non-profit organizations, the occupants themselves, or private landlords.¹¹

⁷ Polcin, D.L., Korcha, R.A., Bond, J., Galloway, G.P., & Lapp, W. (2010). Recovery from Addiction in Two Types of Sober Living Houses: 12-Month Outcomes. *Addiction Research and Theory*, 18(4), 442-455; Polcin, D. L., Korcha, R., Bond, J., & Galloway, G. (2010). Eighteen-Month Outcomes for Clients Receiving Combined Outpatient Treatment and Sober Living Houses. *Journal of Substance Use*, 15(5), 352-366.

⁸ Jason, L. A., Mericle, A. A., Polcin, D. L., & White, W. L. (in press, 2013). The Role of Recovery Residences in Promoting Long-term Addiction Recovery. *American Journal of Community Psychology*; National Association of Recovery Residences. (2012). A Primer on Recovery Residences: FAQs from the National Association of Recovery Residences. Retrieved from www.narronline.com/NARR_formation_website/Recovery%20Residence%20Primer%20-%20Long.pdf.

⁹ State of Hawaii, Department of Health, Alcohol and Drug Abuse Division. (2012). *Relating to the Clean and Sober Homes and Halfway Houses Task Force*. Report to the Twenty-Seventh Legislature, State of Hawaii, 2013. Provided via email from Mardelle Gustilo, Hawaii State Department of Health, on June 24, 2013.

¹⁰ Massachusetts Department of Public Health, Bureau of Substance Abuse Services. *Study Regarding Sober (Alcohol and Drug Free) Housing In Response to Chapter 283, Section 10, of the Acts of 2010*. Retrieved from www.mass.gov/eohhs/docs/dph/substance-abuse/adf-housing-study.rtf.

¹¹ See, www.mass.gov/eohhs/docs/dph/substance-abuse/adf-housing-study.rtf, site accessed August 18, 2013.

V. Number of Recovery Residences Operating in Florida

This inquiry was made through a variety of media, as an attempt to triangulate an estimate of the number of residences in Florida. Regional Department substance abuse and mental health staff, FARR, FLC, and the FAC were asked to identify the number of recovery residences operating in their respective areas. However, despite the requests made to external organizations, there has been no response that assists the Department identify the number of recovery residences at the time of writing.

Historically, to estimate the impact on the Department of proposed legislation, the following methodology has been deployed to provide an estimated range for the number of recovery residences operating in Florida. In 2011, it was estimated that there were around 400-500 such residences in Palm Beach County. This then applied to as a percentage of the population was then projected statewide, resulting in a range of 5,704 to 7,130 recovery residences.

VI. Survey of Legal Authority

To understand the array of legal authority, this section of the report will address the legal authority related to recovery residences by outlining federal and state authority, and reviewing the major trends in case law.

Federal Authority

There are two federal statutes that are particularly relevant to this discussion. The Fair Housing Act (FHA),¹² and the Americans with Disabilities Act (ADA).¹³ Both of these statutes provide the federal

¹² The Fair Housing Act (FHA) was enacted by the Civil Rights Act of 1968, Pub. L. 90-284 (1968), amended by the Fair Housing Amendments Act of 1988, Pub. L. 100-430 (1988), codified at 42 U.S.C. s. 3601, *et. seq.*

¹³ Title II of The Americans with Disabilities Act (ADA) prohibits the discrimination by public entities as it relates to housing on the basis of disability. The ADA was enacted by the Americans with Disabilities Act of 1990, Pub. L. 101-336 (1990), amended by the ADA Amendments Act of 2008, Pub. L. 110-325 (2008), codified at 42 U.S.C. s.12101, *et. seq.*

government with enforcement mechanisms to challenge an action in relation to housing. In a private action, the plaintiff may bring suit for actual damages,¹⁴ which include special damages,¹⁵ and general damages for emotional pain and suffering attributable to the discriminatory practice.¹⁶ Punitive damages may also be awarded.¹⁷ Equitable remedies may also apply.¹⁸ In addition to this, the court also has the discretion to award fees and costs.¹⁹

Specifically, the FHA prohibits discrimination on the basis of disability. In terms of the FHA, disability is defined to include people in recovery from substance use disorders.²⁰ Such protection does not extend to either a person who continues to abuse substances, or has been convicted of manufacture or distribution of a controlled substance.²¹

The most significant affirmative obligation of the FHA requires that a reasonable accommodation be made, when necessary to allow a person with a qualifying disability, equal opportunity to use and enjoy a dwelling.²² There is an exception, for the health, safety and property of others, however, this does not override the reasonable accommodation obligation.²³

The FHA provides a very broad basis for standing to bring suit if a person may be injured by a discriminatory housing practice.²⁴ Further, a third party may bring suit on behalf of a potential resident in a situation where said resident may be discriminated against.²⁵ It should be noted that the FHA does not require the exhaustion of alternative remedies prior to filing suit in federal court.²⁶ In addition to judicial action, an administrative complaint may be filed simultaneously with the United States Department of Housing and Urban Development (HUD).²⁷ HUD may refer cases to the United States

¹⁴ 42 U.S.C. s. 3613(c).

¹⁵ See e.g., *Douglas v. Metro Rental Services, Inc.*, 827 F. 2d 252 (7th Cir. 1987) (Court allowed recovery of expenses to find alternate residence); *Phillips v. Hunter Trails Community Ass'n.*, 685 F. 2d 184, (7th Cir. 1982)(Court allowed recovery of moving expenses); *Moore v. Townsend*, 577 F. 2d 424, (7th Cir. 1978)(Court allowed recovery of temporary lodgings); *Steele v. Title Realty Co.*, 478 F. 2d 380 (10th Cir. 1973) (Court allowed recovery of telephone charges).

¹⁶ See e.g., *Steele*, 478 F. 2d 380.

¹⁷ *Supra*, note 14.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ The ADA defines disability as:

- (A) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (B) A record of such impairment; or
- (C) Being regarded as having such an impairment. See, 42 U.S.C. s. 3602(h).

The FHA defines disability in the same manner. See, 42 U.S.C. s. 12102(1). Federal courts have required a case by case inquiry as to disability. See, *Albertson's Inc. v. Kirkingburg*, 527 U.S. 555, (1999).

²¹ Note, 28 C.F.R. s. 35.131, limits the extension of non-discriminatory practice to a person who may continue to use illicit substances. This does not include alcohol. A public entity is also permitted to test to verify this.

²² 42 U.S.C. s. 3604(f)(3)(B). See, *Oxford House Inc., v. Township of Cherry Hill*, 799 F. Supp. 450, (D.N.J. 1992)(Court held that a reasonable accommodation means changing some rule that is generally applicable to everyone so as to make it less burdensome for a protected class).

²³ 42 U.S.C. s. 3604(f)(9).

²⁴ 42 U.S.C. s. 3602(i).

²⁵ See e.g., *Brandt v. Vill. of Chebanse, Ill.*, 82 F.3d 172, (7th Cir.1996); *Smith & Lee Assocs., Inc. v. City of Taylor, Mich.*, 102 F.3d 781 (6th Cir.1996). But see, *Kessler Institute for Rehabilitation, Inc. v. Mayor and Council of Borough of Essex Fells*, 876 F. Supp. 641, (D N.J. 1995)(Court held that a non-profit advocacy organization lacked standing to intervene).

²⁶ See, e.g., *Pulcinella v. Ridley Tp.*, 822 F. Supp. 204, (E.D. Pa. 1993); *Oxford House, Inc. v. City of Virginia Beach, Va.*, 825 F. Supp. 1251, (E.D. Va. 1993); *Oak Ridge Care Center, Inc. v. Racine County, Wis.*, 896 F. Supp. 867, (E.D. Wis. 1995); *Oliver v. Foster*, 524 F. Supp. 927 (S.D. Tex. 1981); *Concerned Tenants Ass'n of Indian Trails Apartments v. Indian Trails Apartments*, 496 F. Supp. 522 (N.D. Ill. 1980).

²⁷ 42 U.S.C. s. 3610.

Department of Justice(DOJ) to file suit in federal court.²⁸ The United States Attorney General may also bring an action in situations where a “pattern of discriminatory practice” may exist, and a private party whose interests have, or may be harmed, may petition to intervene.²⁹

A violation of the FHA may also constitute a simultaneous violation of the ADA,³⁰ and the Rehabilitation Act.³¹ The ADA also prohibits discrimination on the basis of a substantially limiting impairment.³² Recovery from a substance use disorder has been considered such an impairment.³³

Florida Authority

The Florida Fair Housing Act,³⁴ provides protection against discrimination on the basis of “handicap.” However, the definition of handicap does not include recovery from a substance use disorder.

Authority from other States in the Union Country.

At the time of writing, the Department identified Idaho, Illinois, Massachusetts, Oregon, and Tennessee as providing some sort of legal basis for the operation of a recovery residence, or an equivalent.³⁵ There have been a variety of legislative proposals across the Union country to address the state involvement in relation to the operation of a recovery residence.³⁶

An alternative vehicle used in Hawaii, Kansas and Oklahoma, is an explicit statutory prohibition on a local government implementing ordinances or zoning schemes that discriminate against community based housing for people in recovery.³⁷ Although varying in construction between each state, the general theme has been to define what a recovery residence is, and to statutorily include such as a residence as a single family dwelling.

Case Law

²⁸ This may occur when HUD refers administrative actions to federal court, 42 U.S.C. s. 3612(a), (o); or in cases that involve challenges to zoning or land use regulations, 42 U.S.C. s. 3610(g).

²⁹ 42 U.S.C. s. 3614.

³⁰ In matters of housing discrimination, federal district courts often analyze an alleged violation of the ADA and the FHA as one. *Caron Foundation of Florida, Inc., v. City of Delray Beach*, 879 F. Supp. 2d 1353, (S.D. Fla. 2012) appeal dismissed, (11th Circ. Aug. 16, 2012).

³¹ The Rehabilitation Act of 1973 was enacted by the U.S. Rehabilitation Act of 1973, Pub. L. 93-112 (1973), codified at 29 U.S.C. s. 701 *et. seq.*

³² S. 933 (1990) provides the title of the ADA: “ To establish a clear and comprehensive prohibition of discrimination on the basis of disability.”

³³ See, 28 C.F.R. s.35.104(4)(1)(B)(ii).

³⁴ See, ss. 760.20-760.37, F.S.

³⁵ See, Idaho, IDAHO CODE ANN. 39-302 (11), (2013); Illinois, 20 ILL. COMP. STAT. 301/15-10(f) (2013); Massachusetts, MASS. GEN. LAWS ch. 111B, s. 6A, (2013); Oregon, OR. REV. STAT. s. 430.306(7), (2013); Tennessee, TENN. CODE ANN. S. 33-2-402(2), (2013).

³⁶ See *e.g.*, State Rep. Hennessey and State Sen. Zeldin of New York proposed A06791 and S04697 in the 2013 Legislative Session, a measure which established regulations pertaining to sober living homes.

³⁷ See, Hawaii, HAW. REV. STAT. s. 46-4, (2013); Kansas, KAN. STAT. ANN. s. 12-736, (2013); Oklahoma, OKLA. STAT. tit. 43A-3, s. 417.1, (2013).

A cursory review of the website for the Civil Rights Division Housing and Civil Enforcement Section at DOJ demonstrates that the FHA and ADA are extensively litigated.³⁸ Not only does DOJ bring suit in federal court, it also provides amicus briefs in private suits.

For a housing rule, policy or practice to be challenged pursuant to the FHA,³⁹ federal courts have not required that it be facially discriminatory, but have allowed challenge on the basis of discriminatory intent, or that it has a disparate impact on people with disabilities.⁴⁰ Once a plaintiff has established a prima facie case of housing discrimination, federal courts shift the burden to the defendant to demonstrate a legitimate, nondiscriminatory reason, or that the action furthered a legitimate governmental interest, with no alternative.⁴¹ The courts have, however, held that disability does not require a heightened level of scrutiny for governmental action, in the context of the FHA.⁴²

The FHA provides justifications for housing restrictions that federal courts have narrowly construed. A governmental entity may act on the basis of protecting the public health and safety of other individuals.⁴³ However, courts have observed that this justification may not be used as a guise to impose additional restrictions on protected classes under the FHA.⁴⁴ Additionally, a threat to the public health and safety, or another's property requires objective evidence that is sufficiently recent to be

³⁸ See, <http://www.justice.gov/crt/about/hce/caselist.php>, site accessed August 17, 2013.

³⁹ Specifically, 42 U.S.C. s. 3604(f).

⁴⁰ See e.g., in *Bangerter v. Orem City Corp.*, 46 F.3d 1491, (10th Cir. 1995) (Plaintiff need not prove malice or discriminatory animus of defendant to make a case of intentional discrimination where the defendant expressly treats someone protected by the statute in a different manner than others); *Thornton v. City of Allegan*, 863 F. Supp. 504, (W.D. Mich. 1993), (Not required that the plaintiff prove discriminatory intent, it is sufficient if the plaintiff proves only that the defendant's action had a discriminatory impact or effect); *Potomac Group Home Corp. v. Montgomery County, Md.*, 823 F. Supp. 1285, (D. Md. 1993) (Court held plaintiff may prevail by showing discriminatory intent or by showing discriminatory impact, and that to prove discriminatory intent, the plaintiff need only show that the handicap of a member of a protected group was in some part the basis of the policy being challenged). *But see, Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 1339, 1352, (S.D. Fla. 2007)(Court held that the 11th Circuit had not adopted a standard to determine disparate impact, and did not find the city meet the justifications of *Bangerter*, 46 F.3d 1491).

⁴¹ See e.g., *Tsombandis v. West Haven Fire Dept.*, 180 F. Supp. 2d 262 (D. Conn. 2001), order aff'd in part, rev'd in part on other grounds, 352 F.3d 565, (2d Cir. 2003)(Court held that governmental entity engages in discriminatory practice by refusing to make reasonable accommodations to action); *U.S. v. City of Taylor, MI.*, 13 F.3d 920, (6th Cir. 1993), reh'g and suggestion for reh'g en banc denied, (Mar. 11, 1994) and on remand to, 872 F. Supp. 423, (E.D. Mich. 1995), aff'd in part on other grounds, rev'd in part on other grounds, 102 F.3d 781, (6th Cir. 1996)(Court held it is not necessary for plaintiff to prove discriminatory intent motivated by animus); *Human Resource Research and Management Group, Inc. v. County of Suffolk*, 687 F. Supp. 2d 237 (E.D. N.Y. 2010) (Plaintiff can establish discrimination in the form of: (1) disparate treatment or intentional discrimination; (2) disparate impact of a law, practice, or policy on a covered group; or (3) by demonstrating that the defendant failed to make reasonable accommodation to afford people with disabilities an equal opportunity to live in a dwelling).

⁴² See e.g., *Familystyle of St. Paul, Inc. v. City of St. Paul, Minn.*, 923 F.2d 91 (8th Cir. 1991), reh'g denied, (Feb. 15, 1991)(Court held that the relevant question is whether legislation is rationally related to legitimate government purpose); *Pulcinella*, 822 F. Supp. 204, (Court held that violation of FHAA would not amount to a Constitutional violation, because disability does not give rise to constitutionally protected class under the Equal Protection or Due Process clause of the Fourteenth Amendment). *But see, Bangerter*, 46 F. 3d 1491, (Court held that the inability to assert a right under the Fourteenth Amendment is not of concern, because the FHA provided a basis to determine the justification of a restriction on housing for the disabled).

⁴³ 42 U.S.C. s. 3604(f)(9).

⁴⁴ See e.g., *Bangerter*, 46 F.3d 1491. (Any requirements placed on housing for a protected class based on the protection of the class must be tailored to needs or abilities associated with particular kinds of disabilities, and must have a necessary correlation to the actual abilities of the persons upon whom they are imposed); *Association for Advancement of the Mentally Handicapped, Inc. v. City of Elizabeth*, 876 F. Supp. 614, (D.N.J. 1994), (Court held state and local governments have the authority to protect safety and health, but that authority may be used to restrict the ability of protected classes to live in the community); *Pulcinella*, 822 F. Supp. 204 (Special conditions may not be imposed under the pretext of health and safety concerns).

credible and not unsubstantiated inferences.⁴⁵ The action of a governmental entity may also be justified if the restriction is found to be beneficial or benign.⁴⁶

Federal courts have held that the FHA was intended by Congress to have a broad reach for liability. This includes not only the actors directly involved in a real estate transaction, but also actors that affect the availability of housing.⁴⁷ It should also be noted that federal courts have held governmental officials personally liable for decisions that violate the FHA.⁴⁸

In relation to housing for residents in recovery from substance abuse, or mental illness, federal courts have found that halfway houses, group homes, sober houses or other community housing arrangements used as residences were dwellings, and as such protected by the FHA.⁴⁹ As a protected class, federal courts have held that conditions placed on housing for people in recovery from either state or sub-state entities, such as licenses or conditional use permits, may in application be overbroad and result in violations of the FHA and ADA.⁵⁰ Further to this, federal courts have enjoined state action that is predicated on discriminatory local government decisions.⁵¹

⁴⁵ *Cason v. Rochester Housing Authority*, 748 F. Supp. 1002, (W.D.N.Y. 1990). See, *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329 (D.N.J. 1991) (Generalized assumptions, subjective fears and speculation are insufficient to prove direct threat to others). But see, *Roe v. Housing Authority of City of Boulder*, 909 F. Supp. 814, (D. Colo. 1995) (Court held that no reasonable accommodation could be made to house individual with mental illness, and eviction was justified); *Foster v. Tinnea*, 705 So. 2d 782 (La. Ct. App. 1st Cir. 1997) (Court upheld an eviction, on the basis of evidence showing that tenants' son posed a threat to others).

⁴⁶ See e.g., *Smith & Lee Associates, Inc. v. City of Taylor, Mich.*, 102 F.3d 781, (6th Cir. 1996), (Court held that unlawful discrimination often takes the form of special rules that are allegedly designed to benefit handicapped persons); *Horizon House Developmental Services, Inc. v. Township of Upper Southampton*, 804 F. Supp. 683 (E.D. Pa. 1992), judgment aff'd without discussion, 995 F.2d 217 (3d Cir. 1993) (Court held that the motives of the drafters of an ordinance which is facially discriminatory, whether benign or evil, are irrelevant to a determination of the lawfulness of the ordinance); *Familystyle of St. Paul, Inc.*, 923 F.2d 91, (The court noted that spacing requirement served a valid and legitimate goal of the state and the city by addressing the need to provide services for the mentally disabled in mainstream community settings and by guaranteeing that facilities are located in the community); *Valley Housing LP v. City of Derby*, 802 F. Supp. 2d 359 (D. Conn. 2011) (Court held that claim of non-discriminatory zoning enforcement was a pretext for discrimination); *U.S. v. Borough of Audubon, N.J.*, 797 F. Supp. 353 (D.N.J. 1991), judgment aff'd without discussion, 968 F.2d 14(3d Cir. 1992), (Court held that a municipality applying restrictive zoning classification to preclude the establishment of a group home for recovering alcoholics and drug users cannot avoid a violation by arguing that its actions were merely a response to community sentiment). But see, *Oxford House-C v. City of St Louis*, 843 F. Supp. 1556, (E.D. Mo. 1994), judgment rev'd on other grounds, 77 F. 3d 249, (8th Cir. 1996), cert. denied, 117 S. Ct. 65, (U.S. 1996) (Court upheld legitimate government interest in decreasing congestion, traffic and noise in residential areas).

⁴⁷ See e.g., *Michigan Protection and Advocacy Service, Inc. v. Babin*, 18 F.3d 337, (6th Cir. 1994), *City of Peeskill v. Rehabilitation Support Services, Inc.*, 806 F. Supp. 1147, (S.D.N.Y. 1992) (Court held that city seeking to prevent the acquisition of a building to be used as transitional living violated FHA and state law).

⁴⁸ See e.g., *Samaritan Inns. V. District of Columbia*, 114 F. 3d. 1227, (D.C. Cir. 1997) (Court held that officials reversing decision based on public pressure were not entitled to qualified immunity). But see, *O'Neal by Boyd v. Alabama Dept. of Public Health*, 926 F. Supp. 1368, (M.D. Ala. 1993) (Court held that state officials are entitled to immunity when conduct does not violate established statutory or constitutional rights that a reasonable person would have known).

⁴⁹ See, *Connecticut Hosp. v. City of New London*, 129 F. Supp. 2d 123, (D. Conn. 2001).

⁵⁰ See e.g., *Oxford House-C*, 843 F. Supp. 1556, (Court held that city singled out plaintiffs for zoning enforcement and inspections, on the basis of disability, plaintiff demonstrated city was ignoring zoning violations from people without disabilities); *Marbrunak v. City of Stow, OH.*, 947 F. 2d 43, (6th Cir. 1992) (Court held conditional use permit requiring health and safety protections was an onerous burden); *U.S. v. City of Baltimore, MD*, 845 F. Supp. 2d. 640 (D. Md. 2012) (Court held that conditional ordinance was overbroad and discriminatory); *Children's Alliance v. City of Bellevue*, 950 F. Supp. 1491, (W.D. Wash. 1997) (Court held zoning scheme establishing classes of facilities was overbroad, and created an undue burden on a protected class); *Oxford House-Evergreen*, 769 F. Supp. 1329, (Court held that refusal to issue permit was based on opposition of neighbors, not on protection of health and safety as claimed); *Potomac Group Home, Inc.*, 823 F. Supp. 1285, (Court held that county requirement for evaluation of program offered at facility at public board. At review board, decisions were based on non-programmatic factors, such as neighbor concerns. Further to this, the court held that the requirement to notify neighboring property and enumerated civic organizations violated the FHA). But see, *U.S. v. Village of Palatine, Ill*, 37 F. 3d 1230, (7th Cir.

In Florida, the most recognized case is that of *Jeffrey O. v. City of Boca Raton*.⁵² An ordinance promulgated by the City of Boca Raton, was held to be discriminatory to people in recovery for substance use disorders.⁵³ The court, found that the city had not demonstrated that there was no less discriminatory alternative means to further a legitimate government interest.⁵⁴

VII. Benefits and Concerns with Operation

To identify the benefits and concerns in connection with the operation of recovery residences, this section presents a research review and a summary of concerns and issues identified by members of the public.

Research Review

Researchers studied 132 men from 11 recovery residences in Illinois. Initial interviews were conducted with individuals who had been a resident for at least two weeks, but no more than six weeks. Only 48 participants provided data at a second follow-up interview six months later. These 48 individuals were asked to report on positive and negative experiences. The following results were obtained with regard to negative experiences:

1994)(Court held village did not fail to make reasonable accommodation because plaintiff never applied for a special use permit); *Association for Advancement*, 876 F. Supp. 614, (Court dismissed argument that dispersal requirement protected governmental interest in preserving residential character of neighborhood); *Oxford House, Inc. v. City of Virginia Beach, Va.*, 825 F. Supp. 1251, (E.D. Va. 1993)(Court held that public appeal process to denial of permit was reasonable accommodation), *City of St. Joseph v. Preferred Family Healthcare, Inc.*, 859 S.W.2d 723, 2 A.D.D. 1335 (Mo. Ct. App. W.D. 1993), reh'g or transfer denied, (July 27, 1993) and transfer denied, (Sept. 28, 1993)(Court upheld ordinance limiting the number of unrelated people living together, emphasizing ordinance applied equally to all).

⁵¹ See e.g., *Larkin v. State of Mich.* 883 F. Supp. 172, (E.D. Mich. 1994), judgment aff'd 89 F. 3d 285, (6th Cir. 1996)(Court held there was no rational basis for denial of license on the basis of dispersal requirement, and local government's refusal to permit. The court did find, however, that the city was not a party to the law suit because the state statute did not mandate a variance); *Arc of New Jersey, Inc., v. State of N.J.* 950 F. Supp. 637, D.N.J. 1996)(Court held that municipal land use law, including conditional use, spacing and ceiling quotas violated FHA). *But see, Charter Tp. of Plymouth v. Department of Social Services*, 503 N.W. 2d 449 (Mich. 1993)(Court held statute did not violate FHA because it did not prohibit protected class from obtaining housing); *Familystyle of St. Paul, Inc.* 923 F. 2d 91, (Court upheld state and local action on the basis of deinstitutionalizing protected class). *But see, North Shore-Chicago Rehabilitation Inc. v. Village of Skokie*, 827 F. Supp. 497, (N.D. Ill. 1993)(Court held that municipalities could not rely on the absence of a state licensing scheme to deny an occupancy permit); *Easter Seal Soc. of New Jersey, Inc. v. Township of North Bergen*, 798 F. Supp. 228 (D.N.J. 1992)(Court held that city denial of permit on the basis of failure to obtain state license was due to the city's discriminatory enforcement of zoning enforcement); *Ardmore, Inc. v. City of Akron, Ohio*, 1990 WL 385236 (N.D. Ohio 1990)(Court held granted a preliminary injunction against the enforcement of an ordinance requiring conditional use permit, even though it was applied to everyone, because Congress intended to protect the rights of disabled individuals to obtain housing).

⁵² 511 F. Supp. 3d 1339.

⁵³ Specifically the court found that the language singled out recovering individuals who would be residing in a substance abuse treatment facility. *Id* at 1349.

⁵⁴ The court held that the city had a legitimate interest in preservation of residential character, however, did not demonstrate that there was a less discriminatory definition of family. *Id* at 1353.

- 31.3% experienced “personality conflicts.”
- 22.9% experienced “lack of cooperation among members.”
- 12.5% experienced a “cramped living space.”
- 12.5% experienced “personal financial troubles.”
- 10.4% experienced an “overly structured/authoritarian setting.”
- 8.3% experienced an “unstructured and poorly governed setting.”⁵⁵

Researchers interviewed 64 individuals from randomly selected houses in northern Illinois that were in proximity to a recovery residence. Thirty-two of these individuals lived directly next to one, and 32 lived one block away.⁵⁶ They found that residents in 69% of houses next to recovery residence knew of the existence of it, versus only 9% of residents in houses that were a block away. Qualitative data was collected from the 25 residents who knew of its existence. When asked if they had any concerns about its location in their neighborhood, the following responses were obtained:

- 21 said no.⁵⁷
- 4 said yes.⁵⁸

When these 25 residents were asked if they could see any benefits to having the residence in their neighborhood, they provided the following responses:

- 17 responded yes.⁵⁹
- 8 did not know of any benefits.⁶⁰

Researchers physically inspected 11 recovery residences for women and 44 for men in 2002 in Virginia, Illinois, and Hawaii. An intoxicated or impaired person present was identified near⁶¹ only 1.9% of houses and a drug dealer present was identified near only 3.8% of houses. The physical location of bars or pubs nearby occurred in about 30% of houses.⁶²

In 2008, researchers contacted 90 recovery residence landlords and solicited their participation in a voluntary and anonymous survey.⁶³ Responses were received from 30 landlords, including 18 who rented solely to recovery residences and 12 who rented to both, and other tenants. All 30 indicated that

⁵⁵ Jason, L. A., Ferrari, J. R., Smith, B., Marsh, P., Dvorchak, P. A., Groessl, E. J., Pechota, M.E., Curtin, M., Bishop, P. D., Kot, E., & Bowdin, B. S. (1997). Explanatory Study of Male Recovering Substance Abusers Living in a Self-Help, Self-Governed Setting. *Journal of Mental Health Administration*, 24(3), 332–339.

⁵⁶ I.E., not on the immediate block.

⁵⁷ Neighbours commented, for example: “Guys are friendly.”; “They just proved to be good neighbors.”; “No trouble from them.” Jason, L. A., Roberts, K., & Olson, B. D. (2005). Attitudes Toward Recovery Homes and Residents: Does Proximity Make a Difference? *Journal of Community Psychology*, 33(5), 529-535.

⁵⁸ Neighbours commented, for example: “Sometimes cars block my driveway, only when first opened, no problems now.”; “Sometimes a lot of new faces.”; “Louder, more people on street.” *Id.*

⁵⁹ Neighbours commented, for example: “Good lookouts, watch everything.”; “Upkeep of outside is good.”; “No drugs, no parties going on.”; “Take care of property well outside”; “My son plays basketball with guys out in their yard, keeps them out of trouble.”; “Glad to see it’s being done to rehabilitate women, especially who have children.”; “They keep up the yard better than last owner.” *Id.*

⁶⁰ *Id.*

⁶¹ Near was defined as within half a mile. *Id.*

⁶² Ferrari, J. R., Jason, L. A., Blake, R., Davis, M. I., & Olson, B. D. (2006). “This is My Neighborhood”: Comparing United States and Australian Oxford House Neighborhoods. *Journal of Prevention & Intervention in the Community*, 31(1/2), 41-49.

⁶³ Ferrari, J. R., Aase, D. M., Mueller, D. G., & Jason, L. A. (2009). Landlords of Self-Governed Recovery Homes: An Initial Exploration of Attitudes, Opinions, and Motivation to Serve Others. *Journal of Psychoactive Drugs*, 41(4), 349-354.

residents paid rent on time and kept the property in good physical condition and that recovery residences appeared to be better maintained compared to others on their blocks.

Furthermore, 27 indicated that residents built positive relationships with neighbors and 29 reported that recovery residences had suitable furnishings and window coverings. Additionally, according to landlords who were renting to both recovery residences and other renters, excessive noise, rent payment, landlord-tenant communication, and pet problems were less of a problem with them compared to other renters.

Finally, 16 of the 30 participants responded to the following open-ended question - "do you have any other comments about renting to Oxford House residents?"

- 10 out of the 16 responses contained mostly positive comments;
- 4 were mostly negative comments; and
- 2 were neutral comments.

The most common negative themes mentioned wear and tear on the property and potential problems with the neighbours.⁶⁴

According to the Massachusetts Department of Public Health's Bureau of Substance Abuse Services (BSAS):

[The Bureau] is aware of the numerous complaints received regarding ADF Housing operators. These complaints have been lodged by residents of ADF Housing, neighbors and municipal officials. The nature of complaints range from nuisance complaints (noise) to more serious complaints regarding substandard housing conditions, alcohol and drug use on the property, and fatal and non-fatal overdoses of residents. Although BSAS has received frequent complaints about ADF Housing, the majority of complaints are in reference to only a few ADF homes relative to the number of homes that exist in the Commonwealth. In other words, there are many complaints about a few homes and no complaints about the vast majority of others.⁶⁵

According to the American Planning Association:

Community residences have no effect on neighborhood safety. A handful of studies have also looked at whether community residences compromise neighborhood safety. The most thorough study, conducted for the State of Illinois, concluded that the residents of group homes are much less likely to commit a crime of any sort than the average resident of Illinois. Community residences do not generate adverse impacts on the surrounding community. Other studies have found that group homes and halfway houses for persons with disabilities do not generate undue amounts of traffic, noise, parking demand, or any other adverse impacts."⁶⁶

Community residences have no effect on the value of neighboring properties. More than 50 studies have examined their impact on property values probably more than for any other small land use. Although they use a variety of methodologies, all researchers have discovered that group homes and halfway houses do *not* affect property values of even the house next door. They have no effect on how long it takes to sell neighboring

⁶⁴ Ferrari, J. R., Aase, D. M., Mueller, D. G., & Jason, L. A. (2009). Landlords of Self-Governed Recovery Homes: An Initial Exploration of Attitudes, Opinions, and Motivation to Serve Others. *Journal of Psychoactive Drugs*, 41(4), 349-354.

⁶⁵ *Supra*, note 11.

⁶⁶ See, www.planning.org/policy/guides/pdf/communityresidences.pdf, site accessed August 18, 2013.

property, including the house next door. They have learned that community residences are often the best maintained properties on the block. And they have ascertained that community residences function so much like a conventional family that most neighbors within one to two blocks of the home don't even know there is a group home or halfway house nearby.⁶⁷

Florida Public Comment

At public meetings, participants raised the following concerns:

- Residents being evicted with little or no notice.
- Drug testing might be a necessary part of compliance monitoring.
- Unscrupulous landlords, including an alleged sexual offender who was running a woman's program, and a recovery residence owned by a bar owner and attached to the bar.
- Residents dying in recovery residences.
- Lack of regulation and harm to neighborhoods
- Whether state agencies have the resources to enforce regulations and adequately regulate these homes.
- Land use problems, and nuisance issues caused by visitors at recovery residences, including issues with trash, noise, fights, petty crimes, substandard maintenance, and parking.
- Mismanagement of resident moneys or medication.
- Treatment providers that will refer people to any recovery residence.
- Lack of security at recovery residences and abuse of residents.
- The need for background checks.
- The number of residents living in some recovery residences and the living conditions in these recovery residences.
- Activities going on in recovery residences that require adherence to medical standards and that treatment services may be provided to clients in recovery residences. This included acupuncture and urine tests.
- Houses being advertised as treatment facilities and marketed as the entry point for treatment rather than as a supportive service for individuals who are exiting treatment.
- The allegation that medical providers capable of ordering medical tests, and billing insurance companies were doing so unlawfully.
- Alleged patient brokering, in violation of Florida Statute.⁶⁸

Several concerns were also raised in written responses to the Department. According to stakeholders representing the city of Port St. Lucie, regulation or certification is needed to "ensure that operators of the facilities have the adequate training and experience to provide the services which are needed to assist in the recovery process." They also indicated that without regulation or certification "some of them will be nothing more than a boarding house facility."⁶⁹

⁶⁷ *Id.*

⁶⁸ *See,*

www.dcf.state.fl.us/programs/samh/docs/RRPublicMeetings2013/20130710RecoveryResidencePublicMeetingMinReco.pdf;

www.dcf.state.fl.us/programs/samh/docs/RRPublicMeetings2013/20130626RecoveryResidencePublicMeetingMinutes.pdf;

<http://www.myflfamilies.com/service-programs/substance-abuse/recovery-response-2013>, site accessed August 18, 2013.

⁶⁹ *See,* www.dcf.state.fl.us/programs/samh/docs/RRPublicMeetings2013/20130625PortStLucieResponse.pdf, site accessed August 18, 2013.

Similarly, according to stakeholders representing the city of Delray Beach, “we have seen far too many of these residents evicted at all hours, subjected to abusive behavior and worse.” They indicate that recovery residences should be required to demonstrate “compliance with life safety standards for the residences and have background check requirements for the operators.” They also raised the following concerns:

The lack of state oversight and regulation has made sober house tenants the target of unscrupulous landlords who prey on tenants/residents by ‘flipping’ the same bed, insisting on several months’ rent up front, and then evicting someone for rules violations, and re-renting the same room/bed. Some owners put “rule-breakers” out on the curb, with no alternative housing, which often leads to an increase in homelessness and crime. Even worse is that there have been situations where the operator is a newly recovered individual who begins using drugs/alcohol again and the whole house ends up in disarray. Further, some operators have criminal backgrounds as sexual offenders...In Delray Beach, we had a problem with women being sexually assaulted by the operator of the house that is supposed to be a safe haven. We also have a sober house attached, owned, and operated by the same owner as the adjacent bar...[]In Delray Beach we have had people die in sober houses due to lack of state oversight or regulation...There seems to be a lot of insurance fraud occurring within these homes whereby they are charging obscene amounts of money for simple procedures such as urine tests. This is simply another way that the operators abuse their tenants/patients and use this vulnerable population to maximize profits.⁷⁰

VIII. Impact of Recovery Residences

This section outlines the impact of recovery residences to the treatment of substance use disorders, and neighbourhoods.

Treatment

Several studies report alcohol consumption or the severity of alcohol addiction⁷¹ as a separate outcome. Key findings are presented below and all of these studies are also discussed under a later section that identifies the beneficial impacts of recovery residences on house residents.

⁷⁰ See, www.dcf.state.fl.us/programs/samh/docs/RRPublicMeetings2013/20130621DelrayBeachResponse.pdf, site accessed August 18, 2013.

⁷¹ Note, the direction of proviso was to examine the impact of sober homes on alcoholism.

Jason, Davis, and Ferrari collected baseline data on 897 people from 169 Oxford Houses.⁷² They also collected three subsequent waves of data at 4-month intervals. Only 607 participants from the initial measurement wave remained in the study at wave 4. Of this group, only 13.5% reported having used either drugs or alcohol at the final assessment. The average number of days they used alcohol was 3.7 and the number of days they used other drugs was 5.6. Self-efficacy for remaining abstinent from alcohol and other drugs and the percent of participants' social network members who were abstinent or in recovery increased significantly. Additional models controlling for a variety of factors found that length of residency in Oxford House was a significant predictor of abstinence and abstinence self-efficacy. Abstinence self-efficacy was a significant predictor of abstinence. Only 32.6% of the sample remained in an Oxford House throughout the entire study. The remainder left by waves 2, 3, or 4. Compared to participants who stayed in Oxford House across all four waves, individuals who left had higher rates of any substance use over the last 90 days at wave 4 (18.5% versus 3.1%, respectively). This means that 81.5% of those who left the house and were interviewed at the final wave remained consistently abstinent.⁷³

Outcomes Across Wave 1 Through 4				
	Wave 1	Wave 2	Wave 3	Wave 4
% who used alcohol or other drugs	15.7	10.5	9.7	13.5
% who used alcohol	10.1	5.0	7.7	10.3
% who used other drugs	13.3	9.0	7.0	9.8
Days consumed alcohol	2.2	1.4	1.8	3.7**
Days used other drugs	5.5	3.7	2.3	5.6**
Days paid for work	42.0	49.8	50.5	48.4**
Employment income	794.0			941.9**
Total monthly income	981.8			1133.7**
Alcohol abstinence self-efficacy	80.7	80.4	79.3	84.6**
Drug abstinence self-efficacy	80.4	80.8	81.1	84.6**
% of social network abstinent/in recovery for alcohol use	75.0	79.0	79.0	77.0**
% of social network abstinent/in recovery for drug use	90.0%	94.0%	94.0%	93.0%**

** $p \leq 0.01$, two-tailed, based on repeated measures analyses

In an Illinois study, researchers noted:

...those in the Oxford Houses... had significantly lower substance use (31.3% vs 64.8%), significantly higher monthly income (\$989.40 vs \$440.00), and significantly lower incarceration rates (3% vs 9%). Oxford House participants, by month 24, earned roughly

⁷² Jason, L. A., Davis, M. I., & Ferrari, J. R. (2007). The Need for Substance Abuse Aftercare: Longitudinal Analysis of Oxford House. *Addictive Behaviors*, 32(4), 803-818.

⁷³ *Id.*

\$550 more per month than participants in the usual-care group. In a single year, the income difference for the entire Oxford House sample corresponds to approximately \$494,000 in additional production. In 2002, the state of Illinois spent an average of \$23,812 per year to incarcerate each drug offender. The lower rate of incarceration among Oxford House versus usual-care participants at 24 months (3% vs 9%) corresponds to an annual saving of roughly \$119,000 for Illinois. Together, the productivity and incarceration benefits yield an estimated \$613,000 in savings per year, or an average of \$8,173 per Oxford House member.⁷⁴

Borkman, Kaskutas, Room, Bryan, and Barrows presented findings from two outcome studies that specifically included social model programs.⁷⁵ Both of these studies were published as government reports. One report examined 18-month follow-up data on 198 social model program clients in San Diego and found that clients who used only the recovery home were the most likely to be abstaining at follow-up. The other study looked at outcomes among 1,826 clients at social model and nonsocial model residential programs in California. At the 15-month post-treatment follow-up, program graduates from both models reduced the number and frequency of substances used. There was also a relationship between length of stay in social model programs and reductions in substance abuse. For social model program stays of less than 30 days, there was a 36% reduction in substance abuse. For longer stays, there was a 52% reduction in post-treatment substance abuse.⁷⁶

A longitudinal analysis conducted with a national sample of recovering substance abusers living in Oxford Houses found that persons with psychiatric comorbid substance use disorders, compared to those who do not have co-occurring mental illnesses, are not at higher risk for relapse when they reside in self-help residential settings like Oxford House. Furthermore, residents with high psychiatric severity reported decreased psychiatric outpatient treatment utilization over the course of the study.⁷⁷

Kaskutas, Ammon, and Weisner conducted a naturalistic, longitudinal comparison of outcomes for individuals in social model programs and clinical programs.⁷⁸ Researchers obtained 12-month follow-up data with 164 social model clients from two public detoxification programs and two public residential recovery homes and 558 clinical model clients from a mix of inpatient and outpatient programs. After controlling for demographics and baseline problem severity, social model program clients were less likely than clinical model clients to report alcohol and other drug problems at the 1-year follow-up. More specifically, 57% of social model clients reported no alcohol problems, compared to 49% of clinical model clients, and 59% of social model clients reported having no drug problems, compared to 51% of clinical model clients.⁷⁹

⁷⁴ Jason, L. A., Olson, B. D., Ferrari, J. R., & Lo Sasso, A. T. (2006). Communal Housing Settings Enhance Substance Abuse Recovery. *American Journal of Public Health, 96*(10), 1727-1729.

⁷⁵ Borkman, T. J., Kaskutas, L. A., Room, J., Bryan, K., & Barrows, D. (1998). An Historical and Developmental Analysis of Social Model Programs. *Journal of Substance Abuse Treatment, 15*(1), 7-17.

⁷⁶ *Id.*

⁷⁷ Majer, J. M., Jason, L. A., North, C. S., Ferrari, J. R., Porter, N. S., Olson, B., Davis, M., Aase, D., & Molloy, J. P. (2008). A Longitudinal Analysis of Psychiatric Severity upon Outcomes Among Substance Abusers Residing in Self-Help Settings. *American Journal of Community Psychology, 42*, 145-153.

⁷⁸ Kaskutas, L. A., Ammon, L., & Weisner, C. (2003-2004). A Naturalistic Comparison of Outcomes at Social and Clinical Model Substance Abuse Treatment Programs. *International Journal of Self Help and Self Care, 2*(2), 111-133.

⁷⁹ *Id.*

Data from a randomized controlled study was used to conduct a cost–benefit analysis. Economic cost measures were derived from length of stay at an Oxford House residence, and derived from self-reported measures of inpatient and outpatient treatment utilization. Economic benefit measures were derived from self-reported information on monthly income, days participating in illegal activities, alcohol and drug use, and incarceration.⁸⁰

While treatment costs were roughly \$3000 higher for the OH group, benefits differed substantially between groups. Relative to usual care, OH enrollees exhibited a mean net benefit of \$29,022 per person. The result suggests that the additional costs associated with OH treatment, roughly \$3000, are returned nearly tenfold in the form of reduced criminal activity, incarceration, and drug and alcohol use as well as increases in earning from employment... even under the most conservative assumption, we find a statistically significant and economically meaningful net benefit to Oxford House of \$17,800 per enrollee over two years.⁸¹

California Studies

Polcin, Korcha, Bond, and Galloway have undertaken comprehensive studies in California, focusing on Sacramento and Berkley.

Berkley

Polcin et. al., reviewed 55 individuals entering four different sober living homes in Berkeley, California, operated by a specific provider.⁸² These houses were different from free-standing sober living houses because all clients are required to attend outpatient treatment in order to be admitted. However, residents can remain at these houses after they complete treatment for as long as they want as long as they follow the house rules. All participants were interviewed during their first week of entering the houses between January 2004 and July 2006. They were interviewed again 6-months, 12-months, and 18-months, with follow-up rates of 86%, 76%, and 71%, respectively.

Polcin et. al., used generalized estimating equations models in order to include all participants in their analyses even if they missed follow-up interviews. In the year before entering the program, the most common substances residents were dependent on were cocaine, alcohol, cannabis, heroin, and amphetamines. Residents entered the homes with relatively low average Alcohol Severity Index⁸³ scores that were generally maintained at follow-up time points.⁸⁴ According to the researchers, it is important to note that residents were able to retain their improvements even after leaving the residence. Among the residents contacted for follow up interviews 71% had left the residence at 12 months and 86% had left at 18 months.⁸⁵

⁸⁰ Lo Sasso, A. T., Byro, E., Jason, L. A., Ferrari, J. R., & Olson, B. (2012). Benefits and Costs Associated with Mutual-Help Community-Based Recovery Homes: The Oxford House Model. *Evaluation and Program Planning*, 35(1), 47-53.

⁸¹ *Id.*

⁸² Polcin, D. L., Korcha, R., Bond, J., & Galloway, G. (2010). Eighteen-Month Outcomes for Clients Receiving Combined Outpatient Treatment and Sober Living Houses. *Journal of Substance Use*, 15(5), 352-366.

⁸³ The Addiction Severity Index Lite (ASI) is a standardized, structured interview that assesses problem severity in six areas: medical, employment/ support, drug/alcohol, legal, family/social, and psychological. The ASI measures a 30-day period and provides composite scores between 0 and 1 for each problem area. *Id.*

⁸⁴ 0.07 (baseline), 0.06 (6 months), 0.5 (12 months), and 0.11 (18 months). The same pattern was observed for drug severity: 0.05 (baseline), 0.03 (6 months), 0.05 (12 months), and 0.11 (18 months). *Id.*

⁸⁵ *Id.*

Specifically, Polcin et. al., found:

- Residents at 6 months were 16.4 times more likely to report being abstinent.
- Residents at 12 months were 15.0 times more likely to report being abstinent.
- Residents at 18 months were 6.5 times more likely to report being abstinent.⁸⁶

Sacramento County

Polcin, et. al., also studied 245 individuals entering 16 sober living homes in Sacramento County, California, operated by a specific provider.⁸⁷ Participants were recruited and interviewed during their first week of entering the houses between January 2004 and July 2006.⁸⁸ Among the total sample of 245, 89% participated in at least one follow-up interview. Polcin et. al., used the same methodology as with the prior Berkeley study. In the year before entering the program, the most common substances residents were dependent on were methamphetamine and alcohol. Residents entered the homes with low average ASI alcohol scores that showed significant improvement at 6 months and then were generally maintained at subsequent follow-up time points.⁸⁹

There was a statistically significant decrease in the number of months they used drugs or alcohol, from about 3 out of the 6 months before entering the sober living houses to about 1.5 months on average. Even among the 78 individuals who relapsed, there was a significant reduction in the intensity of substance use. The number of days of substance use during the month of heaviest use decreased from an average of 23 days at baseline to 16 days at the 6-month follow up. Furthermore, there were significance improvements in the number of days worked, the percent arrested, and the severity of psychiatric symptoms.⁹⁰

Surrounding Neighborhoods

The American Planning Association's Policy Guide on Community Residences reviewed more than 50 studies and concluded that community residences such as group homes and halfway houses do not have an effect on the value of neighboring properties. Reviews also note that community residences are often the best maintained homes on their block and that many neighbors were not even aware there was such a residence in the neighborhood. Other reviews have found no negative effects on neighborhood safety and that residents of group homes are much less likely to commit a crime of any sort than the average resident.⁹¹

⁸⁶ *Id.*

⁸⁷ Polcin, D. L., Korcha, R. A., Bond, J., & Galloway, G. (2010). Sober Living Houses for Alcohol and Drug Dependence: 18-Month Outcomes. *Journal of Substance Abuse Treatment*, 38, 356-365.

⁸⁸ They were interviewed again at 6-months, 12-months, and 18-months, with follow-up rates of 72%, 71%, and 73%, respectively. *Id.*

⁸⁹ 0.16 (baseline), 0.10 (6 months), 0.10 (12 months), and 0.10 (18 months). The same pattern was observed for drug severity: 0.08 (baseline), 0.05 (6 months), 0.06 (12 months), and 0.06 (18 months). *Id.*

⁹⁰ Polcin, D. L., & Hendersen, D. (2008). A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses. *Journal of Psychoactive Drugs*, 40(2), 153-159.

⁹¹ See, www.narronline.com/NARR_formation_website/Recovery%20Residence%20Primer%20-%20Long.pdf site accessed August 18, 2013.

Researchers reported that, knowledge of the existence of an Oxford House led to improved attitudes toward those in substance abuse recovery and self-run substance abuse recovery homes. They summarized the major findings as follows:

The study's major finding was that residents who lived next to an Oxford House versus those who lived a block away had significantly more positive attitudes concerning the need to provide a supportive environment to those in recovery, the importance of allowing those in substance abuse recovery to live in residential neighborhoods, the need for recovery homes, and the willingness to have a self-run recovery home on their own block...Another important finding was that there were no significant perceived differences in housing prices for those next to and those a block away from the Oxford Houses. In addition, among those interviewees who knew of the existence of the self-run recovery home, the values of their houses had actually increased over a mean of 3 years. These findings suggest that the presence of the Oxford Houses did not lead to reduced values for houses in these communities.⁹²

In 2005, researchers surveyed individuals at an annual Oxford House World Convention. About 84% of participants indicated that they thought living in the Oxford House increased their likelihood of involvement in their neighborhood. Respondents reported participating in the community about 10.6 hours per month on the following activities:

- 39% reported involvement in informing or advising agencies or local leaders
- 32% reported involvement in community anti-drug campaigns
- 32% reported working with youth
- 30% reported fundraising
- 30% reported attending community meetings
- 23% reported volunteering time with community organizations
- 21% reported attending public hearings and forums
- 16% reported speaking at political events⁹³

In a mixed-methods study of Oxford House residents, Jason et al., found that the overwhelming majority of current and alumni members agreed that residents provide support and companionship for each other and that Oxford Houses provide motivation and increase member's sense of responsibility.⁹⁴

Both alumni and current residents also reported a variety of formal and informal helping activities in their community outside of Oxford House. Both groups were also similarly likely to respond that they were involved in formal volunteer work in the community and also engaged in informal neighborhood helping such as cleanups... In the current study, alumni and current residents both tended to spend considerable time each week in neighborhood-helping activities, suggesting that these habits may form earlier in recovery and continue once residents move on to another location. Results from the current study also suggest that alumni and current residents are engaging in processes of change, such as helping relationships (via mutual-help involvement) and social liberation (via ongoing advocacy and community involvement) that are outlined in the transtheoretical model of change for addictive behaviors.⁹⁵

⁹² Jason, L. A., Roberts, K., & Olson, B. D. (2005). Attitudes Toward Recovery Homes and Residents: Does Proximity Make a Difference? *Journal of Community Psychology, 33*(5), 529-535.

⁹³ Jason, L. A., Schober, D., & Olson, B. D. (2008). Community Involvement Among Residents of Second-Order Change Recovery Homes. *The Australian Community Psychologist, 20*(1), 73-83.

⁹⁴ *Supra*, note 61.

⁹⁵ Jason, L. A., Aase, D. M., Mueller, D. G., & Ferrari, J. R. (2009). Current and Previous Residents of Self-Governed Recovery Homes: Characteristics of Long-Term Recovery. *Alcoholism Treatment Quarterly, 27*(4), 442-452.

Researchers compared crime rates, from 2005, within a 2-block radius of 42 Oxford Houses and 42 control houses within the city limits of Portland, Oregon. There were no significant differences between Oxford Houses and control houses with regard to the amount of any of the tested crimes - including assault, arson, burglary, larceny, robbery, homicide, and vehicle theft.⁹⁶

Researchers conducted in-depth qualitative interviews with neighbors living near one of the Clean and Sober Transitional Living houses in Fair Oaks, California.⁹⁷ They found that:

Many of the neighbors also had a limited understanding of SLHs. In some cases, they had no idea a SLH existed in the neighborhood; it seemed to them like any other house. For those who were aware that there was a SLH in their neighborhood, there was often a fairly vague notion of the population served and how the program operated. Without information, some neighbors expressed fears that the residents were mostly parolees or that they included sex offenders. They did not seem to be aware that a minority (about 25%) of residents was referred from the criminal justice system (i.e., jail or prison) and does not accept individuals convicted of sex offenses.⁹⁸

Neighbors who expressed concerns lived in the vicinity of 6 houses that were densely located along a two-block area in one complex. Some complaints related to noise and parking. Furthermore, a few neighbors expressed fears about safety, the potential for an increase in crime, and declining values of houses in the neighborhood. However, when pressed by the interviewer, they had difficulty providing examples of these issues.⁹⁹

Concerns about houses appeared to center mostly on issues such as the size and higher density of these houses in one area, as well as related concerns about noise and traffic. Only a few mentioned issues related to resident behavior, such as offensive language and leaving cigarette butts in the area.¹⁰⁰

IX. What is the Appropriate Action?

This section discusses the feasibility, and consequence of action.

Feasibility of Action

Recommendations from Other States

Connecticut

A 2009 Connecticut Office of Legal Research Report found that:

⁹⁶ Deaner, J., Jason, L. A., Aase, D. M., & Mueller, D. G. (2009). The Relationship Between Neighborhood Criminal Behavior and Oxford Houses. *Therapeutic Communities, 30*(1), 89-94.

⁹⁷ From the criminal justice system, local government, housing services, and drug and alcohol treatment.

⁹⁸ Polcin, D.L., Henderson, D., Trocki, K., Evans, K., & Wittman, F. (2012) Community Context of Sober Living Houses. *Addiction Research & Theory, 20*(6), 490-491.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

Sober houses do not provide treatment, just a place where people in similar circumstances can support one another in sobriety. Because they do not provide treatment, they typically are not subject to state regulation. And, because people with substance abuse disorders are covered by the Americans with Disabilities Act and the federal Fair Housing Act, state and local zoning and other requirements meant to regulate them are subject to challenge.¹⁰¹

Hawaii

A 2012 Hawaii Task Force report recommended “establishing a voluntary registry of homes.”¹⁰²

Massachusetts

A 2010 Task Force report found that:

The FHAA limits the Commonwealth’s and BSAS’ authority to implement mandatory licensure, regulation, registration or certification requirements directed specifically at ADF Housing providers and residents. Federal courts have repeatedly rejected state and local efforts to regulate ADF Housing.¹⁰³

Based on these surveys it did not appear that the ADF Housing operators involved were providing any treatment services that required licensure by BSAS.¹⁰⁴

In sum, the FHAA imposes a significant complication to local or state governments seeking to impose licensure, regulatory, registration or certification requirements on ADF Housing. The Commonwealth and BSAS would need to prove with reliable evidence or studies that any proposed mandatory licensure, certification or registration requirement (1) benefits the residents of ADF Housing, or responds to legitimate safety concerns in the community, (2) is narrowly tailored, and (3) that a nondiscriminatory alternative means of achieving those goals is not available.¹⁰⁵

Public Comments

- Stakeholders representing the city of Port St. Lucie stated that, “The Department of Children and Family Services (*sic*) is an appropriate agency to regulate and operate the licensure of recovery residences in the State of Florida. There are processes and procedures in place for the regulation of other similar uses of homes in residential neighborhoods and similar types of services being provided in the home setting environment. The fees for licensure and registrations could also be similar to fees currently being charged to community residential homes.”¹⁰⁶
- Stakeholders representing the city of Delray Beach, stated that, “We agree that the State of Florida cannot regulate a relationship between individuals who have a common interest in

¹⁰¹ See, <http://www.cga.ct.gov/2009/rpt/2009-R-0316.htm>, site accessed August 18, 2013.

¹⁰² Email on file with Office of Substance Abuse and Mental Health Staff, June 24, 2013.

¹⁰³ *Supra*, note 11.

¹⁰⁴ *Id.*.

¹⁰⁵ *Id.*

¹⁰⁶ *Supra*, note 39.

being sober and therefore agreeing to live together and sharing rent. We also agree that people cannot and should not be discriminated against for doing so.” However, that is not what is occurring here. (You have taken the words out of context.) They also stated that, “The cost of the license/registration fee should cover the cost of licensing/registering by DCF.”¹⁰⁷

- LL., expressed concern about whether state agencies have the resources to enforce regulations.
- JL., an attorney for many owners and operators of a recovery homes in Delray Beach, also expressed concern over the Department lacking the funds needed to adequately regulate these homes.¹⁰⁸ He also stated that on August 5, 2013, “on a daily basis, people want to open a recovery residence on a daily basis. My firm is trying to teach providers how to operate legally.” “Sober House/ IOP/PHP, most people do not know the difference. People come from out of state and they go directly to sober houses.” “DCF/ State needs a board to investigate complaints and enforce.”
- GJ., Director of Sober Living in Delray Beach and a member of the Florida Association of Recovery Residences (FARR), indicated that “big government isn’t the answer; FARR is the answer,” and that private industries can work together to solve problems as has been done in California. He also said at the hearing on July 10, 2013, “The only way to close down dishonest operators is to affect them financially.” There are problems with “Patient brokering, insurance fraud – folks are being charged “\$4,000- \$6,000 for drug tests 4-5 times per week that cost \$4.95 per test”. “Difficult to bleed people financially with income like this.” “Bleed them on referral sources”.
- AS., CEO of Palm Beach County Behavioral Health, stated at the hearing on August 5, 2013 that what is occurring is “switching from old Florida Model to unregulated pop-ups.” “Recently there was a death in Juno Beach of a 16 year old boy in a hotel.” “People are living in hotels and being treated when they need in patient treatment.”
- AB., an operator, stated that, “the government doesn’t have the resources to regulate” and “the reality is that the Department of Children and Families gets their funding cut every year.”
- M., an operator in Miami, stated at the hearing on August 5, 2013, “need some oversight, annual inspections, guidelines, and bylaws.” “Great need for recovery, but we need it regulated.”
- RC., an operator asked “how the state is going to regulated with two people in the Department of Children and Families’ regional Substance Abuse and Mental Health office?”¹⁰⁹

What are the Consequences?

In relation to the cost of action, FARR has observed:

Most recovery residences (particularly levels 1 & 2) are self-funded through resident contribution, but recovery residences with higher levels of support, such as a range of clinical services, often receive other forms of federal, state, and private support. RRs are historically self-funded, eventually become self-sustainable, and utilize community of volunteers. Start-up costs

¹⁰⁷ *Supra*, note 40.

¹⁰⁸ *Supra*, note 38.

¹⁰⁹ *Id.*

are typically covered by the housing provider, an Angel Investor, or a nonprofit. As a part of their recovery process, residents are expected to work, pay rent, and support the house. In some cases, residents may not be able to fully cover operational costs, so housing providers offer short-term scholarship beds and utilize other financial resources in the community. No RR could financially survive without the use of volunteer staff and peer-s cultivating the culture of recovery in homes. Start-up costs of RRs vary across the 4 Levels of Support. Lower Levels of Support, RR 1s and 2s, typically rent residential houses—a practice that avoids the capital cost of purchasing a property. The cost of capital improvements and fully furnishing a household to accommodate on average 10 residents is the largest start-up cost. Marketing, maintenance, and utilities are the largest operational expenses for the lower Levels of Support, RR 1s and 2s. Higher Levels of Support, RR 3s and 4s, have higher staffing and administrative expenses as well as higher initial capital outlays. In general, RRs are NOT very profitable. By the time someone is ready to embrace recovery, they have often lost the financial means to afford to live in an RR at any price. Plus, occupancy rates can be inconsistent, and operational costs can be high. It may take several years for an RR to recoup start-up costs and achieve a positive cash flow. As a result, a single financial challenge, like defining housing rights, can easily cause an RR to close.¹¹⁰ [This may be true of the clients that FARR and NARR serve, but not true of all operators as was obvious through the three \(3\) public hearings and comments made by the operators.](#)

In the Massachusetts study, with regard to the consequences of no action:

It appears that complaints and concerns will continue to be handled through existing resources. BSAS has determined that all complaints about ADF homes fall into specific categories and have existing avenues for resolution. For example:

- All nuisance complaints (such as noise), disruptive behavior of residents, and drug use complaints are typically handled by the local police;
- Complaints regarding occupancy and substandard living conditions are typically handled by municipal Building and Fire Departments; [Who will complain when residents have no rights? They are told to follow the rules or get out.](#)
- Complaints regarding unlicensed substance treatment programs are typically handled by the DPH, specifically BSAS; [What is this? We do not have these organizations \(DPH and BSAS\) in Florida. If it is Department of Health- that makes little sense because DCF regulates treatment programs, not the Department of Health.](#)
- Complaints regarding unfair housing practices, including eviction practices, are typically handled in housing court; and [We do not have "housing court" in Florida. Again, these folks come here from out of state and generally do not know their rights. When they are kicked out- they have no money. How is this going to happen?](#)
- [Complaints regarding unscrupulous ADF Housing operators are typically handled through the Attorney General's Consumer Protection Division within the Consumer Protection and Advocacy Bureau.](#)¹¹¹
 - [What about Insurance Fraud?](#)
 - [What about patient brokering?](#)
 - [What about kickbacks?](#)

¹¹⁰ *Supra*, note 61.

¹¹¹ *Supra*, note 73.

- What about requiring licensed service provider facilities to refer only to accredited sober houses?

- What is your Conclusion/ Recommendation? It is not clear what DCF is recommending from this report.

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**Recovery Residence Report
Fiscal Year 2013-2014 General Appropriations Act
The Office of Substance Abuse and Mental Health**

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I. SUMMARY

II. INTRODUCTION

The 2013-2014 General Appropriations Act (GAA) directed the Department of Children and Families (Department) to develop a plan to determine whether [Sober Homes](#) should be licensed or registered:

From the funds in Specific Appropriations 370 through 380, the department shall develop a plan to determine whether to establish a licensure/registration process relating to residential facilities that provide managed and peer-supported, alcohol-free and drug-free living environments for persons recovering from drug and alcohol addiction, commonly referred to as [Sober Homes](#). This plan shall identify the number of [Sober Homes](#) operating in Florida, identified benefits and concerns in connection with the operation of [Sober Homes](#), and the impact of [Sober Homes](#) on effective treatment of alcoholism and on [Sober Home](#) residents and surrounding neighborhoods. The department shall also examine the feasibility, cost, and consequences of licensing, regulating, registering, or certifying [Sober Homes](#) and their operators. The department shall consult with interested parties, including, but not limited to, the Florida Alcohol and Drug Abuse Association, local governments, stakeholders in the chemical abuse treatment community, and operators of [Sober Homes](#). The plan shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2013.¹

III. METHODOLOGY

¹Ch. 2013-040, L.O.F.

Sober Homes are also known as Sober Living Homes, recovery residences, or alcohol and drug free housing. These terms are considered synonymous and used interchangeably.² For the purposes of this report, the Department has used the term *recovery residence*.

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The Department held both public meetings to receive commentary, and established an online survey to collect public feedback. The Department also consulted with interested parties, including but not limited to, the Florida Alcohol and Drug Abuse Association (FADAA), Florida Association of Recovery Residences (FARR), the Florida League of Cities (FLC), the Florida Association of Counties (FAC), substance abuse treatment providers, local governments, owners and operators of recovery residences, and concerned citizens.

The Department posted the following questions on its website:³

- Should recovery residences be regulated?
- How many recovery residences operate in Florida? What is your methodology for arriving at this number?
- What would be the feasibility, cost and consequence of licensing, regulating, registering, or certifying recovery residences and their operators?
- If there were to be a regulating body, ~~what is the~~ ~~what-appropriate~~ appropriate level of government ~~for it will it to~~ ~~operate at~~?
- What should be included in any regulatory framework for a recovery residence?
- Are there any other issues that need to be addressed?

Public comment is included in this report, both in summary and raw form. To protect the anonymity of the public, the Department recorded respondent's names by initials.⁴

IV. What is a Recovery Residence?

² When citing other sources, an attempt is made to use the terminology used by the original authors.

³ See, www.myfloridafamilies.com

⁴ However, in compliance with the Sunshine Law, the Department has the full name of people who provided it. This information will be made available as a result of a public records request.

Researchers have proposed the following essential characteristics of a recovery residence:

- An alcohol and drug-free living environment for individuals attempting to establish or maintain abstinence.
- No treatment services offered on site, but attendance at self-help groups such as Alcoholics Anonymous and Narcotics Anonymous [or Celebrate Recovery](#) may be either mandated or strongly encouraged.
- Compliance with house rules.⁵
- Residents are responsible for paying rent and other costs.
- No limitations on length of stay as long as residents comply with house rules.⁶

These characteristics help distinguish recovery residences from other housing options. For example, unlike most halfway houses, which receive government funding and limit the length of stays, recovery residences are financially self-sustaining through rent and fees paid by residents and there is no limit on length of stay for those who abide by the rules.⁷ Furthermore, unlike “wet housing” where residents are allowed to consume alcohol or other drugs and “damp housing” that discourages but does not exclude individuals for consuming, recovery residences are abstinence-based environments where consumption of alcohol or other drugs results in eviction.⁸

The Alcohol and Drug Abuse Division of Hawaii’s Department of Health recommended the following definition in a recent Task Force report:

[A] “Clean and sober home” means a dwelling that is designed to provide a stable, independent environment of alcohol and drug free living conditions to sustain recovery and that is shared by unrelated adult persons who are attempting to maintain a life of sobriety.⁹

The Massachusetts Department of Public Health’s Bureau of Substance Abuse Services considered Alcohol and Drug-Free Housing as a form of group housing that offers an alcohol and ~~drug~~-free living environment for individuals recovering from alcohol or substance use disorders and where, as a condition of occupancy, residents agree not to use alcohol or other substances.¹⁰ More specifically, Alcohol and Drug-Free Housing (ADF) refers to:

⁵ Such as maintaining abstinence, paying rent and other fees on time, participating in house chores and meetings.

⁶ Polcin, D. L., Korcha, R. A., Bond, J., & Galloway, G. (2010). Sober Living Houses for Alcohol and Drug Dependence: 18-Month Outcomes. *Journal of Substance Abuse Treatment*, 38, 356-365; Polcin, D.L., Korcha, R.A., Bond, J., Galloway, G.P., & Lapp, W. (2010). Recovery from Addiction in Two Types of Sober Living Houses: 12-Month Outcomes. *Addiction Research and Theory*, 18(4), 442-455.

⁷ Polcin, D.L., Korcha, R.A., Bond, J., Galloway, G.P., & Lapp, W. (2010). Recovery from Addiction in Two Types of Sober Living Houses: 12-Month Outcomes. *Addiction Research and Theory*, 18(4), 442-455; Polcin, D. L., Korcha, R., Bond, J., & Galloway, G. (2010). Eighteen-Month Outcomes for Clients Receiving Combined Outpatient Treatment and Sober Living Houses. *Journal of Substance Use*, 15(5), 352-366.

⁸ Jason, L. A., Mericle, A. A., Polcin, D. L., & White, W. L. (in press, 2013). The Role of Recovery Residences in Promoting Long-term Addiction Recovery. *American Journal of Community Psychology*; National Association of Recovery Residences. (2012). A Primer on Recovery Residences: FAQs from the National Association of Recovery Residences. Retrieved from www.narronline.com/NARR_formation_website/Recovery%20Residence%20Primer%20-%20Long.pdf.

⁹ State of Hawaii, Department of Health, Alcohol and Drug Abuse Division. (2012). *Relating to the Clean and Sober Homes and Halfway Houses Task Force*. Report to the Twenty-Seventh Legislature, State of Hawaii, 2013. Provided via email from Mardelle Gustilo, Hawaii State Department of Health, on June 24, 2013.

¹⁰ Massachusetts Department of Public Health, Bureau of Substance Abuse Services. *Study Regarding Sober (Alcohol and Drug Free) Housing In Response to Chapter 283, Section 10, of the Acts of 2010*. Retrieved from www.mass.gov/eohhs/docs/dph/substance-abuse/adf-housing-study.rtf.

...the variety of group housing arrangements, however designated or legally structured, that provide an alcohol and drug-free living environment for people in recovery from substance use disorders. ADF Housing is also referred to as Sober Housing, alcohol and substance-free housing, clean-and-sober housing, alcohol-free or sober-living environments, three-quarter way houses, re-entry homes and other similar names. ADF Housing includes both transitional and permanent housing models which that may be operated by a variety of entities, including state and federal government agencies, licensed mental health and addiction treatment agencies, for-profit and non-profit organizations, the occupants themselves, or private landlords.¹¹

¹¹ See, www.mass.gov/eohhs/docs/dph/substance-abuse/adf-housing-study.rtf, site accessed August 18, 2013.

V. Number of Recovery Residences Operating in Florida

This inquiry was made through a variety of media, as an attempt to triangulate an estimate of the number of residences in Florida. Regional Department substance abuse and mental health staff, FARR, FLC, and the FAC were asked to identify the number of recovery residences operating in their respective areas. However, despite the requests made to external organizations, there has been no response that assists the Department ~~identify in identifying~~ the number of recovery residences at the time of writing.

Historically, to estimate the impact on the Department of proposed legislation, the following methodology has been deployed to provide an estimated range for the number of recovery residences operating in Florida. In 2011, it was estimated that there were ~~around approximately~~ 400-500 such residences in Palm Beach County. This, then, applied to as a percentage of the population, was ~~then~~ projected statewide, resulting in a range of 5,704 to 7,130 recovery residences.

VI. Survey of Legal Authority

To understand the array of legal authority, this section of the report will address the legal authority related to recovery residences by outlining federal and state authority, and reviewing the major trends in case law.

Federal Authority

There are two federal statutes that are particularly relevant to this discussion. The Fair Housing Act (FHA),¹² and the Americans with Disabilities Act (ADA).¹³ Both of these statutes provide the federal government with enforcement mechanisms to challenge an action in relation to housing. In a private action, the plaintiff may bring suit for actual damages,¹⁴ which include special damages,¹⁵ and general damages for emotional pain and suffering attributable to the discriminatory practice.¹⁶ Punitive damages may also be awarded.¹⁷ Equitable remedies may also apply.¹⁸ In addition to this, the court also has the discretion to award fees and costs.¹⁹

Specifically, the FHA prohibits discrimination on the basis of disability. In terms of the FHA, disability is defined to include people in recovery from substance use disorders.²⁰ Such protection does not extend to either a person who continues to abuse substances, or has been convicted of manufacture or distribution of a controlled substance.²¹

The most significant affirmative obligation of the FHA requires that a reasonable accommodation be made, when necessary, to allow a person with a qualifying disability, equal opportunity to use and enjoy a dwelling.²² There is an exception⁷ for the health, safety and property of others, however, this does not override the reasonable accommodation obligation.²³

¹² The Fair Housing Act (FHA) was enacted by the Civil Rights Act of 1968, Pub. L. 90-284 (1968), amended by the Fair Housing Amendments Act of 1988, Pub. L. 100-430 (1988), codified at 42 U.S.C. s. 3601, *et. seq.*

¹³ Title II of The Americans with Disabilities Act (ADA) prohibits the discrimination by public entities as it relates to housing on the basis of disability. The ADA was enacted by the Americans with Disabilities Act of 1990, Pub. L. 101-336 (1990), amended by the ADA Amendments Act of 2008, Pub. L. 110-325 (2008), codified at 42 U.S.C. s.12101, *et. seq.*

¹⁴ 42 U.S.C. s. 3613(c).

¹⁵ *See e.g., Douglas v. Metro Rental Services, Inc.*, 827 F. 2d 252 (7th Cir. 1987) (Court allowed recovery of expenses to find alternate residence); *Philips v. Hunter Trails Community Ass'n.*, 685 F. 2d 184, (7th Cir. 1982)(Court allowed recovery of moving expenses); *Moore v. Townsend*, 577 F. 2d 424, (7th Cir. 1978)(Court allowed recovery of temporary lodgings); *Steele v. Title Realty Co.*, 478 F. 2d 380 (10th Cir. 1973) (Court allowed recovery of telephone charges).

¹⁶ *See e.g., Steele*, 478 F. 2d 380.

¹⁷ *Supra*, note 14.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ The ADA defines disability as:

- (A) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (B) A record of such impairment; or
- (C) Being regarded as having such an impairment. *See*, 42 U.S.C. s. 3602(h).

The FHA defines disability in the same manner. *See*, 42 U.S.C. s. 12102(1). Federal courts have required a case by case inquiry as to disability. *See, Albertson's Inc. v. Kirkingburg*, 527 U.S. 555, (1999).

²¹ Note, 28 C.F.R. s. 35.131, limits the extension of non-discriminatory practice to a person who may continue to use illicit substances. This does not include alcohol. A public entity is also permitted to test to verify this.

²² 42 U.S.C. s. 3604(f)(3)(B). *See, Oxford House Inc., v. Township of Cherry Hill*, 799 F. Supp. 450, (D.N.J. 1992)(Court held that a reasonable accommodation means changing some rule that is generally applicable to everyone so as to make it less burdensome for a protected class).

²³ 42 U.S.C. s. 3604(f)(9).

The FHA provides a very broad basis for standing to bring suit if a person may be injured by a discriminatory housing practice.²⁴ Further, a third party may bring suit on behalf of a potential resident in a situation where said resident may be discriminated against.²⁵ It should be noted that the FHA does not require the exhaustion of alternative remedies prior to filing suit in federal court.²⁶ In addition to judicial action, an administrative complaint may be filed simultaneously with the United States Department of Housing and Urban Development (HUD).²⁷ HUD may refer cases to the United States Department of Justice(DOJ) to file suit in federal court.²⁸ The United States Attorney General may also bring an action in situations where a “pattern of discriminatory practice” may exist, and a private party whose interests have, or may be harmed, may petition to intervene.²⁹

A violation of the FHA may also constitute a simultaneous violation of the ADA,³⁰ and the Rehabilitation Act.³¹ The ADA also prohibits discrimination on the basis of a substantially limiting impairment.³² Recovery from a substance use disorder has been considered such an impairment.³³

Florida Authority

The Florida Fair Housing Act,³⁴ provides protection against discrimination on the basis of “handicap.” However, the definition of handicap does not include recovery from a substance use disorder.

Authority from other States in the Union

At the time of writing, the Department identified Idaho, Illinois, Massachusetts, Oregon, and Tennessee as providing some sort of legal basis for the operation of a recovery residence, or an equivalent.³⁵ -There

²⁴ 42 U.S.C. s. 3602(i).

²⁵ See e.g., *Brandt v. Vill. of Chebanse, Ill.*, 82 F.3d 172, (7th Cir.1996); *Smith & Lee Assocs., Inc. v. City of Taylor, Mich.*, 102 F.3d 781 (6th Cir.1996). But see, *Kessler Institute for Rehabilitation, Inc. v. Mayor and Council of Borough of Essex Fells*, 876 F. Supp. 641, (D N.J. 1995)(Court held that a non-profit advocacy organization lacked standing to intervene).

²⁶ See, e.g., *Pulcinella v. Ridley Tp.*, 822 F. Supp. 204, (E.D. Pa. 1993); *Oxford House, Inc. v. City of Virginia Beach, Va.*, 825 F. Supp. 1251, (E.D. Va. 1993); *Oak Ridge Care Center, Inc. v. Racine County, Wis.*, 896 F. Supp. 867, (E.D. Wis. 1995); *Oliver v. Foster*, 524 F. Supp. 927 (S.D. Tex. 1981); *Concerned Tenants Ass'n of Indian Trails Apartments v. Indian Trails Apartments*, 496 F. Supp. 522 (N.D. Ill. 1980).

²⁷ 42 U.S.C. s. 3610.

²⁸ This may occur when HUD refers administrative actions to federal court, 42 U.S.C. s. 3612(a), (o); or in cases that involve challenges to zoning or land use regulations, 42 U.S.C. s. 3610(g).

²⁹ 42 U.S.C. s. 3614.

³⁰ In matters of housing discrimination, federal district courts often analyze an alleged violation of the ADA and the FHA as one. *Caron Foundation of Florida, Inc., v. City of Delray Beach*, 879 F. Supp. 2d 1353, (S.D. Fla. 2012) appeal dismissed, (11th Cir. Aug. 16, 2012).

³¹ The Rehabilitation Act of 1973 was enacted by the U.S. Rehabilitation Act of 1973, Pub. L. 93-112 (1973), codified at 29 U.S.C. s. 701 *et. seq.*

³² S. 933 (1990) provides the title of the ADA: “ To establish a clear and comprehensive prohibition of discrimination on the basis of disability.”

³³ See, 28 C.F.R. s.35.104(4)(1)(B)(ii).

³⁴ See, ss. 760.20-760.37, F.S.

³⁵ See, Idaho, IDAHO CODE ANN. 39-302 (11), (2013); Illinois, 20 ILL. COMP. STAT. 301/15-10(f) (2013); Massachusetts, MASS. GEN. LAWS ch. 111B, s. 6A, (2013); Oregon, OR. REV. STAT. s. 430.306(7), (2013); Tennessee, TENN. CODE ANN. S. 33-2-402(2), (2013).

have been a variety of legislative proposals across the [Union-Nation](#) to address ~~the state~~ [Florida's](#) involvement in relation to the operation of a recovery residence.³⁶

An alternative vehicle used in Hawaii, Kansas and Oklahoma, is an explicit statutory prohibition on a local government implementing ordinances or zoning schemes that discriminate against community based housing for people in recovery.³⁷ Although varying in construction between each state, the general theme has been to define what a recovery residence is, and to statutorily include such as a residence as a single family dwelling.

Case Law

A cursory review of the website for the Civil Rights Division Housing and Civil Enforcement Section at DOJ demonstrates that the FHA and ADA are extensively litigated.³⁸ Not only does DOJ bring suit in federal court, it also provides amicus briefs in private suits.

For a housing rule, policy or practice to be challenged pursuant to the FHA,³⁹ federal courts have not required that it be facially discriminatory, but have allowed challenge on the basis of discriminatory intent, or that it has a disparate impact on people with disabilities.⁴⁰ Once a plaintiff has established a prima facie case of housing discrimination, federal courts shift the burden to the defendant to demonstrate a legitimate, nondiscriminatory reason, or that the action furthered a legitimate governmental interest, with no alternative.⁴¹ The courts have, however, held that disability does not require a heightened level of scrutiny for governmental action, in the context of the FHA.⁴²

³⁶ See e.g., State Rep. Hennessey and State Sen. Zeldin of New York proposed A06791 and S04697 in the 2013 Legislative Session, a measure which established regulations pertaining to [Sober Living Homes](#).

³⁷ See, Hawaii, HAW. REV. STAT. s. 46-4, (2013); Kansas, KAN. STAT. ANN. s. 12-736, (2013); Oklahoma, OKLA. STAT. tit. 43A-3, s. 417.1, (2013).

³⁸ See, <http://www.justice.gov/crt/about/hce/caselist.php>, site accessed August 17, 2013.

³⁹ Specifically, 42 U.S.C. s. 3604(f).

⁴⁰ See e.g., in *Bangerter v. Orem City Corp.*, 46 F.3d 1491, (10th Cir. 1995) (Plaintiff need not prove malice or discriminatory animus of defendant to make a case of intentional discrimination where the defendant expressly treats someone protected by the statute in a different manner than others); *Thornton v. City of Allegan*, 863 F. Supp. 504, (W.D. Mich. 1993), (Not required that the plaintiff prove discriminatory intent, it is sufficient if the plaintiff proves only that the defendant's action had a discriminatory impact or effect); *Potomac Group Home Corp. v. Montgomery County, Md.*, 823 F. Supp. 1285, (D. Md. 1993) (Court held plaintiff may prevail by showing discriminatory intent or by showing discriminatory impact, and that to prove discriminatory intent, the plaintiff need only show that the handicap of a member of a protected group was in some part the basis of the policy being challenged). *But see, Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 1339, 1352, (S.D. Fla. 2007) (Court held that the 11th Circuit had not adopted a standard to determine disparate impact, and did not find the city meet the justifications of *Bangerter*, 46 F.3d 1491).

⁴¹ See e.g., *Tsombandis v. West Haven Fire Dept.*, 180 F. Supp. 2d 262 (D. Conn. 2001), order aff'd in part, rev'd in part on other grounds, 352 F.3d 565, (2d Cir. 2003) (Court held that governmental entity engages in discriminatory practice by refusing to make reasonable accommodations to action); *U.S. v. City of Taylor, MI.*, 13 F.3d 920, (6th Cir. 1993), reh'g and suggestion for reh'g en banc denied, (Mar. 11, 1994) and on remand to, 872 F. Supp. 423, (E.D. Mich. 1995), aff'd in part on other grounds, rev'd in part on other grounds, 102 F.3d 781, (6th Cir. 1996) (Court held it is not necessary for plaintiff to prove discriminatory intent motivated by animus); *Human Resource Research and Management Group, Inc. v. County of Suffolk*, 687 F. Supp. 2d 237 (E.D. N.Y. 2010) (Plaintiff can establish discrimination in the form of: (1) disparate treatment or intentional discrimination; (2) disparate impact of a law, practice, or policy on a covered group; or (3) by demonstrating that the defendant failed to make reasonable accommodation to afford people with disabilities an equal opportunity to live in a dwelling).

⁴² See e.g., *Familystyle of St. Paul, Inc. v. City of St. Paul, Minn.*, 923 F.2d 91 (8th Cir. 1991), reh'g denied, (Feb. 15, 1991) (Court held that the relevant question is whether legislation is rationally related to legitimate government purpose); *Pulcinella*, 822 F. Supp. 204, (Court held that violation of FHAA would not amount to a Constitutional violation, because disability does not give rise to constitutionally protected class under the Equal Protection or Due Process clause of the Fourteenth Amendment). *But*

The FHA provides justifications for housing restrictions that federal courts have narrowly construed. A governmental entity may act on the basis of protecting the public health and safety of other individuals.⁴³ However, courts have observed that this justification may not be used as a guise to impose additional restrictions on protected classes under the FHA.⁴⁴ Additionally, a threat to the public health and safety, or another's property requires objective evidence that is sufficiently recent to be credible and not unsubstantiated inferences.⁴⁵ The action of a governmental entity may also be justified if the restriction is found to be beneficial or benign.⁴⁶

Federal courts have held that the FHA was intended by Congress to have a broad reach for liability. This includes not only the actors directly involved in a real estate transaction, but also actors that affect the availability of housing.⁴⁷ It should also be noted that federal courts have held governmental officials personally liable for decisions that violate the FHA.⁴⁸

In relation to housing for residents in recovery from substance abuse, or mental illness, federal courts have found that halfway houses, group homes, sober houses or other community housing arrangements

see, *Bangerter*, 46 F. 3d 1491, (Court held that the inability to assert a right under the Fourteenth Amendment is not of concern, because the FHA provided a basis to determine the justification of a restriction on housing for the disabled).

⁴³ 42 U.S.C. s. 3604(f)(9).

⁴⁴ See e.g., *Bangerter*, 46 F.3d 1491. (Any requirements placed on housing for a protected class based on the protection of the class must be tailored to needs or abilities associated with particular kinds of disabilities, and must have a necessary correlation to the actual abilities of the persons upon whom they are imposed); *Association for Advancement of the Mentally Handicapped, Inc. v. City of Elizabeth*, 876 F. Supp. 614, (D.N.J. 1994), (Court held state and local governments have the authority to protect safety and health, but that authority may be used to restrict the ability of protected classes to live in the community); *Pulcinella*, 822 F. Supp. 204 (Special conditions may not be imposed under the pretext of health and safety concerns).

⁴⁵ *Cason v. Rochester Housing Authority*, 748 F. Supp. 1002, (W.D.N.Y. 1990). See, *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329 (D.N.J. 1991)(Generalized assumptions, subjective fears and speculation are insufficient to prove direct threat to others). *But see, Roe v. Housing Authority of City of Boulder*, 909 F. Supp. 814, (D. Colo. 1995)(Court held that no reasonable accommodation could be made to house individual with mental illness, and eviction was justified); *Foster v. Tinnea*, 705 So. 2d 782 (La. Ct. App. 1st Cir. 1997) (Court upheld an eviction, on the basis of evidence showing that tenants' son posed a threat to others).

⁴⁶ See e.g., *Smith & Lee Associates, Inc. v. City of Taylor, Mich.*, 102 F.3d 781, (6th Cir. 1996), (Court held that unlawful discrimination often takes the form of special rules that are allegedly designed to benefit handicapped persons); *Horizon House Developmental Services, Inc. v. Township of Upper Southampton*, 804 F. Supp. 683 (E.D. Pa. 1992), judgment aff'd without discussion, 995 F.2d 217 (3d Cir. 1993)(Court held that the motives of the drafters of an ordinance which is facially discriminatory, whether benign or evil, are irrelevant to a determination of the lawfulness of the ordinance); *Familystyle of St. Paul, Inc.*, 923 F.2d 91, (The court noted that spacing requirement served a valid and legitimate goal of the state and the city by addressing the need to provide services for the mentally disabled in mainstream community settings and by guaranteeing that facilities are located in the community); *Valley Housing LP v. City of Derby*, 802 F. Supp. 2d 359 (D. Conn. 2011) (Court held that claim of non-discriminatory zoning enforcement was a pretext for discrimination); *U.S. v. Borough of Audubon, N.J.*, 797 F. Supp. 353 (D.N.J. 1991), judgment aff'd without discussion, 968 F.2d 14(3d Cir. 1992), (Court held that a municipality applying restrictive zoning classification to preclude the establishment of a group home for recovering alcoholics and drug users cannot avoid a violation by arguing that its actions were merely a response to community sentiment). *But see, Oxford House-C v. City of St Louis*, 843 F. Supp. 1556, (E.D. Mo. 1994), judgment rev'd on other grounds, 77 F. 3d 249, (8th Cir. 1996), cert. denied, 117 S. Ct. 65, (U.S. 1996)(Court upheld legitimate government interest in decreasing congestion, traffic and noise in residential areas).

⁴⁷ See e.g. *Michigan Protection and Advocacy Service, Inc. v. Babin*, 18 F.3d 337, (6th Cir. 1994), *City of Peeskill v. Rehabilitation Support Services, Inc.*, 806 F. Supp. 1147, (S.D.N.Y. 1992)(Court held that city seeking to prevent the acquisition of a building to be used as transitional living violated FHA and state law).

⁴⁸ See e.g. *Samaritan Inns. V. District of Columbia*, 114 F. 3d. 1227, (D.C. Cir. 1997)(Court held that officials reversing decision based on public pressure were not entitled to qualified immunity). *But see, O'Neal by Boyd v. Alabama Dept. of Public Health*, 926 F. Supp. 1368, (M.D. Ala. 1993)(Court held that state officials are entitled to immunity when conduct does not violate established statutory or constitutional rights that a reasonable person would have known).

used as residences were dwellings, and as such protected by the FHA.⁴⁹ As a protected class, federal courts have held that conditions placed on housing for people in recovery from either state or sub-state entities, such as licenses or conditional use permits, may in application be overbroad and result in violations of the FHA and ADA.⁵⁰ Further to this, federal courts have enjoined state action that is predicated on discriminatory local government decisions.⁵¹

In Florida, the most recognized case is that of *Jeffrey O. v. City of Boca Raton*.⁵² An ordinance promulgated by the City of Boca Raton, was held to be discriminatory to people in recovery for substance use disorders.⁵³ The court, found that the city had not demonstrated that there was no less discriminatory alternative means to further a legitimate government interest.⁵⁴

⁴⁹ See, *Connecticut Hosp. v. City of New London*, 129 F. Supp. 2d 123, (D. Conn. 2001).

⁵⁰ See e.g., *Oxford House-C*, 843 F. Supp. 1556, (Court held that city singled out plaintiffs for zoning enforcement and inspections, on the basis of disability, plaintiff demonstrated city was ignoring zoning violations from people without disabilities); *Marbrunak v. City of Stow, OH.*, 947 F. 2d 43, (6th Cir. 1992)(Court held conditional use permit requiring health and safety protections was an onerous burden); *U.S. v. City of Baltimore, MD*, 845 F. Supp. 2d. 640 (D. Md. 2012)(Court held that conditional ordinance was overbroad and discriminatory); *Children's Alliance v. City of Bellevue*, 950 F. Supp. 1491, (W.D. Wash. 1997)(Court held zoning scheme establishing classes of facilities was overbroad, and created an undue burden on a protected class); *Oxford House-Evergreen*, 769 F. Supp. 1329, (Court held that refusal to issue permit was based on opposition of neighbors, not on protection of health and safety as claimed); *Potomac Group Home, Inc.*, 823 F. Supp. 1285, (Court held that county requirement for evaluation of program offered at facility at public board. At review board, decisions were based on non-programmatic factors, such as neighbor concerns. Further to this, the court held that the requirement to notify neighboring property and enumerated civic organizations violated the FHA). *But see, U.S. v. Village of Palatine, Ill*, 37 F. 3d 1230, (7th Cir. 1994)(Court held village did not fail to make reasonable accommodation because plaintiff never applied for a special use permit); *Association for Advancement*, 876 F. Supp. 614, (Court dismissed argument that dispersal requirement protected governmental interest in preserving residential character of neighborhood); *Oxford House, Inc. v. City of Virginia Beach, Va.*, 825 F. Supp. 1251, (E.D. Va. 1993)(Court held that public appeal process to denial of permit was reasonable accommodation), *City of St. Joseph v. Preferred Family Healthcare, Inc.*, 859 S.W.2d 723, 2 A.D.D. 1335 (Mo. Ct. App. W.D. 1993), reh'g or transfer denied, (July 27, 1993) and transfer denied, (Sept. 28, 1993)(Court upheld ordinance limiting the number of unrelated people living together, emphasizing ordinance applied equally to all).

⁵¹ See e.g., *Larkin v. State of Mich.* 883 F. Supp. 172, (E.D. Mich. 1994), judgment aff'd 89 F. 3d 285, (6th Cir. 1996)(Court held there was no rational basis for denial of license on the basis of dispersal requirement, and local government's refusal to permit. The court did find, however, that the city was not a party to the law suit because the state statute did not mandate a variance); *Arc of New Jersey, Inc., v. State of N.J.* 950 F. Supp. 637, D.N.J. 1996)(Court held that municipal land use law, including conditional use, spacing and ceiling quotas violated FHA). *But see, Charter Tp. of Plymouth v. Department of Social Services*, 503 N.W. 2d 449 (Mich. 1993)(Court held statute did not violate FHA because it did not prohibit protected class from obtaining housing); *Familystyle of St. Paul, Inc.* 923 F. 2d 91, (Court upheld state and local action on the basis of deinstitutionalizing protected class). *But see, North Shore-Chicago Rehabilitation Inc. v. Village of Skokie*, 827 F. Supp. 497, (N.D. Ill. 1993)(Court held that municipalities could not rely on the absence of a state licensing scheme to deny an occupancy permit); *Easter Seal Soc. of New Jersey, Inc. v. Township of North Bergen*, 798 F. Supp. 228 (D.N.J. 1992)(Court held that city denial of permit on the basis of failure to obtain state license was due to the city's discriminatory enforcement of zoning enforcement); *Ardmore, Inc. v. City of Akron, Ohio*, 1990 WL 385236 (N.D. Ohio 1990)(Court held granted a preliminary injunction against the enforcement of an ordinance requiring conditional use permit, even though it was applied to everyone, because Congress intended to protect the rights of disabled individuals to obtain housing).

⁵² 511 F. Supp. 3d 1339.

⁵³ Specifically the court found that the language singled out recovering individuals who would be residing in a substance abuse treatment facility. *Id* at 1349.

⁵⁴ The court held that the city had a legitimate interest in preservation of residential character, however, did not demonstrate that there was a less discriminatory definition of family. *Id* at 1353.

VII. Benefits and Concerns with Operation

To identify the benefits and concerns in connection with the operation of recovery residences, this section presents a research review and a summary of concerns and issues identified by members of the public.

Research Review

Researchers studied 132 men from 11 recovery residences in Illinois. Initial interviews were conducted with individuals who had been a resident for at least two weeks, but no more than six weeks. Only 48 participants provided data at a second follow-up interview six months later. These 48 individuals were asked to report on positive and negative experiences. The following results were obtained with regard to negative experiences:

- 31.3% experienced “personality conflicts.”
- 22.9% experienced “lack of cooperation among members.”
- 12.5% experienced a “cramped living space.”
- 12.5% experienced “personal financial troubles.”
- 10.4% experienced an “overly structured/authoritarian setting.”
- 8.3% experienced an “unstructured and poorly governed setting.”⁵⁵

Researchers interviewed 64 individuals from randomly selected houses in northern Illinois that were in proximity to a recovery residence. Thirty-two of these individuals lived directly next to one, and 32 lived one block away.⁵⁶ They found that residents in 69% of houses next to recovery residence knew of the existence of it, versus only 9% of residents in houses that were a block away. Qualitative data was collected from the 25 residents who knew of its existence. When asked if they had any concerns about its location in their neighborhood, the following responses were obtained:

- 21 said no.⁵⁷
- 4 said yes.⁵⁸

When these 25 residents were asked if they could see any benefits to having the residence in their neighborhood, they provided the following responses:

- 17 responded yes.⁵⁹
- 8 did not know of any benefits.⁶⁰

⁵⁵ Jason, L. A., Ferrari, J. R., Smith, B., Marsh, P., Dvorchak, P. A., Groessl, E. J., Pechota, M.E., Curtin, M., Bishop, P. D., Kot, E., & Bowdin, B. S. (1997). Explanatory Study of Male Recovering Substance Abusers Living in a Self-Help, Self-Governed Setting. *Journal of Mental Health Administration*, 24(3), 332-339.

⁵⁶ I.E., not on the immediate block.

⁵⁷ Neighbors commented, for example: “Guys are friendly.”; “They just proved to be good neighbors.”; “No trouble from them.” Jason, L. A., Roberts, K., & Olson, B. D. (2005). Attitudes Toward Recovery Homes and Residents: Does Proximity Make a Difference? *Journal of Community Psychology*, 33(5), 529-535.

⁵⁸ Neighbors commented, for example: “Sometimes cars block my driveway, only when first opened, no problems now.”; “Sometimes a lot of new faces.”; “Louder, more people on street.” *Id.*

⁵⁹ Neighbors commented, for example: “Good lookouts, watch everything.”; “Upkeep of outside is good.”; “No drugs, no parties going on.”; “Take care of property well outside”; “My son plays basketball with guys out in their yard, keeps them out of trouble.”; “Glad to see it’s being done to rehabilitate women, especially who have children.”; “They keep up the yard better than last owner.” *Id.*

⁶⁰ *Id.*

Researchers physically inspected 11 recovery residences for women and 44 for men in 2002 in Virginia, Illinois, and Hawaii. -An intoxicated or impaired person present was identified near⁶¹ only 1.9% of houses and a drug dealer present was identified near only 3.8% of houses. -The physical location of bars or pubs nearby occurred in about -30% of houses.⁶²

In 2008, researchers contacted 90 recovery residence landlords and solicited their participation in a voluntary and anonymous survey.⁶³ -Responses were received from 30 landlords, including 18 who rented solely to recovery residences and 12 who rented to both, and other tenants. -All 30 indicated that residents paid rent on time and kept the property in good physical condition and that recovery residences appeared to be better maintained compared to others on their blocks.

Furthermore, 27 indicated that residents built positive relationships with neighbors and 29 reported that recovery residences had suitable furnishings and window coverings. -Additionally, according to landlords who were renting to both recovery residences and other renters, excessive noise, rent payment, landlord-tenant communication, and pet problems were less of a problem with them compared to other renters.

Finally, 16 of the 30 participants responded to the following open-ended question - “Do you have any other comments about renting to Oxford House residents?”

- 10 out of the 16 responses contained mostly positive comments;
- 4 were mostly negative comments; and
- 2 were neutral comments.

The most common negative themes mentioned wear and tear on the property and potential problems with the neighbors.⁶⁴

According to the Massachusetts Department of Public Health’s Bureau of Substance Abuse Services (BSAS):

[The Bureau] is aware of the numerous complaints received regarding ADF Housing operators. These complaints have been lodged by residents of ADF Housing, neighbors and municipal officials. -The nature of complaints range from nuisance complaints (noise) to more serious complaints regarding substandard housing conditions, alcohol and drug use on the property, and fatal and non-fatal overdoses of residents. Although BSAS has received frequent complaints about ADF Housing, the majority of complaints are in reference to only a few ADF homes relative to the number of homes that exist in the Commonwealth. -In other words, there are many complaints about a few homes and no complaints about the vast majority of others.⁶⁵

According to the American Planning Association:

⁶¹ Near was defined as within half a mile. *Id.*

⁶² Ferrari, J. R., Jason, L. A., Blake, R., Davis, M. I., & Olson, B. D. (2006). “This is My Neighborhood”: Comparing United States and Australian Oxford House Neighborhoods. *Journal of Prevention & Intervention in the Community*, 31(1/2), 41-49.

⁶³ Ferrari, J. R., Aase, D. M., Mueller, D. G., & Jason, L. A. (2009). Landlords of Self-Governed Recovery Homes: An Initial Exploration of Attitudes, Opinions, and Motivation to Serve Others. *Journal of Psychoactive Drugs*, 41(4), 349-354.

⁶⁴ Ferrari, J. R., Aase, D. M., Mueller, D. G., & Jason, L. A. (2009). Landlords of Self-Governed Recovery Homes: An Initial Exploration of Attitudes, Opinions, and Motivation to Serve Others. *Journal of Psychoactive Drugs*, 41(4), 349-354.

⁶⁵ *Supra*, note 11.

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Community residences have no effect on neighborhood safety.– A handful of studies have also looked at whether community residences compromise neighborhood safety. The most thorough study, conducted for the State of Illinois, concluded that the residents of group homes are much less likely to commit a crime of any sort than the average resident of Illinois. Community residences do not generate adverse impacts on the surrounding community. –Other studies have found that group homes and halfway houses for persons with disabilities do not generate undue amounts of traffic, noise, parking demand, or any other adverse impacts.”⁶⁶

Community residences have no effect on the value of neighboring properties. –More than 50 studies have examined their impact on property values probably more than for any other small land use. Although they use a variety of methodologies, all researchers have discovered that group homes and halfway houses do *not* affect property values of even the house next door. They have no effect on how long it takes to sell neighboring property, including the house next door. They have learned that community residences are often the best maintained properties on the block. And they have ascertained that community residences function so much like a conventional family that most neighbors within one to two blocks of the home don't even know there is a group home or halfway house nearby.⁶⁷

Florida Public Comment

At public meetings, participants raised the following concerns:

- Residents being evicted with little or no notice.
- Drug testing might be a necessary part of compliance monitoring.
- Unscrupulous landlords, including an alleged sexual offender who was running a woman's program, and a recovery residence owned by a bar owner and attached to the bar.
- Residents dying in recovery residences.
- Lack of regulation and harm to neighborhoods
- Whether state agencies have the resources to enforce regulations and adequately regulate these homes.
- Land use problems, and nuisance issues caused by visitors at recovery residences, including issues with trash, noise, fights, petty crimes, substandard maintenance, and parking.
- Mismanagement of resident moneys or medication.
- Treatment providers that will refer people to any recovery residence.
- Lack of security at recovery residences and abuse of residents.
- The need for background checks.
- The number of residents living in some recovery residences and the living conditions in these recovery residences.
- Activities going on in recovery residences that require adherence to medical standards and that treatment services may be provided to clients in recovery residences. This included acupuncture and urine tests.
- Houses being advertised as treatment facilities and marketed as the entry point for treatment rather than as a supportive service for individuals who are exiting treatment.
- The allegation that medical providers capable of ordering medical tests, and billing insurance companies were doing so unlawfully.

⁶⁶ See, www.planning.org/policy/guides/pdf/communityresidences.pdf, site accessed August 18, 2013.

⁶⁷ *Id.*

- Alleged patient brokering, in violation of Florida Statute.⁶⁸

Several concerns were also raised in written responses to the Department. According to stakeholders representing the city of Port St. Lucie, regulation or certification is needed to “ensure that operators of the facilities have the adequate training and experience to provide the services which are needed to assist in the recovery process.” -They also indicated that without regulation or certification “some of them will be nothing more than a boarding house facility.”⁶⁹

Similarly, according to stakeholders representing the city of Delray Beach, “we have seen far too many of these residents evicted at all hours, subjected to abusive behavior and worse.” -They indicate that recovery residences should be required to demonstrate “compliance with life safety standards for the residences and have background check requirements for the operators.” -They also raised the following concerns:

The lack of state oversight and regulation has made sober house tenants the target of unscrupulous landlords who prey on tenants/residents by ‘flipping’ the same bed, insisting on several months’ rent up front, and then evicting someone for rules violations, and re-renting the same room/bed. Some owners put “rule-breakers” out on the curb, with no alternative housing, which often leads to an increase in homelessness and crime. Even worse is that there have been situations where the operator is a newly recovered individual who begins using drugs/alcohol again and the whole house ends up in disarray. Further, some operators have criminal backgrounds as sexual offenders...In Delray Beach, we had a problem with women being sexually assaulted by the operator of the house that is supposed to be a safe haven. We also have a sober house attached, owned, and operated by the same owner as the adjacent bar...[I]n Delray Beach we have had people die in sober houses due to lack of state oversight or regulation...There seems to be a lot of insurance fraud occurring within these homes whereby they are charging obscene amounts of money for simple procedures such as urine tests. This is simply another way that the operators abuse their tenants/patients and use this vulnerable population to maximize profits.⁷⁰

⁶⁸ See,

www.dcf.state.fl.us/programs/samh/docs/RRPublicMeetings2013/20130710RecoveryResidencePublicMeetingMinReco.pdf;
www.dcf.state.fl.us/programs/samh/docs/RRPublicMeetings2013/20130626RecoveryResidencePublicMeetingMinutes.pdf;
<http://www.myflfamilies.com/service-programs/substance-abuse/recovery-response-2013>, site accessed August 18, 2013.

⁶⁹ See, www.dcf.state.fl.us/programs/samh/docs/RRPublicMeetings2013/20130625PortStLucieResponse.pdf, site accessed August 18, 2013.

⁷⁰ See, www.dcf.state.fl.us/programs/samh/docs/RRPublicMeetings2013/20130621DelrayBeachResponse.pdf, site accessed August 18, 2013.

VIII. Impact of Recovery Residences

This section outlines the impact of recovery residences to the treatment of substance use disorders, and neighborhoods.

Treatment

Several studies report alcohol consumption or the severity of alcohol addiction⁷¹ as a separate outcome. Key findings are presented below and all of these studies are also discussed under a later section that identifies the beneficial impacts of recovery residences on house residents.

Jason, Davis, and Ferrari collected baseline data on 897 people from 169 Oxford Houses.⁷² They also collected three subsequent waves of data at 4-month intervals. Only 607 participants from the initial measurement wave remained in the study at wave 4. -Of this group, only 13.5% reported having used either drugs or alcohol at the final assessment. -The average number of days they used alcohol was 3.7 and the number of days they used other drugs was 5.6. Self-efficacy for remaining abstinent from alcohol and other drugs and the percent of participants' social network members who were abstinent or in recovery increased significantly. Additional models controlling for a variety of factors found that length of residency in Oxford House was a significant predictor of abstinence and abstinence self-efficacy. Abstinence self-efficacy was a significant predictor of abstinence. Only 32.6% of the sample remained in an Oxford House throughout the entire study. -The remainder left by waves 2, 3, or 4. Compared to participants who stayed in Oxford House across all four waves, individuals who left had higher rates of any substance use over the last 90 days at wave 4 (18.5% versus 3.1%, respectively). This means that 81.5% of those who left the house and were interviewed at the final wave remained consistently abstinent.⁷³

Outcomes Across Wave 1 Through 4				
	Wave 1	Wave 2	Wave 3	Wave 4
% who used alcohol or other drugs	15.7	10.5	9.7	13.5
% who used alcohol	10.1	5.0	7.7	10.3
% who used other drugs	13.3	9.0	7.0	9.8
Days consumed alcohol	2.2	1.4	1.8	3.7**
Days used other drugs	5.5	3.7	2.3	5.6**
Days paid for work	42.0	49.8	50.5	48.4**
Employment income	794.0			941.9**
Total monthly income	981.8			1133.7**
Alcohol abstinence self-efficacy	80.7	80.4	79.3	84.6**
Drug abstinence self-efficacy	80.4	80.8	81.1	84.6**
% of social network abstinent/in recovery for	75.0	79.0	79.0	77.0**

⁷¹ Note, the direction of proviso was to examine the impact of sober homes on alcoholism.

⁷² Jason, L. A., Davis, M. I., & Ferrari, J. R. (2007). The Need for Substance Abuse Aftercare: Longitudinal Analysis of Oxford House. *Addictive Behaviors*, 32(4), 803-818.

⁷³ *Id.*

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alcohol use				
% of social network abstinent/in recovery for drug use	90.%	94.0%	94.0%	93.0%**

** $p \leq 0.01$, two-tailed, based on repeated measures analyses

In an Illinois study, researchers noted:

...those in the Oxford Houses... had significantly lower substance use (31.3% vs 64.8%), significantly higher monthly income (\$989.40 vs \$440.00), and significantly lower incarceration rates (3% vs 9%). Oxford House participants, by month 24, earned roughly \$550 more per month than participants in the usual-care group. In a single year, the income difference for the entire Oxford House sample corresponds to approximately \$494,000 in additional production. In 2002, the state of Illinois spent an average of \$23,812 per year to incarcerate each drug offender. The lower rate of incarceration among Oxford House versus usual-care participants at 24 months (3% vs 9%) corresponds to an annual saving of roughly \$119,000 for Illinois. Together, the productivity and incarceration benefits yield an estimated \$613,000 in savings per year, or an average of \$8,173 per Oxford House member.⁷⁴

Borkman, Kaskutas, Room, Bryan, and Barrows presented findings from two outcome studies that specifically included social model programs.⁷⁵ Both of these studies were published as government reports. -One report examined 18-month follow-up data on 198 social model program clients in San Diego and found that clients who used only the recovery home were the most likely to be abstaining at follow-up. -The other study looked at outcomes among 1,826 clients at social model and nonsocial model residential programs in California. -At the 15-month post-treatment follow-up, program graduates from both models reduced the number and frequency of substances used. -There was also a relationship between length of stay in social model programs and reductions in substance abuse. -For social model program stays of less than 30 days, there was a 36% reduction in substance abuse. -For longer stays, there was a 52% reduction in post-treatment substance abuse.⁷⁶

A longitudinal analysis conducted with a national sample of recovering substance abusers living in Oxford Houses found that persons with psychiatric comorbid substance use disorders, compared to those who do not have co-occurring mental illnesses, are not at higher risk for relapse when they reside in self-help residential settings like Oxford House. Furthermore, residents with high psychiatric severity reported decreased psychiatric outpatient treatment utilization over the course of the study.⁷⁷

⁷⁴ Jason, L. A., Olson, B. D., Ferrari, J. R., & Lo Sasso, A. T. (2006). Communal Housing Settings Enhance Substance Abuse Recovery. *American Journal of Public Health, 96*(10), 1727-1729.

⁷⁵ Borkman, T. J., Kaskutas, L. A., Room, J., Bryan, K., & Barrows, D. (1998). An Historical and Developmental Analysis of Social Model Programs. *Journal of Substance Abuse Treatment, 15*(1), 7-17.

⁷⁶ *Id.*

⁷⁷ Majer, J. M., Jason, L. A., North, C. S., Ferrari, J. R., Porter, N. S., Olson, B., Davis, M., Aase, D., & Molloy, J. P. (2008). A Longitudinal Analysis of Psychiatric Severity upon Outcomes Among Substance Abusers Residing in Self-Help Settings. *American Journal of Community Psychology, 42*, 145-153.

Kaskutas, Ammon, and Weisner conducted a naturalistic, longitudinal comparison of outcomes for individuals in social model programs and clinical programs.⁷⁸ -Researchers obtained 12-month follow-up data with 164 social model clients from two public detoxification programs and two public residential recovery homes and 558 clinical model clients from a mix of inpatient and outpatient programs. After controlling for demographics and baseline problem severity, social model program clients were less likely than clinical model clients to report alcohol and other drug problems at the 1-year follow-up. More specifically, 57% of social model clients reported no alcohol problems, compared to 49% of clinical model clients, and 59% of social model clients reported having no drug problems, compared to 51% of clinical model clients.⁷⁹

Data from a randomized controlled study was used to conduct a cost-benefit analysis. Economic cost measures were derived from length of stay at an Oxford House residence, and derived from self-reported measures of inpatient and outpatient treatment utilization. Economic benefit measures were derived from self-reported information on monthly income, days participating in illegal activities, alcohol and drug use, and incarceration.⁸⁰

While treatment costs were roughly \$3000 higher for the OH group, benefits differed substantially between groups. Relative to usual care, OH enrollees exhibited a mean net benefit of \$29,022 per person. The result suggests that the additional costs associated with OH treatment, roughly \$3000, are returned nearly tenfold in the form of reduced criminal activity, incarceration, and drug and alcohol use as well as increases in earning from employment... even under the most conservative assumption, we find a statistically significant and economically meaningful net benefit to Oxford House of \$17,800 per enrollee over two years.⁸¹

California Studies

Polcin, Korcha, Bond, and Galloway have undertaken comprehensive studies in California, focusing on Sacramento and Berkeley.

Berkeley

Polcin et. al., reviewed 55 individuals entering four different sober living homes in Berkeley, California, operated by a specific provider.⁸² These houses were different from free-standing sober living houses because all clients are required to attend outpatient treatment in order to be admitted.- However, residents can remain at these houses after they complete treatment for as long as they want as long as they follow the house rules.- All participants were interviewed during their first week of entering the houses between January 2004 and July 2006. -They were interviewed again 6-months, 12-months, and 18-months, with follow-up rates of 86%, 76%, and 71%, respectively.

⁷⁸ Kaskutas, L. A., Ammon, L., & Weisner, C. (2003-2004). A Naturalistic Comparison of Outcomes at Social and Clinical Model Substance Abuse Treatment Programs. *International Journal of Self Help and Self Care*, 2(2), 111-133.

⁷⁹ *Id.*

⁸⁰ Lo Sasso, A. T., Byro, E., Jason, L. A., Ferrari, J. R., & Olson, B. (2012). Benefits and Costs Associated with Mutual-Help Community-Based Recovery Homes: The Oxford House Model. *Evaluation and Program Planning*, 35(1), 47-53.

⁸¹ *Id.*

⁸² Polcin, D. L., Korcha, R., Bond, J., & Galloway, G. (2010). Eighteen-Month Outcomes for Clients Receiving Combined Outpatient Treatment and Sober Living Houses. *Journal of Substance Use*, 15(5), 352-366.

Polcin et. al., -used generalized estimating equations models in order to include all participants in their analyses even if they missed follow-up interviews. In the year before entering the program, the most common substances residents were dependent on were cocaine, alcohol, cannabis, heroin, and amphetamines. -Residents entered the homes with relatively low average Alcohol Severity Index⁸³ scores that were generally maintained at follow-up time points.⁸⁴ -According to the researchers, it is important to note that residents were able to retain their improvements even after leaving the residence. -Among the residents contacted for follow up interviews, 71% had left the residence at 12 months and 86% had left at 18 months.⁸⁵

Specifically, Polcin et. al., found:

- Residents at 6 months were 16.4 times more likely to report being abstinent.
- Residents at 12 months were 15.0 times more likely to report being abstinent.
- Residents at 18 months were 6.5 times more likely to report being abstinent.⁸⁶

Sacramento County

Polcin, et. al., also studied 245 individuals entering 16 sober living homes in Sacramento County, California, operated by a specific provider.⁸⁷ -Participants were recruited and interviewed during their first week of entering the houses between January 2004 and July 2006.⁸⁸ -Among the total sample of 245, 89% participated in at least one follow-up interview. Polcin et. al., used the same methodology as with the prior Berkley study. -In the year before entering the program, the most common substances residents were dependent on were methamphetamine and alcohol. Residents entered the homes with low average ASI alcohol scores that showed significant improvement at 6 months and then were generally maintained at subsequent follow-up time points.⁸⁹

There was a statistically significant decrease in the number of months they used drugs or alcohol, from about 3 out of the 6 months before entering the sober living houses to about 1.5 months on average. Even among the 78 individuals who relapsed, there was a significant reduction in the intensity of substance use. -The number of days of substance use during the month of heaviest use decreased from an average of 23 days at baseline to 16 days at the 6-month follow up. Furthermore, there were significance improvements in the number of days worked, the percent arrested, and the severity of psychiatric symptoms.⁹⁰

⁸³ The Addiction Severity Index Lite (ASI) is a standardized, structured interview that assesses problem severity in six areas: medical, employment/ support, drug/alcohol, legal, family/social, and psychological. The ASI measures a 30-day period and provides composite scores between 0 and 1 for each problem area. *Id.*

⁸⁴ 0.07 (baseline), 0.06 (6 months), 0.5 (12 months), and 0.11 (18 months). The same pattern was observed for drug severity: 0.05 (baseline), 0.03 (6 months), 0.05 (12 months), and 0.11 (18 months). *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Polcin, D. L., Korcha, R. A., Bond, J., & Galloway, G. (2010). Sober Living Houses for Alcohol and Drug Dependence: 18-Month Outcomes. *Journal of Substance Abuse Treatment*, 38, 356-365.

⁸⁸ They were interviewed again at 6-months, 12-months, and 18-months, with follow-up rates of 72%, 71%, and 73%, respectively. *Id.*

⁸⁹ 0.16 (baseline), 0.10 (6 months), 0.10 (12 months), and 0.10 (18 months). The same pattern was observed for drug severity: 0.08 (baseline), 0.05 (6 months), 0.06 (12 months), and 0.06 (18 months). *Id.*

⁹⁰ Polcin, D. L., & Hendersen, D. (2008). A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses. *Journal of Psychoactive Drugs*, 40(2), 153-159.

Surrounding Neighborhoods

The American Planning Association's Policy Guide on Community Residences reviewed more than 50 studies and concluded that community residences such as group homes and halfway houses do not have an effect on the value of neighboring properties. Reviews also note that community residences are often the best maintained homes on their block and that many neighbors were not even aware there was such a residence in the neighborhood. Other reviews have found no negative effects on neighborhood safety and that residents of group homes are much less likely to commit a crime of any sort than the average resident.⁹¹

Researchers reported that, knowledge of the existence of an Oxford House led to improved attitudes toward those in substance abuse recovery and self-run substance abuse recovery homes. They summarized the major findings as follows:

The study's major finding was that residents who lived next to an Oxford House versus those who lived a block away had significantly more positive attitudes concerning the need to provide a supportive environment to those in recovery, the importance of allowing those in substance abuse recovery to live in residential neighborhoods, the need for recovery homes, and the willingness to have a self-run recovery home on their own block...Another important finding was that there were no significant perceived differences in housing prices for those next to and those a block away from the Oxford Houses. In addition, among those interviewees who knew of the existence of the self-run recovery home, the values of their houses had actually increased over a mean of 3 years. These findings suggest that the presence of the Oxford Houses did not lead to reduced values for houses in these communities.⁹²

In 2005, researchers surveyed individuals at an annual Oxford House World Convention. About 84% of participants indicated that they thought living in the Oxford House increased their likelihood of involvement in their neighborhood. Respondents reported participating in the community about 10.6 hours per month on the following activities:

- 39% reported involvement in informing or advising agencies or local leaders
- 32% reported involvement in community anti-drug campaigns
- 32% reported working with youth
- 30% reported fundraising
- 30% reported attending community meetings
- 23% reported volunteering time with community organizations
- 21% reported attending public hearings and forums
- 16% reported speaking at political events⁹³

In a mixed-methods study of Oxford House residents, Jason et al., found that the overwhelming majority of current and alumni members agreed that residents provide support and companionship for each other and that Oxford Houses provide motivation and increase member's sense of responsibility.⁹⁴

⁹¹ See, www.narronline.com/NARR_formation_website/Recovery%20Residence%20Primer%20-%20Long.pdf site accessed August 18, 2013.

⁹² Jason, L. A., Roberts, K., & Olson, B. D. (2005). Attitudes Toward Recovery Homes and Residents: Does Proximity Make a Difference? *Journal of Community Psychology*, 33(5), 529-535.

⁹³ Jason, L. A., Schober, D., & Olson, B. D. (2008). Community Involvement Among Residents of Second-Order Change Recovery Homes. *The Australian Community Psychologist*, 20(1), 73-83.

⁹⁴ *Supra*, note 61.

Both alumni and current residents also reported a variety of formal and informal helping activities in their community outside of Oxford House. Both groups were also similarly likely to respond that they were involved in formal volunteer work in the community and also engaged in informal neighborhood helping such as cleanups... In the current study, alumni and current residents both tended to spend considerable time each week in neighborhood-helping activities, suggesting that these habits may form earlier in recovery and continue once residents move on to another location. Results from the current study also suggest that alumni and current residents are engaging in processes of change, such as helping relationships (via mutual-help involvement) and social liberation (via ongoing advocacy and community involvement) that are outlined in the transtheoretical model of change for addictive behaviors.⁹⁵

Researchers compared crime rates, from 2005, within a 2-block radius of 42 Oxford Houses and 42 control houses within the city limits of Portland, Oregon.- There were no significant differences between Oxford Houses and control houses with regard to the amount of any of the tested crimes - including assault, arson, burglary, larceny, robbery, homicide, and vehicle theft.⁹⁶

Researchers conducted in-depth qualitative interviews with neighbors living near one of the Clean and Sober Transitional Living houses in Fair Oaks, California.⁹⁷ They found that:

Many of the neighbors also had a limited understanding of SLHs.- In some cases, they had no idea a SLH existed in the neighborhood; it seemed to them like any other house. -For those who were aware that there was a SLH in their neighborhood, there was often a fairly vague notion of the population served and how the program operated. -Without information, some neighbors expressed fears that the residents were mostly parolees or that they included sex offenders. They did not seem to be aware that a minority (about 25%) of residents was referred from the criminal justice system (i.e., jail or prison) and does not accept individuals convicted of sex offenses.⁹⁸

Neighbors who expressed concerns lived in the vicinity of 6 houses that were densely located along a two-block area in one complex. -Some complaints related to noise and parking. Furthermore, a few neighbors expressed fears about safety, the potential for an increase in crime, and declining values of houses in the neighborhood. -However, when pressed by the interviewer, they had difficulty providing examples of these issues.⁹⁹

Concerns about houses appeared to center mostly on issues such as the size and higher density of these houses in one area, as well as related concerns about noise and traffic. -Only a few mentioned issues related to resident behavior, such as offensive language and leaving cigarette butts in the area.¹⁰⁰

⁹⁵ Jason, L. A., Aase, D. M., Mueller, D. G., & Ferrari, J. R. (2009). Current and Previous Residents of Self-Governed Recovery Homes: Characteristics of Long-Term Recovery. *Alcoholism Treatment Quarterly*, 27(4), 442-452.

⁹⁶ Deaner, J., Jason, L. A., Aase, D. M., & Mueller, D. G. (2009). The Relationship Between Neighborhood Criminal Behavior and Oxford Houses. *Therapeutic Communities*, 30(1), 89-94.

⁹⁷ From the criminal justice system, local government, housing services, and drug and alcohol treatment.

⁹⁸ Polcin, D.L., Henderson, D., Trocki, K., Evans, K., & Wittman, F. (2012) Community Context of Sober Living Houses. *Addiction Research & Theory*, 20(6), 490-491.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

IX. What is the Appropriate Action?

This section discusses the feasibility and consequence of action.

Feasibility of Action

Recommendations from Other States

Connecticut

A 2009 Connecticut Office of Legal Research Report found that:

Sober Houses do not provide treatment, just a place where people in similar circumstances can support one another in sobriety. Because they do not provide treatment, they typically are not subject to state regulation. And, because people with substance abuse disorders are covered by the Americans with Disabilities Act and the federal Fair Housing Act, state and local zoning and other requirements meant to regulate them are subject to challenge.¹⁰¹

Hawaii

A 2012 Hawaii Task Force report recommended “establishing a voluntary registry of homes.”¹⁰²

Massachusetts

A 2010 Task Force report found that:

The FHAA limits the Commonwealth’s and BSAS’ authority to implement mandatory licensure, regulation, registration or certification requirements directed specifically at ADF Housing providers and residents. Federal courts have repeatedly rejected state and local efforts to regulate ADF Housing.¹⁰³

Based on these surveys it did not appear that the ADF Housing operators involved were providing any treatment services that required licensure by BSAS.¹⁰⁴

In sum, the FHAA imposes a significant complication to local or state governments seeking to impose licensure, regulatory, registration or certification requirements on ADF Housing. The Commonwealth and BSAS would need to prove with reliable evidence or studies that any proposed mandatory licensure, certification or registration requirement (1) benefits the residents of ADF Housing, or responds to legitimate safety concerns in the community, (2) is narrowly tailored, and (3) that a nondiscriminatory alternative means of achieving those goals is not available.¹⁰⁵

¹⁰¹ See, <http://www.cga.ct.gov/2009/rpt/2009-R-0316.htm>, site accessed August 18, 2013.

¹⁰² Email on file with Office of Substance Abuse and Mental Health Staff, June 24, 2013.

¹⁰³ *Supra*, note 11.

¹⁰⁴ *Id.*.

¹⁰⁵ *Id.*.

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Public Comments

- Stakeholders representing the city of Port St. Lucie stated that, “The Department of Children and Family Services (*sic*) is an appropriate agency to regulate and operate the licensure of recovery residences in the State of Florida. There are processes and procedures in place for the regulation of other similar uses of homes in residential neighborhoods and similar types of services being provided in the home setting environment. The fees for licensure and registrations could also be similar to fees currently being charged to residential homes.”¹⁰⁶
- Stakeholders representing the city of Delray Beach, stated that, “We agree that the State of Florida cannot regulate a relationship between individuals who have a common interest in being sober and therefore agreeing to live together and sharing rent. -We also agree that people cannot and should not be discriminated against for doing so.” -They also stated that, “The cost of the license/registration fee should cover the cost of licensing/registering by DCF.”¹⁰⁷
- LL., expressed concern about whether state agencies have the resources to enforce regulations.
- JL., an owner and operator of a recovery home in Delray Beach, also expressed concern over the Department lacking the funds needed to adequately regulate these homes.¹⁰⁸
- GJ., Director of Sober Living in Delray Beach and a member of the Florida Association of Recovery Residences (FARR), indicated that “big government isn’t the answer; FARR is the answer,” and that private industries can work together to solve problems as has been done in California.
- AB., an operator, stated that, “the government doesn’t have the resources to regulate” and “the reality is that the Department of Children and Families gets their funding cut every year.”
- RC., an operator asked “how the state is going to regulated with two people in the Department of Children and Families’ regional Substance Abuse and Mental Health office.”¹⁰⁹

What are the Consequences?

In relation to the cost of action, FARR has observed:

Most recovery residences (particularly levels 1 & 2) are self-funded through resident contribution, but recovery residences with higher levels of support, such as a range of clinical services, often receive other forms of federal, state, and private support. RRs are historically self-funded, eventually become self-sustainable, and utilize community of volunteers. Start-up costs are typically covered by the housing provider, an Angel Investor, or a nonprofit. As a part of their recovery process, residents are expected to work, pay rent, and support the house. In some cases, residents may not be able to fully cover operational costs, so housing providers offer short-term scholarship beds and utilize other financial resources in the community. No RR could financially survive without the use of volunteer staff and peer-s cultivating the culture of recovery in homes. Start-up costs of RRs vary across the 4 Levels of Support. Lower Levels of Support, RR 1s and 2s, typically rent residential houses—a practice that avoids the capital cost of

¹⁰⁶ *Supra*, note 39.

¹⁰⁷ *Supra*, note 40.

¹⁰⁸ *Supra*, note 38.

¹⁰⁹ *Id.*

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purchasing a property. The cost of capital improvements and fully furnishing a household to accommodate on average 10 residents is the largest start-up cost. Marketing, maintenance, and utilities are the largest operational expenses for the lower Levels of Support, RR 1s and 2s. Higher Levels of Support, RR 3s and 4s, have higher staffing and administrative expenses as well as higher initial capital outlays. In general, RRs are NOT very profitable. By the time someone is ready to embrace recovery, they have often lost the financial means to afford to live in an RR at any price. Plus, occupancy rates can be inconsistent, and operational costs can be high. It may take several years for an RR to recoup start-up costs and achieve a positive cash flow. As a result, a single financial challenge, like defining housing rights, can easily cause an RR to close.¹¹⁰

In the Massachusetts study, with regard to the consequences of no action:

It appears that complaints and concerns will continue to be handled through existing resources. BSAS has determined that all complaints about ADF homes fall into specific categories and have existing avenues for resolution. -For example:

- All nuisance complaints (such as noise), disruptive behavior of residents, and drug use complaints are typically handled by the local police;
- Complaints regarding occupancy and substandard living conditions are typically handled by municipal Building and Fire Departments;
- Complaints regarding unlicensed substance treatment programs are typically handled by the DPH, specifically BSAS;
- Complaints regarding unfair housing practices, including eviction practices, are typically handled in housing court; and
- Complaints regarding unscrupulous ADF Housing operators are typically handled through the Attorney General's Consumer Protection Division within the Consumer Protection and Advocacy Bureau.¹¹¹

¹¹⁰ *Supra*, note 61.

¹¹¹ *Supra*, note 73.