

Q: Can you please clarify the updated rule regarding 15-minute breaks each hour?

Fair Housing Laws and Pool Rules

(Excerpted from "Preparing Your Association for Pool Season", By: Marla J. Diaz, Esq.)

All residential community associations must comply with the federal Fair Housing Act (the "FHA"), the state fair housing laws, and often with human rights ordinances adopted by their local government; all of which prohibit discrimination in community associations.

The FHA prohibits community associations from discriminating against any of the protected classes in the provision of services or the use of its facilities. Practically, this means that a community association cannot adopt or enforce any rules or regulations that limit a person's use of a service or facility of the association based on such person's race, color, religion, sex, national origin, familial status, or disability.

For pools, most associations find themselves unintentionally running afoul of the FHA out of a concern for the health and safety of their younger patrons. Associations often adopt rules that:

Require children to leave the pool for 15 minutes of each hour;

Require children to be supervised while at the pool;

Prohibit children from horseplay or disruptive conduct at the pool; and

Require children who have not yet been potty-trained to wear special diapers.

These types of rules are generally well-intentioned, but unfortunately, a good intention is not a defense to a discrimination claim under the FHA.

Absent a legitimate health and safety concern, it is unlawful for an association to have a pool rule that differentiates between the way an adult uses the pool and the way a child uses the pool. The 15-minute break rule, for example, is not related to a legitimate health and safety concern because there is no evidence that this break is necessary for children to safely use the pool. Conversely, a rule requiring children under a certain age to be supervised is more legitimate.

*Associations can avoid allegations of discrimination by focusing their rules on the conduct they are trying to prevent, instead of the class of people that they believe are most likely to act badly. For example, an association can adopt a rule prohibiting **any** incontinent person from using the pool without wearing a swim diaper. This addresses the conduct of concern, i.e., peeing in the pool, without focusing the rule on a protected class. By focusing on conduct and not a protected class, associations can prevent the harm that they are most concerned about without subjecting themselves to claims of discrimination.*

A: To ensure that the community association is in compliance with the FHA law, while also accommodating pool members who have traditionally used break periods to swim laps, everyone will now be required to exit the pool when the 15-minute break period is called. Once the guards confirm that health and safety standards are met, anyone wishing to swim laps will be allowed to enter the pool during the break.

Please note that the requirement for everyone to exit the pool during break has been stated in the Burke Centre pool rules for many years, however, lifeguards were given the discretion to allow adults to remain in the water during break periods provided health and safety standards were met to their satisfaction. The FHA law as written no longer allows for break periods to be managed in the same way.