

Frequently Asked Questions (FAQS)
Sober Houses/Recovery Residences

I. What is a “Sober House”?

A Sober House is a group home for persons in recovery from drug/alcohol abuse. It is intended to be the last step in the continuum of substance abuse/addiction treatment. No treatment should take place at the house.

II. Can a “Sober House” be located in a Residential Neighborhood/Zoning District?

Yes. Pursuant to Federal law, a “Sober House” can be located in a Residential Neighborhood/Residential Zoning District (including Single Family) as per below:

A. Federal Laws.

1. Fair Housing Amendments Act (FHAA)

Under the Fair Housing Amendments Act, the term “handicap” means, with respect to a person, a “physical or mental impairment which substantially limits one or more of such person’s major life activities, a record of such an impairment, or being regarded as having such an impairment.” 42 U.S.C. Section 3602(h). The term “physical or mental impairment” includes “alcoholism” and “drug addiction” (other than addiction caused by current, illegal use of a controlled substance). 24 C.F.R. Section 100.201.

Under the Fair Housing Amendments Act, it is unlawful to discriminate against or otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of that buyer, renter, or person residing in or intending to reside in that dwelling after it is sold, rented, or made available. 42 U.S.C. Section 3604(f)(1).

2. Americans with Disabilities Amendments Act (ADAA)

Under the Americans with Disabilities Amendments Act, the term “disability” means, a physical or mental impairment which substantially limits one or more major life activities; a record of having such an impairment; or being regarded as having such an impairment. *See*, 42 U.S.C. § 12102(2), 29 U.S.C. § 705(20).

An individual is considered disabled if he/she: 1) suffers from a physical or mental impairment that 2) affects a major life activity, and 3) the effect is “substantial”. *See, Bragdon v. Abbot*, 524 U.S. 624, 631, 118 S.Ct. 2196, 141 L.Ed. 2d 540 (1998).

Alcoholism and drug addiction are considered “impairments” under the definitions of a disability set forth in the ADA. *See, Buckley v. Consol. Edison Co.*, 155 F.3d 150, 154 (2d Cir. 1998) (*en banc*) (recovering drug addicts may be considered to have a “disability” under the ADA).

The Americans with Disabilities Amendments Act requires that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, program, or activities of a public entity, or be subjected to discrimination of any such entity. 42 U.S.C. Section 12132.

The federal regulations implementing the Americans with Disabilities Amendments Act prohibits a public entity from discriminating against a qualified individual with a disability in administering a licensing program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees that subject qualified individuals with disabilities to discrimination on the basis of disability. 35 C.F.R. 35.130(6).

The federal regulations also make it unlawful for a public entity to determine site or location of a facility in a manner that has the purpose or effect of excluding individuals with disabilities or denying them the benefit of public services or otherwise subjecting them to discrimination. 35 C.F.R. 35.130(4)(I).

B. Florida State Laws

Sober Houses are not required to be licensed under state law, however, the Florida Administrative Code Provisions define the “Community Housing” component of Day or Night Treatment with Community Housing as well as the “Residential Treatment” component of Licensed Service Providers in a way that is very similar to what we refer to as Sober Houses. *See*, Rules 65D-30.004, 65D-30.007, and 65D-30.0081 F.A.C. and these entities are required to be licensed. § 397.311(18)(a)(3) and (9) and § 397.403, *Fla. Stat.*

C. Case Law

In the case of *Jeffrey O. v. City of Boca Raton*, 511 F.Supp.2d 1339 (S.D. Fla. 2007), the United States District Court for the Southern District of Florida found for the Plaintiff, Jeffrey O. et al., a group of recovering alcoholics and drug addicts and stated as follows: “the City did not present sufficient evidence to justify the Ordinance based on legitimate public safety concerns or to demonstrate that the restriction imposed benefited the recovering individuals.” Further, the Court held that the City of Boca Raton’s Ordinances were discriminatory because they did not allow handicapped individuals (in recovery from drug and alcohol abuse) the opportunity to live in residential districts, thereby treating them differently than everyone else and they provided no procedure for them to request an accommodation from the maximum number of unrelated individuals allowed to live in a residential dwelling, thereby resulting in a disparate impact for a group of handicapped individuals for which, according to the Court, “evidence has shown that recovering individuals need a group living, substance free environment in order for their treatment to be effective”. Ultimately, Boca Raton only had to pay \$1 in damages; but they were responsible for attorneys’ fees in the amount of over \$1,000,000.

III. Can people have group meetings at a “Sober House”?

Yes. Group meetings such as Alcoholics Anonymous/Narcotics Anonymous can be held at a “Sober House” the same way that you can have a Book Club/Bible Study/Cub Scout meeting at your house.

IV. What regulations can local government impose on “Sober Houses”?

None. That being said, local governments can still apply occupancy limitations such as dwelling unit size limitations/number of unrelated people limitations and local landlord permit requirements, provided that these regulations are in place already and apply to all residences/rentals across the board, regardless of the status of the occupants.

V. Can we limit turnover of occupancy in residential zoning districts?

Yes and No.

a. If your local government had a regulation on the books prior to June 1, 2011, you can continue to enforce it to limit the turnover of occupancy, provided it is applied equally to all, regardless of the status of the occupants.

b. If your local government did not have such a regulation on the books prior to June 1, 2011, then you may be preempted from creating one now due to a change in the Transient Public Lodging Establishment statute that occurred at that time and pre-empted regulation of short term rentals to the state. § 509.013, *Fla. Stat.*

IV. Do folks who operate/own a “Sober House” have to have any training or certifications?

No.

VII. Do folks who operate/own a “Sober House” have to have background checks?

No.

VIII. Do folks who operate/own a “Sober House” have any licensing/registration requirements?

No.

IX. Are folks who operate/own a “Sober House” accountable to any regulatory agency?

No.

X. What can local government do to address citizen complaints about “Sober Houses?”

Talk to their legislators at the state and federal level (unless there is current, illegal drug use/sales/possession occurring on site, in which case, please contact local police).

XI. I have heard that the “Sober Houses” in my jurisdiction are committing insurance fraud by submitting residents for drug testing and the labs are charging upwards of \$2,000+, what can I do?

Report it to the Department of Financial Services, Insurance Fraud Division, #850-413-3115. This is illegal per § 817.234, *Fla. Stat.*

XII. I have heard that the “Sober Houses” in my jurisdiction are committing patient brokering by dealing with treatment providers and accepting health insurance as payment for rent/getting their tenants high and then shipping them back to treatment so the “Sober House” operator can collect a kickback from the patient referral. What can I do?

Report it to your local law enforcement agency. (Police Department, Sherriff’s Office, Criminal Justice Commission). This is illegal per § 817.505, *Fla. Stat.* “Patient Brokering Prohibited”.

XIII. What is the proposed legislation proposing to do?

A. Define “Sober Houses”. Currently there is no definition in the statutes (state or federal).

B. Provide for registration of each “Sober House” with the Department of Children & Families (DCF currently regulates all other Substance Abuse Treatment Components).

C. Provide a requirement for background checks of owners/operators of “Sober Houses”.

D. Provide penalties for failure to register.

E. Provide that advertisements for “Sober Houses” must include the registration number in order to help with enforcement of the registration requirement.

F. Provide that inspections may take place by DCF.

XIV. Why are we asking the state to regulate “Sober Houses”?

A. To provide for a consistent standard of operation to be applied consistently throughout the state.

B. To help end abuses that are occurring in some of the homes (i.e. Houses for Women operated by a registered sexual offender; multi-family residence owned and operated by same person as owner of bar it is attached to; insurance fraud; patient brokering; etc.)

C. To provide for accountability for the owners/operators of these homes.

D. Because the Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) provided a Joint Statement in 1999 that encouraged the states to commit the resources needed to make these systems (group homes for persons with disabilities including persons recovering from alcohol/drug abuse) responsive to resident and community needs and concerns.” *See*, Joint Statement of DOJ and HUD, “Group Homes, Local Land Use, and the Fair Housing Act” http://www.justice.gov/crt/about/hce/final8_1.php at 4. (August 18, 1999).

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