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FRAMEWORK CASE

Recent Mass. Court Decision Clarifies Condo Association Obligations

Associations Not on Hook to Pay for Disability Modifications

BY DILLON KNIGHT
SPECIAL TO BANKER & TRADESMAN



Who is responsible for paying the expense of reasonable modifications when a condominium owner is disabled and requires modifications to the property in order to

enjoy full use of their premises?

Until recently, based on a 2010 decision by the Massachusetts Commission Against Discrimination (MCAD), condominium associations were required to pay the cost of reasonable modifications necessary to afford a disabled individual full enjoyment of the premises.

However, in November 2024, the Massachusetts Appeals Court overruled the MCAD and clarified the rights and obligations of condominium associations concerning disabled unit owners.

Who Pays for New Patio?

The case at hand involves White Cliffs Condominium Four, a condominium complex located in Plymouth. Like most condominiums, each unit at White Cliffs is owned in fee simple, while the common areas are jointly owned by all

unit owners. The patios are part of the common areas, with each unit having an exclusive-use easement for its patio.

In this case, the plaintiff purchased a unit with a sunken living room and a split-level patio connected by stairs. After purchasing the unit, the plaintiff developed medical conditions that affected her ability to use stairs.

In June 2017, White Cliffs announced plans

The decision provides a clear and thoughtful framework for evaluating future disputes.

to replace the existing split-level patios with single-level ones, installing two steps for access into the upper-level of the unit. The plaintiff requested to keep her split-level patio design. White Cliffs agreed if the plaintiff paid the additional cost associated with the modification. The plaintiff refused and filed a complaint with the United States Department of Housing and Urban Development, asserting disability discrimination under federal law.

HUD eventually dismissed the claim, determining that federal law required White Cliffs to allow the unit owner to make reasonable modifications but did not require White Cliffs to pay.

Following HUD's dismissal, the plaintiff filed a complaint with the MCAD and, subsequently, Superior Court, alleging unlawful discrimination in violation of the Massachusetts antidiscrimination statute.

Dispute Over Disability Law

Under Massachusetts' antidiscrimination statute, it is unlawful to discriminate in selling, leasing, renting and managing housing accommodations for various reasons, including based on a person's disability.

In describing what constitutes discrimination, Section 4 of the statute prohibits refusing a disabled person's request to make reasonable modifications to their premises.

For a specified subset of housing accommodations, the statute shifts the cost for the requested modifications to the property owner. The plaintiff argued that her unit qualified under this cost-shifting provision because White Cliffs was the "owner" of the patio as a common area, thus White Cliffs was responsible for the modification costs.

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In deciding the case, the state Appeals Court held that the plaintiff's unit would not qualify as contiguously located housing, which is defined to mean: (a) housing which "is offered for sale, lease, or rental;" (b) by an entity that owns or controls, or at any time has owned or controlled, the sale of ten or more housing accommodations; (c) on contiguous land.

Whose Responsibility Was It?

As to ownership, the Appeals Court concluded that a condominium association was not an "owner" of the common areas and it did not own or control 10 or more housing accommodations. White Cliffs is responsible only

for management or regulation of the common areas but does not have ownership rights. The "owners" of the common areas are the unit owners who jointly own these areas.

The Appeals Court clarified that the statute applies only to housing currently offered for sale, lease, or rent at the time of the requested modifications. This interpretation aligns with the purpose of the statute, which is designed to prevent discrimination in the business of housing: Condominium associations are not in the housing business.

By failing these two prongs of the statute, the Appeals Court held that the condominium association, similar to a real estate broker or

property management company, was not responsible to pay for the requested modifications.

The Appeals Court established a favorable precedent for condominium associations and property managers regarding the responsibility for requested modifications. The decision not only clarifies any issues involving ownership and contiguously located housing, but it also provides a clear and thoughtful framework for evaluating future disputes. ◀

Dillon M. Knight is an attorney at Boston law firm Davis Malm.