

## OCTOBER 2011 MONTHLY COLUMN

### **ASSOCIATIONS SHOULD EXERCISE CAUTION WHEN RESTRICTING THE USE OF COMMON AREAS BY CHILDREN**

Many associations have implemented rules and regulations over the years restricting the age of children who can use common area recreational facilities, such as swimming pools, exercise rooms and the like. Oftentimes, the association's rules will require that children under a certain age be accompanied by a parent or other adult, and may also restrict the hours of operation of such recreational facilities. However, both federal and state fair housing laws prohibit discrimination based on familial status, which is defined to be discrimination against families with children.

The U. S. Department of Housing and Urban Development ("HUD") has addressed swimming pool rules for community associations in a number of cases. For example, in one case the association adopted a rule that specifically stated that no child under the age of five (5) would be allowed to use the pool. The association argued that the rule was not meant to discriminate against children but, rather, was meant to address the health and welfare of the residents in the community who used the swimming pool by identifying a health risk inherent in children under a certain age using the community swimming pool. However, HUD took the position that such rule was an improper restriction against families with children and, therefore, was discriminatory based on familial status. See HUD v. Paradise Gardens, Section II, Homeowners Association, (1992 WL 406531).

Similarly, many associations have attempted to implement rules requiring children under a certain age to wear "swim diapers" when using an association pool. Other associations have attempted to implement rules specifically prohibiting children who are not properly potty trained from using the community swimming pool. These types of rules have also been interpreted by HUD as being discriminatory based on familial status. HUD has taken the position that such rules target children of a specific age and should be redrafted to be more age neutral. For example, an association could seek to implement a rule that specifically states that no person, regardless of age, will be allowed to use the association swimming pool if they are not properly potty trained or if they are otherwise incontinent. We believe that such a rule would be upheld as reasonable because it does not specifically target children and because it would apply to any person who could be deemed a health and safety risk to the association's swimming pool.

In this regard, it is strongly recommended that an association consult with association counsel when drafting rules and regulations governing the use of recreational facilities, such as association swimming pools, especially where the rules are being adopted to regulate the use of such facilities by children.

SACHS SAX CAPLAN



PETER S. SACHS