

Rutgers Journal of Law & Public Policy

VOLUME 5

SPRING 2008

ISSUE 3

Editor-in-Chief

KRISTYN BYRNES

Executive Editor

NEENA VERMA

Symposium Editor

CARRIE FORD

Business Editor

MICHAEL BARNES

***Managing Editor
of Articles***

TIFFANY D. JOHNSON

***Managing Technology
Editor***

LOUIS E. MOYA

***Managing Editor
of Notes***

JULIE HOROWITZ

***Senior Articles
Editor***

CHANTAL ARTUR

***Managing Research
Editor***

AMY N. KESEDAY

***Senior Notes
Editor***

BRIAN E. HILDEBRANDT

Submissions Editors

LAUREL B. BUDMAN
ADAM MARC KAPLAN

***Senior Technology
Editors***

SUPURNA BHAR
BRENDAN P. FERNALD
DARRELL MARTINELLI

Marketing Editor

RUCHIKA SACHDEVA

Articles Editors

KEVIN BIRKHEAD
ANDY HUGHES
ANTHONY VECCHIO
MARIE OLIVER
SUSAN SHAW
TARA CANNADAY
LALENA J. TURCHI
CHRISTINA J. KUBIAK
ALEXANDRIA JEAN-PIERRE

***Technology
Editors***

RENEE DELLA FAVE
JONATHAN GROPPER
BRYCE GUINGRICH
JULIE PAULL

Notes Editors

A. MASON ROHRER
JESSE MELENDREZ
ASHLEY G. D'AMATO
RACHAEL MINARDI
A. ERIC LEVINE
BRIAN PREW



MELISSA ABATEMARCO
RICHARD BATELMAN
JESSICA BISIGNANO
KRISHNA SANAT BHAVSAR
SARAH BOYER
KEVIN DAVENPORT
CHRISTOPHER EMRICH
ELIZABETH FORADORI
MICHAEL FORD
KEVIN GOLDEN

Members
BRANDON HAWKINS
CHARLES HOLMGREN
JOHN C. HYON
MATTHEW KOHUT
MARK F. KOWAL
JACLYN LEVASH
DENISE M. MAHER
DOUGLAS C. MAUTE
KATHLEEN M. McCLURE
JESSICA MILLER
HEDWIG MURPHY

ELIZABETH MYERS
ADAM V. ORLACCHIO
ROBERT RICHARDSON
MATTHEW ROBINSON
DAVID F. ROEBER
NOAH SCHWARTZ
BORIS SHAPIRO
JOSEPH A. WACKER
RICHARD DAVID WALKER
JOHN WYAND

Faculty Advisors
PHILIP L. HARVEY
SARAH E. RICKS
DAMON Y. SMITH



About the Rutgers Journal of Law & Public Policy

The *Rutgers Journal of Law and Public Policy* (ISSN 1934-3736) is published three times per year by students of the Rutgers School of Law – Camden, located at 217 North Fifth Street, Camden, NJ 08102. The views expressed in the *Rutgers Journal of Law & Public Policy* are those of the authors and not necessarily of the *Rutgers Journal of Law & Public Policy* or the Rutgers School of Law – Camden.

Form: Citations conform to *The Bluebook: A Uniform System of Citation* (18th ed. 2005). Please cite the *Rutgers Journal of Law & Public Policy* as 5 RUTGERS J.L. & PUB. POL'Y __ (2008).

Copyright: All articles copyright © 2008 by the *Rutgers Journal of Law & Public Policy*, except where otherwise expressly indicated. For all articles to which it holds copyright, the *Rutgers Journal of Law & Public Policy* permits copies to be made for classroom use, provided that (1) the author and the *Rutgers Journal of Law & Public Policy* are identified, (2) the proper notice of copyright is affixed to each copy, (3) each copy is distributed at or below cost, and (4) the *Rutgers Journal of Law & Public Policy* is notified of the use.

For reprint permission for purposes other than classroom use, please submit request as specified at <http://www.rutgerspolicyjournal.org/>.

Manuscripts: The *Rutgers Journal of Law & Public Policy* seeks to publish articles making original contributions in the field of public policy. The *Journal* accepts both articles and compelling essays for publication that are related to the expansive topic of public policy. Manuscripts must contain an abstract describing the article or essay which will be edited and used for publication on the website and in CD-ROM format. The *Journal* welcomes submissions from legal scholars, academics, policy makers, practitioners, lawyers, judges and social scientists.

Electronic submissions are encouraged. Submissions by email and attachment should be directed to submissions@rutgerspolicyjournal.org.

Paper or disk submissions should be directed to *Rutgers Journal of Law & Public Policy*, Rutgers University School of Law – Camden, 217 North 5th Street, Camden, New Jersey 08102.

Subscriptions: Subscription requests should be mailed to to *Rutgers Journal of Law & Public Policy*, Rutgers University School of Law – Camden, 217 North 5th Street, Camden, New Jersey 08102, or emailed to info@rutgerspolicyjournal.org.

Internet Address: The *Rutgers Journal of Law & Public Policy* website is located at <http://www.rutgerspolicyjournal.org>.

OFFICERS OF THE UNIVERSITY

RICHARD L. MCCORMICK, B.A., Ph.D., *President*

MARGARET S. MARSH, B.A., M.A., Ph.D., *Interim Provost and Dean, FASC*

LAW SCHOOL ADMINISTRATION

RAYMAN L. SOLOMON, B.A., M.A., J.D., Ph.D., *Dean and Professor of Law*

JAYDEV CHOLERA, B.A., M.B.A., *Director, Finance and Administration*

JOHN S. BECKERMAN, A.B., M.A., J.D., Ph.D., *Associate Dean—Academic Affairs*

CAMILLE SPINELLO ANDREWS, B.A., J.D., *Associate Dean—Enrollment*

ANNE V. DALESANDRO, A.B., M.L.S., J.D., *Director of Law Library*

BARBARA MAYLATH, A.B., *Director of Development*

EVE BISKIND KLOTHEN, B.G.S., J.D., *Assistant Dean for Pro Bono and Public Interest Programs*

ANGELA V. BAKER, B.A., J.D., *Associate Dean of Students and Career Planning*

FACULTY

AARON ARI AFILALO, A.B., J.D., LL.M.,
Associate Professor of Law

DAVID E. BATISTA, A.B., J.D., M.S., *Librarian*

LINDA S. BOSNIAK, A.B., J.D., M.A., *Professor
of Law*

HON. DENNIS BRAITHWAITE, B.S., J.D., LL.M.,
Visiting Professor of Law

A. HAYS BUTLER, B.A., J.D., M.S. (LIS),
Librarian II

LISA CAPASSO, *Visiting Clinic Asst. Prof. - LRW*

MICHAEL A. CARRIER, B.A., J.D., *Associate
Professor of Law*

FRED C. CHANDLER, JR., B.A., LL.B., LL.M.,
Professor of Law Emeritus

GLORIA F. CHAO, B.A., M.L.S., *Librarian II*

EDWARD E. CHASE, B.A., J.D., *Professor of
Law Emeritus*

VICTORIA L. CHASE, B.A., J.D., *Clinical
Associate Professor of Law*

ROGER S. CLARK, B.A., LL.B., LL.M., J.S.D.,
LL.D., *Board of Governors Professor*

JASON K. COHEN, B.A., J.D., *Legal Writing
Clinical Asst. Professor*

RUSSELL M. COOMBS, B.A., J.D., *Associate
Professor of Law*

LUCY COX, B.A., M.S., Ph.D., M.L.S., *Librarian
II*

PERRY DANE, B.A., J.D., *Professor of Law*

JOHN H. DAVIES, B.S., LL.B., LL.M., *Professor
of Law Emeritus*

JAY M. FEINMAN, B.A., J.D., *Distinguished
Professor of Law*

KIMBERLY D. FERZAN, B.S., J.D., *Professor of
Law*

DAVID M. FRANKFORD, B.A., J.D., *Professor of
Law*

ANN E. FREEDMAN, B.A., J.D., *Associate
Professor of Law*

STEVEN F. FRIEDEL, B.A., J.D., *Professor of
Law*

SANDRA GAVIN, B.A., J.D., *Director of
Advocacy Programs*

ERIC GILSON, B.A., J.D., M.L.I.S., *Librarian III*

GEORGE GINSBURGS, Bacchalaureat Serie
Mathematiques, B.A., M.A., Ph.D.,

HARRIET N. KATZ, B.A., J.D., *Clinical Professor
of Law & Director, Lawyering Program*

A. KODZO PAAKU KLUDZE, B.A., LL.B., Ph.D.,
Distinguished Professor of Law Emeritus

DONALD KOROBKIN, B.A., A.M., J.D., *Professor
of Law*

ARTHUR B. LABY, B.A., J.D., *Associate
Professor of Law*

F. GREGORY LASTOWKA, B.A., J.D., *Associate
Professor of Law*

ARNO LIIVAK, B.A., M.L.S., J.D., *Professor of
Law Emeritus*

HARRY LITMAN, A.B., J.D., *Visiting Associate
Professor of Law*

MICHAEL A. LIVINGSTON, A.B., J.D., *Professor
of Law*

JOHN C. LORE, III, *Visiting Asst. Clinical
Professor of Law*

JONATHAN MALLAMUD, A.B., J.D., *Professor of
Law Emeritus*

EARL M. MALTZ, B.A., J.D., *Distinguished
Professor of Law*

KIMBERLY MUTCHERSON, B.A., J.D., *Associate
Professor of Law*

JOHN F. K. OBERDIEK, B.A., M.A., J.D., Ph.D.,
Associate Professor of Law

CRAIG N. OREN, A.B., J.D., *Professor of Law*

TRACI OVERTON, B.A., J.D., *Clinical Staff
Attorney*

DENNIS M. PATTERSON, B.A., M.A., J.D., Ph.D.,
Distinguished Professor of Law

IMANI PERRY, B.A., J.D., LL.M., Ph.D.,
Professor of Law

STANISLAW POMORSKI, LL.B., LL.M., J.S.D.,
Distinguished Professor of Law Emeritus

SARAH RICKS, B.A., J.D., *Clinical Associate
Professor, Legal Writing*

RUTH ANNE ROBBINS, B.A., J.D., *Clinical
Professor of Law & Chair, LRW Program*

SHEILA RODRIGUEZ, *Clinical Asst. Professor-
LRW*

RAND E. ROSENBLATT, B.A., M.Sc., J.D.,
Professor of Law

PATRICK J. RYAN, B.A., M.A., J.D., LL.M.,
J.S.D., *Associate Professor of Law*

Distinguished Professor of Law Emeritus
SALLY F. GOLDFARB, B.A., J.D., *Associate*
Professor of Law
ELLEN P. GOODMAN, A.B., J.D., *Professor of*
Law
JOANNE GOTTESMAN, B.A., J.D., *Clinical*
Associate Professor of Law
PHILLIP L. HARVEY, B.A., J.D., Ph.D., *Professor*
of Law
ELIZABETH L. HILLMAN, B.S.E.E., J.D., Ph.D.,
Professor of Law
N.E.H. HULL, B.A., Ph.D., J.D., *Distinguished*
Professor of Law
RICHARD HYLAND, A.B., M.F.A., J.D., D.E.A.,
Distinguished Professor of Law
JOHN P. JOERGENSEN, B.A., M.A., M.S. (LIS),
J.D., *Librarian II*
DONALD K. JOSEPH, B.S., LL.B., *Visiting*
Associate Professor of Law

MEREDITH L. SHALICK, B.A., M.S., J.D.,
Visiting Clinical Asst. Professor of Law
SANDRA SIMKINS, *Clinical Associate Professor*
of Law
RICHARD G. SINGER, B.A., J.D., LL.M., J.S.D.,
Distinguished Professor of Law
DAMON Y. SMITH, B.A., M.U.P., J.D., *Assistant*
Professor of Law
WILLIAM M. SPEILLER, B.S., LL.B., LL.M.,
Professor of Law Emeritus
ALLAN R. STEIN, B.A., J.D., *Professor of Law*
BETH STEPHENS, B.A., J.D., *Professor of Law*
GERARDO VILDOSTEGUI, B.A., J.D., *Visiting*
Professor of Law
CAROL WALLINGER, B.S., J.D., *Legal Writing,*
Clinical Associate Professor of Law
ROBERT M. WASHBURN, A.B., J.D., LL.M.,
Professor of Law
ROBERT F. WILLIAMS, B.A., J.D., LL.M., LL.M.,
Distinguished Professor of Law

Rutgers
Journal of Law & Public Policy

VOLUME 5

SPRING 2008

ISSUE 3

Current Issues in
Public Policy



Rutgers Journal of Law & Public Policy

VOLUME 5

SPRING 2008

ISSUE 3

CONTENTS

- HASTE MAKES WASTE: A CALL TO REVAMP NEW JERSEY'S
MEGAN'S LAW LEGISLATION AS-APPLIED TO
JUVENILES408
Andrew J. Hughes
- OUR BUILDING BLOCKS OF EDUCATION DO NOT STACK
UP 456
Amy Keseday
- THE RIGHT TO REFUSE TREATMENT FOR MENTAL
ILLNESS..... 492
Jennifer Colangelo
- HEALTH INSURANCE: PAYING THE PREMIUM, OR PAYING
THE PRICE? - ERISA PREEMPTION AND RICO'S
RECOURSE..... 526
Lalena J. Turchi
- EVERYONE DESERVES A DECENT PLACE TO LIVE: WHY THE
DISABLED ARE SYSTEMATICALLY DENIED FAIR HOUSING
DESPITE FEDERAL LEGISLATION561
Christina Kubiak
- THE UNEQUAL APPLICATION OF NEW JERSEY'S ARTIFICIAL
INSEMINATION ACT 594
Anthony J. Vecchio



EVERYONE DESERVES A DECENT PLACE TO
LIVE: WHY THE DISABLED ARE
SYSTEMATICALLY DENIED FAIR HOUSING
DESPITE FEDERAL LEGISLATION

Christina Kubiak¹

*“Housing is not just for those who can walk.
Housing is not just for those who can see.
Housing is not just for those who are white
or for patriots with flags hung out the window
or for men who chase women
or for politicians who lie...
Housing is also for the old,
for the weak,
the insane,
the angry
and the good,
the holy
and the person without prayers.
Housing is for the prisoner set free.
Housing is for the sad,
for the desperate,
the addicted and those afraid.
Like food for our stomachs,
air for our lungs, water for our drying lips,
housing protects our bodies
and sustains lives.
Housing is a safe place where health is restored
and intimacy thrives...”*

¹ Christina Kubiak graduated from Rutgers University School of Law – Camden in 2008 and Temple University in 2004.

-Phil Lord²

I. INTRODUCTION

Living in a home that is not accessible to a disabled person is like living in a prison cell. Likewise, visiting the home of a friend can contain impossible barriers if you are unable to get your wheelchair in the bathroom door or up a few steps. There has been a long history of physical and mental discrimination to the disabled, whether it is through inaccessible buildings to those in wheelchairs or preventing the disabled from living meaningful lives in society. Despite what people believe, research shows that disabled housing does not cause adverse effects in neighborhoods³ and does not increase crime.⁴ People

² Phil Lord, *Housing Is*, LIBERTY WORKS, Vol. 24 No. 3, at 6 (Fall 2004), <http://old.libertyresources.org/Publications/LibertyWorks/LibWorkFall2004web.pdf> (last visited June 15, 2008).

³ “[H]istorically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.” 42 U.S.C.A § 12101(a)(2) (2008). See *Horizon Hous. Dev. Serv. v. Twp. of Southampton*, 804 F. Supp. 683 (E.D.P.A. 1992) (concluding that the neighbors’ objections to the group home were based on “not in my back yard” (NIMBY) principles and thus not a valid reason to keep a group home from opening); see also, CASSIE JAMES, PAC POSITION PAPER, <http://libertyresources.org/resources/pac.html> (last visited June 15, 2008) (“[d]iscrimination is still the number one reason people with disabilities have a difficult time locating housing”); *Fighting Discrimination Against the Disabled and Minorities Through Fair Housing Enforcement: Joint Hearing Before the Subcomm. on Housing and Cmty. Opportunity and the Subcomm. on Oversight and Investigations of the Comm. on Fin. Serv., 107th Cong. 1* (2002) [hereinafter *Hearings*] (statement of the Honorable Sue Kelly, Chair, Subcomm. on Oversight and Investigations), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:82683.pdf (last visited Feb. 18, 2008) (“[D]iscrimination continues to be a disturbing problem in our nation, which is very apparent in housing. The disabled have a particularly hard time since the wrong housing reduces their ability to function even in the confines of their own homes.”)

⁴ Daniel Lauber, *A Real LULU: Zoning for Group Homes and Halfway Houses Under the Fair Housing Amendments Act of 1988*, 29 J. MARSHALL L. REV. 369, 377-78 (1996) (Regarding crime, “[o]n the contrary, like persons with developmental or physical disabilities, people with mental illness constitute a

do not want the disabled living in their neighborhood because they are different and this discrimination is promulgated by stereotypes and misconceptions.⁵ The problem doesn't seem to be getting better as housing discrimination complaints from the disabled increased by eight percent in 2005⁶ and there are an estimated two million situations of housing discrimination occurring each year.⁷ According to discrimination reports by Liberty Resources, Inc.,⁸ the biggest problem results from landlords telling the disabled that they are too disabled to live independently and thereby requiring them to live in their particular housing.⁹ Complaints must be filed to identify the discrimination and make changes.¹⁰ However, fear of retaliation, difficulty in filing complaints, and general mistrust of the government often keeps people from filing these complaints.

vulnerable population much more likely to be the victim of a crime than the perpetrator.”).

⁵ *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 435 (1985) (holding that there was no reason to exclude the mentally retarded from living in Cleburne and that all of the objections raised by the zoning board regarding the potential dangers of such a home were based on stereotypes and prejudices).

⁶ News Release, U.S. Dept. of Hous. and Urban Develop., *Annual Fair Housing Report Indicates Rise in Discrimination Complaints from People with Disabilities*, Apr. 3, 2006, www.hud.gov/news/release.cfm?CONTENT=pr06-035.cfm (last visited Feb. 18, 2008). This news report quoted Kim Kendrick, HUD Assistant Secretary for Fair Housing and Equal Opportunity, as stating “This [fair housing] report confirmed the need for HUD to continue to aggressively protect the rights of persons with disabilities . . . No one should be denied housing because they require a guide-dog, an assigned parking space, or some other reasonable accommodation because of a disability.” *Id.*

⁷ *Hearings*, *supra* note 3, (statement of Louis V. Gutierrez, Ranking Democrat, Subcomm. on Oversight & Investigations) (“HUD estimates that more than 2 million instances of housing discrimination occur every year”).

⁸ Liberty Resources is the Philadelphia Center for Independent Living. They provide information and services to the disabled community seeking independent living or who need assistance with their in Philadelphia. <http://libertyresources.org/about-us.html> (last visited Feb. 18, 2008).

⁹ JAMES, *supra* note 3, at 1. (“In 1998, the most reported discrimination is that landlords tell people with disabilities that you are too disabled to live on your own.”)

¹⁰ *Id.*

Philadelphia's discriminatory policies that hinder the disabled and their search to find affordable, safe, and clean housing have not changed much since the case of *United States v. City of Philadelphia* in 1993.¹¹ Despite a drop in population of two and a half percent in Philadelphia in the last three years,¹² and rental vacancy rates at nine and a half percent,¹³ why is there still a shortage of housing for the disabled? I will begin by explaining the history of special needs housing, and continue by explaining federal legislation on the issue, exploring some of the relevant case law, showing how special needs are dealt with in other countries, explaining how the problem has worsened, and conclude by offering some ideas on where we should go from here.

II. HISTORY OF SPECIAL NEEDS HOUSING— INSTITUTIONS AND NORMALIZATION

In the past, the disabled and mentally ill were removed from society and housed in state mental hospitals. There was a general view that these people could not fit within society so they were isolated and treated in hospitals. English literature shows they were often referred to in derogatory ways being called the "village idiot" or "cripples" and were pitied by the community.¹⁴ In 1955 there were 559,000 people in state

¹¹ 838 F. Supp. 223, 225 (E.D.P.A. 1993).

¹² U.S. Census Bureau, Philadelphia Quick Facts, <http://quickfacts.census.gov/qfd/states/42/426000.html> (last visited Mar. 06, 2007). The population from April 1, 2000 to July 1, 2003 dropped two and a half percent in Philadelphia and rose by less than one percent in Pennsylvania.

¹³ U.S. Census Bureau, Philadelphia Selected Housing Characteristics 2005, http://factfinder.census.gov/servlet/ADPTable?_bm=y&-context=adp&-qr_name=ACS_2005_EST_G00_DP4&-ds_name=ACS_2005_EST_G00_-tree_id=305&-redoLog=true&-all_geo_types=N&-caller=geoselect&-geo_id=05000US42101&-format=&-_lang=en (last visited Feb. 18, 2008).

¹⁴ Clare Picking, *Working in Partnership with Disabled People: New Perspectives for Professionals Within the Social Model of Disability*, in LAW, RIGHTS AND DISABILITY 11, 11 (Jeremy Cooper ed., Jessica Kingsley Publishers Ltd. 2000).

psychiatric hospitals in the United States compared to less than 50,000 today.¹⁵ The drastic change in the numbers of mentally ill and disabled living in state hospitals in the 1950's as compared to today began with a movement in the 1960's to "deinstitutionalize." The goal of deinstitutionalization was to close mental institutions in favor of alternative treatment. By the 1960s these institutions were seen as failures and there was a movement to return the residents back to the community.

In addition to deinstitutionalizing there was also a movement to "normalize." Normalization was introduced into the United States by Wolf Wolfensberger and was later called Social Role Valorisation. The objective was to introduce those with disabilities into a routine everyday life as similar to the rest of society as possible.¹⁶ There were also new options such as medications, day treatment, group homes, and home support so patients could live at home.¹⁷ However, deinstitutionalization generally failed as well.¹⁸ Many people with disabilities left facilities and were unable to find housing and care so they ended up in homeless shelters or within the criminal justice system.

¹⁵ Based on the increase in the general population since that time, if a comparable per population number of individuals were similarly hospitalized today, they would number approximately one million. In fact, there are fewer than 50,000 individuals so hospitalized, meaning that 95% of individuals who would have been hospitalized fifty years ago have been effectively deinstitutionalized.

E. Fuller Torrey & Kenneth Kres, *The New Neurobiology of Severe Psychiatric Disorders and Its Implication for Laws Governing Involuntary Commitment and Treatment* 9-10 (The Berkeley Electronic Press, Paper No. 423, 2004), available at <http://law.bepress.com/cgi/viewcontent.cgi?article=2181&context=expresso>.

¹⁶ *Id.* See also Wikipedia.org, Social Role Valorization, http://en.wikipedia.org/wiki/Social_Role_Valorisation (last visited Feb. 24, 2008).

¹⁷ Picking, *supra* note 14, at 14.

¹⁸ Torrey, *supra* note 15, at 10. See also Michael L. Perlin, *Competency, Deinstitutionalization, and Homelessness: A Story of Marginalization*, 28 HOUS. L. REV. 63, 81 (1991) (stating deinstitutionalization is seen "as a massive social failure").

The mentally ill make up one third of the homeless population and about seven to sixteen percent of prison inmates.¹⁹

Within Philadelphia, the numbers are even higher. About half of the chronically homeless have received publicly funded mental health services and forty percent have had substance abuse treatment.²⁰ Changes in societal attitudes as well as medical advances were the first steps in changing the old stereotypes and showing that the disabled could live independently and have a decent quality of life. Unfortunately, deinstitutionalization failed without housing and programs to support the efforts.

III. FEDERAL LEGISLATION

A. SECTION 504 OF THE REHABILITATION ACT OF 1973

The Rehabilitation Act of 1973 was the first federal law dealing with the rights of the disabled. It prohibited

¹⁹ Mentally ill compromise at least one third of all homeless and seven to sixteen percent of those in prison are mentally ill. Torrey, *supra* note 15, at 10. See also Reed Karaim, *People with Mental Illness*, National Public Radio, <http://www.npr.org/news/specials/housingfirst/whoneeds/mentallyill.html> (last visited Feb. 24, 2008).

²⁰ The situation is dire - in 1990 there were one hundred and seventy one homeless in Philadelphia compared with five hundred and fifty in August 2006. Paul R. Levy, *With Street Homelessness on the Rise, New Strategies are Needed*, Center City Digest, Winter 2006, at 3, available at <http://www.centercityphila.org/docs/winterdigest2006.pdf>.

In 2005, 15,000 unduplicated individuals used and passed through the city's shelter system: 63% were single individuals, 13% were heads of households, 23% were children. A snapshot of one night, January 25, 2006, counted 3,079 individuals living in city-funded shelters and 313 people on the street. Some people experience brief episodes of homelessness; others, recurring episodes and still others are long-term chronically homeless.

Id. See also Philadelphia Office of Hous. and Cmty. Dev., Year 32 Consolidated Plan, 9 (2007), <http://www.phila.gov/ohcd/conplan32/consolplan%20Year32.pdf> [hereinafter *Consolidated Plan*] (allocating funds to subsidize the development of low and moderate income housing).

discrimination against the disabled in an assortment of situations, including employment and housing. However, it only dealt with discrimination by federally financed agencies.²¹ The purpose of the act was to end discrimination against the disabled, but was not approved because some argued it did not go far enough, especially in the arena of housing discrimination.²²

B. THE FAIR HOUSING ACT

The Fair Housing Act (FHA) is title VIII of the Civil Rights Act and it was amended in 1988 by the Fair Housing Amendment Act (FHAA) to add disability to the list of protected groups: race, color, religion, and natural origin.²³ The FHAA prohibits discrimination in sale and rental of properties to the disabled and all others protected by the Civil Rights Act. It also prohibits using stereotypes to permit exclusion because the perception of the disabled being a threat to safety is generally a misconception.²⁴ The purpose of the FHAA has been recognized as an unambiguous assertion that our country will no longer tolerate discrimination against the disabled.²⁵

Most lawsuits regarding group homes are brought under the FHAA as it defines a dwelling broadly as a home used by one family or more.²⁶ The courts have found this includes homeless

²¹ 29 U.S.C. §§ 791-796 (2006).

²² H.R. Rep. No. 100-711, at 1 (1998), *reprinted in* 1988 U.S.C.C.A.N. 2173.

²³ The term “handicap” in the FHA has the same meaning as “disability” in the ADA. ROBERT G. SCHWEMM, *HOUSING DISCRIMINATION LAW AND LITIGATION* §29.3 (Thomson/West 2007). *See also* Lauber, *supra* note 4, at 369.

²⁴ H.R. Rep., *supra* note 22, at 2179.

²⁵ *Hovsons, Inc. v. Twp. of Brick*, 89 F.3d 1096, 1105 (3d Cir. 1996). *See also* H.R. Rep., *supra* note 22, at 2179 (providing that the Report supporting the Fair Housing Act states the statute “is a clear pronouncement of national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream”).

²⁶ The Free Housing Act defines “dwelling” as “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.” 42 U.S.C. § 3602(b) (2008).

shelters, domestic violence shelters, group homes, and hospice facilities.²⁷

“Handicapped” is defined in three ways by the FHAA: (1) a physical or mental impairment that significantly restricts life activities, (2) a history of having an impairment, or (3) being considered to have an impairment which excludes current drug and alcohol addiction.²⁸ The FHAA makes it illegal to discriminate against this group and requires “reasonable accommodations” to be made to permit a disabled person the “equal opportunity” to live in a dwelling.²⁹

“Reasonable accommodations” is not defined within the FHAA, but the FHAA regulations released by the Department of Housing and Urban Development help develop the term. For example, the FHAA regulations explain that “reasonable accommodations” includes permitting a Seeing Eye Dog in an

²⁷ See *Villegas v. Sandy Farms, Inc.* 929 F. Supp. 1324, 1327 (D. Or. 2006) (stating “[t]he FHA applies only to ‘dwellings’ Courts have applied the FHA to homeless shelters, *Turning Point v. City of Caldwell*, 74 F.3d 941 (9th Cir. 1996); shelters for homeless and battered women and their families, *Woods v. Foster*, 884 F. Supp. 1169 (N.D. Ill. 1995); . . . group homes for recovering drug addicts and alcoholics, *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995); seasonal bungalows, *United States v. Columbus Country Club*, 915 F.2d 877 (3d Cir. 1990), *cert. denied*, 501 U.S. 1205, 111 S.Ct. 2797, 115 L.Ed.2d 971 (1991); and hospice facilities for AIDS patients, *Baxter v. City of Belleville*, 720 F. Supp. 720 (S.D. Ill. 1989). The FHA does not apply, however, to lodging for transient guests such as hotels, *Patel v. Holley House Motels*, 483 F. Supp. 374 (S.D. Ala. 1979).”).

²⁸ The Free Housing Act defines “handicap” as

(1) a physical or mental impairment which substantially limits one or more of such person’s major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).

42 U.S.C. § 3602(h) (2008).

²⁹ 42 U.S.C. § 3604(f)(3)(B) (2008). The FHA makes it illegal to “refus[e] to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a person with a disability] equal opportunity to use and enjoy a dwelling.”

apartment that does not usually permit animals.³⁰ Another reasonable accommodation includes permitting a tenant to pay for and make reasonable modifications on the premises with the owner's approval.³¹ For example, a tenant may widen doorways to allow a wheelchair. The modification is permissible provided the tenant agrees to restore the dwelling to the previous condition.³² Modifications that do not interfere with the next tenant's use and enjoyment do not need to be changed back when the tenant leaves. Thus, if a doorway is widened for wheelchair access, it does not need to be restored because it will not impede the next tenant's utilization of the apartment.³³

Reasonable accommodations are an important part of the FHAA because the policy gives the disabled the right to make changes to their current housing when they cannot find adequate housing. It also permits those changes to be maintained if it is impossible for them to be changed back avoiding unnecessary costs when the tenant moves. This is very important because the expenses necessary to restore the apartment in the first place might have been high and if it is unnecessary to change it back it is illogical to do so. Very few

³⁰ 24 C.F.R. § 100.204(b) (2008). *See also* *Majors v. Hous. Auth.*, 652 F.2d 454 (5th Cir. 1981) (requiring an exception to no pet rule of a reasonable accommodation for a woman whose mental disability required the companionship of a dog and remanded for determination on the facts).

³¹ Discrimination includes: "(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental." 42 U.S.C. § 3604(f)(3)(A) (1988).

³² [T]he landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted [R]efusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling;

42 U.S.C. § 3604(f)(3)(A) – (B) (2008).

³³ 24 C.F.R. § 100.204(b)(2) (1993). Widening doorways to permit wheelchair access will not interfere with next tenant's use of the property so the apartment will not need to be restored back to its original condition.

people would even notice if a doorway was wider than standard and wider doorways do not interfere with the purpose or efficacy of a dwelling. In addition, this accommodation might make the apartment accessible for another disabled tenant. This also requires landlords to face issues the disabled face and learn about the needs of the disabled. The major hindrance to reasonable accommodations can no longer be landlords according to the FHAA, but reasonable accommodations are still a hurdle because so many of the disabled are on a fixed income and cannot afford the costs to make adjustments.

The FHAA ban on discrimination against the disabled is also intended to apply to zoning. This includes prohibiting discrimination through land use regulations, restrictive covenants, special use permits, and conditional use permits.³⁴ The disabled have the right to live where they choose. While the FHAA was an important step in changing stereotypes about the disabled and effectively ending discrimination, it does not go far enough. The disabled have been systematically denied participation in American life because of stereotypes, prejudice, misconceptions, and ignorance.³⁵ The FHAA still permits local, state, or federal limitations on the number of people permitted to live in a dwelling as long as it is reasonable.³⁶

In *City of Edmonds v. Oxford House*, the Supreme Court explained the FHAA's application to zoning. In this case, the Supreme Court found that group homes must be permitted in

³⁴ The Committee intends that the prohibition against discrimination against those with handicaps apply to zoning decisions and practices. The Act is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community.

H.R. Rep., *supra* note 22, at 2185.

³⁵ *Id.* at 2179.

³⁶ See 42 U.S.C. § 3607(b)(1) (2008) (stating that “[n]othing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling”).

single family dwelling zoned areas.³⁷ The Supreme Court decided that neighbors could not keep group homes out of areas where group homes would be the most effective based on zoning ordinances. Philadelphia claims to fully comply with the FHA. A “Notice of Accommodation for Residences of People with Disabilities” is posted on the phila.gov website.³⁸

C. THE AMERICANS WITH DISABILITIES ACT

Another obstacle against discrimination is the Americans with Disabilities Act (ADA). It was signed into law in 1990 to prohibit discrimination against those with physical and mental disabilities.³⁹ Congress found that there had been a long history of discrimination against the disabled; they were seen as inferior and were isolated, segregated, and disadvantaged in every facet of society.⁴⁰

There are three main goals of the ADA. First, Title II provides that no disabled person will be excluded from public services or programs. Second, Title III deals with public accommodations and commercial facilities providing that, no disabled person can be discriminated against on the basis of disability from “full and equal enjoyment” in public accommodations. If changes are necessary they must be “readily achievable” or easily and inexpensively done. In addition, private clubs, religious groups, and historical landmarks are not bound by Title III.

Third, regarding future building, the statute says that all buildings built 30 months after July 26, 1990 must be made accessible and usable to those with disabilities unless

³⁷ City of Edmonds v. Oxford Hous., 514 U.S. 725, 737 (1995).

³⁸ Mayor’s Comm’n on People with Disabilities, Notice of Accommodation for Residences of People with Disabilities, <http://www.phila.gov/mcpd/docs/housing/information.doc> (last visited Feb. 29, 2008).

³⁹ The purpose of the ADA is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1) (2008).

⁴⁰ The findings note that those with disabilities “occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally.” 42 U.S.C. § 12101(a)(6) (2008).

demonstrated structurally impracticable.⁴¹ It also requires alterations be made to already existing buildings when feasible.⁴² Despite these requirements, the City of Philadelphia does not enforce the ADA because Pennsylvania has its own Act. The Pennsylvania Act 1988-166, which generally complies with the ADA, is broader in that it requires *all* new buildings be accessible to the disabled.⁴³ When making alterations to already existing facilities, the requirements are more rigorous than the ADA.⁴⁴ In addition to being in compliance with Pennsylvania's

⁴¹ 42 U.S.C.A. § 12183(a)(1) (2008).

⁴² 42 U.S.C.A. § 12183(a)(2) (2008).

⁴³ Therefore, in order to provide for the general welfare of all citizens, all new construction of buildings, included within the provisions of this act, shall be accessible to and usable by persons with physical handicaps. As existing buildings are remodeled, accessibility features shall be incorporated into these buildings to the maximum extent feasible. It is recognized by the General Assembly that the degree of accessibility achievable when existing buildings are remodeled will, under certain circumstances, be less than that possible in new construction. When the incorporation of accessibility elements in existing buildings results in an extreme hardship, then variances may be obtained.

Pa. Universal Accessibility Act P.L. 1296, No. 166 (1965) (amended 1988), available at <http://www.dli.state.pa.us/landi/lib/landi/laws-regulations%5Cbois%5Cuniversalaccessibilityact.pdf>; see also Mayor's Comm'n on People with Disabilities, Accessible Construction Questions and Answers, <http://www.phila.gov/mcpd/construction.html> (last visited Feb. 29, 2008).

⁴⁴ [W]hen the construction cost of remodeling is less than 30 percent of the worth of the building, only the remodeled area(s) must be made accessible. When the construction cost of the remodeling is greater than or equal to 30 percent but less than 50 percent of the worth of the building, the remodeled area(s) must be made accessible, and an accessible route to the remodeled area(s) must be provided. When the construction cost of the remodeling is 50 percent or more of the worth of the building, the entire building and building site must be made accessible. In addition, if an alteration affects the usability of, or access to, an area containing a primary function, an accessible route to the primary function area must be provided.

Mayor's Comm'n on People with Disabilities, *supra* note 43.

Act, any property owners in Philadelphia must also comply with the ADA.

IV. CASE LAW

A. PHILADELPHIA CASE LAW

In 1993, the United States District Court of the Eastern District of Pennsylvania held that the City of Philadelphia violated the FHA by refusing to permit a substitution of a side yard for a back yard in a zoning requirement for a property that planned to house the mentally ill homeless or recovering substance abuse homeless. Project H.O.M.E., a Pennsylvania non-profit run by Sister Mary Scullion, acquired two properties on Fairmont Avenue to be used as Single Room Occupancy (SRO) housing with twenty-four hour a day case management services. SRO's contain a small bedroom, a community kitchen and are designed to give the resident some control over his or her environment while still getting the services needed to help him stay off the streets.⁴⁵ This permits those who are able to live more independently to transition out of homeless shelters while freeing up much needed space in homeless shelters where there are shortages of beds. The residents must be drug and alcohol free, which is enforced by random drug testing.⁴⁶

The property contained a four-story building with a side yard measuring 5,400 feet. This home is partially funded by the federal government, but to get funding through HUD there may be no legal claims pending. This litigation caused funding to be put on hold.⁴⁷ The zoning code required that residential property have a rear yard. Originally, Licensing and Inspections granted the permit despite the violation of the zoning code. This permit was appealed by two neighborhood associations that did not want a group home for mentally ill homeless and recovered substance abusers in their neighborhood. Because the substitution of a side yard for a rear yard does not put any financial or administrative burden on the city or require a

⁴⁵ United States v. City of Phila., 838 F. Supp. 223, 225 (E.D. Pa. 1993).

⁴⁶ *Id.*

⁴⁷ *Id.*

fundamental alteration of the zoning code, the use is permissible.⁴⁸

Although this case came out in favor of Project H.O.M.E., discrimination against special needs housing is still a problem. In 1997, Ken-Crest Services, Inc. received a permit to open a foster home for disabled children. Neighbors sought an injunction to prevent Ken-Crest from operating a foster home for disabled children in a residential district.⁴⁹ The Zoning Board permitted the foster home, making a reasonable accommodation to allow a non-residential use in a residential zone. Ken-Crest still appealed the decision because despite the zoning board's permission they believed the use of the home constituted a "family" and it was residential use because it was equivalent to a family. Saying they were not residential and giving a reasonable accommodation allegedly violated the FHA because they were being treated differently. The court found that the zoning board was correct in its findings. In general, Pennsylvania case law finds that foster homes are the same as family residences when it comes to zoning,⁵⁰ but this home was not considered an ordinary foster home because the children live there only on a temporary basis.⁵¹

The court permitted the home, but did not agree with Ken-Crest that their services could fit within the definition of family, despite finding that typically foster homes are considered families for zoning purposes.⁵² The court does not think this

⁴⁸ *Id.* at 228. See *Southeastern Cmty. Coll. v. Davis*, 442 U.S. 397 (1979) (holding that an accommodation is not reasonable if: (1) it would require a fundamental alteration in the nature of a program, or (2) it would impose undue financial or administrative burdens on the defendant); see also *Nathanson v. Med. Coll. of Pa.*, 926 F.2d 1368, 1383 (3d Cir. 1991).

⁴⁹ *Ken-Crest Serv., Inc. v. Zoning Bd.*, 33 Phila. Co. Rptr. 385 (1997).

⁵⁰ *Id.* at 391. The court held that "ordinary foster homes are to be treated as family residences for zoning purposes." Examples given include *Children's Home of Easton v. City of Easton*, 417 A.2d 830 (1980), and *Children's Aid Soc'y v. Zoning Bd. of Adjustment*, 402 A.2d 1162 (1979), because there is no real difference between ordinary foster homes and family residences.

⁵¹ *Ken-Crest*, 33 Phila. Co. Rptr. at 395. Temporary basis is less than eighteen months.

⁵² *Id.*

group represents a family, but still permits the use to adhere to the FHA's requirements. Their holding excludes a foster home with five medically disabled children as a use that creates a family.

B. PENNSYLVANIA CASE LAW

The Third Circuit has generally ruled against groups which discriminate against the disabled. In *Dr. Gertrude A. Barber Center, Inc. v. Peters Twp.*,⁵³ Dr. Gertrude A. Barber Center, Inc. ("the Barber Center") provided residential services to the mentally retarded. Most residents lived in single-family home neighborhoods in four-person homes that integrated the residents into the community. The township zoning ordinance defines a family as not more than three unrelated persons living together so the Barber Center had to apply for a special exception. At the hearing for the zoning exception, neighbors testified to noise problems, traffic, and parking concerns.⁵⁴ The special exception was denied and the home was closed.

The U.S. District Court for the Western District of Pennsylvania found that the ordinance defining a family had a disparate impact on the mentally retarded and therefore violated the FHA. In addition, the defendants failed to make reasonable accommodations. The Western District entered a judgment in favor of the Barber Center and awarded damages.

In *Philadelphia Center for Developmental Services, Inc. v. The Zoning Board of Plymouth Township*,⁵⁵ the court found that a special use exception to the zoning requirement was not needed. This was a case concerning Community Living Arrangements (CLAs) for the mentally retarded. The CLA existed in the neighborhood for several years and housed three mentally retarded citizens. The township required that all CLAs apply for a special exception under the zoning ordinance to continue operation because their use did not fit the definition of family. The zoning ordinance includes non-traditional families which were defined as no more than five unrelated individuals

⁵³ 273 F. Supp. 2d 643 (W.D. Pa., 2003).

⁵⁴ *Id.* at 650.

⁵⁵ 492 A.2d 1191 (Pa. Commw. Ct. 1985).

that live together as a nonprofit housekeeping unit.⁵⁶ Because this CLA only involved three residents and the zoning ordinance specifically permits five unrelated individuals, the court held that the zoning board misinterpreted the statute and no special use exception was required.

Most recently, in 2006, the Third Circuit ruled on *Lakeside Resort Enterprises, LP v. Board of Supervisors of Palmyra Township*.⁵⁷ In 2000, the plaintiff, Lakeside, was negotiating the sale of a property, which had formerly been a hotel and restaurant, to Greenway, Inc. (“Greenway”). Greenway intended the property to be used as a drug and alcohol facility. In January 2001, a zoning ordinance amendment was passed that prohibited drug and alcohol treatment centers in the Community Commercial district. The sale to Greenway fell through because they could not obtain a conditional use permit. Lakeside filed suit against the township alleging a violation of the FHAA. The district court entered a judgment as a matter of law in favor of the Township because 14.8 days was not considered a significant period of time, the residents were transient; they lived there solely to get treatment and wouldn’t see it as a place they would return to.⁵⁸

The FHAA prohibits discrimination of sale of a dwelling solely because the handicapped will move in. The appellate court used the following test from *United States v. Columbus Country Club*⁵⁹ to determine whether a facility is a dwelling under the FHA. They looked at whether (1) the facility was a place where residents intended to remain for a significant period of time, and (2) it would be a place they would see as somewhere to return to during that time period. The court found that 14.8 days (a cap often put on by insurance companies) was only the average and many stayed longer so it was a dwelling where the residents intended to remain for a significant period of time. While there, the residents treated the place as a residence so it was also somewhere they intended to return to while staying

⁵⁶ *Id.*

⁵⁷ 455 F.3d 154 (3d Cir. 2006).

⁵⁸ *Id.* at 157.

⁵⁹ 915 F.2d 877, 881 (3d Cir. 1990).

there. The court held that the facility was considered a dwelling and remanded it back to the district court. Most recently, certiorari was denied by the United States Court of Appeals for the Third Circuit (as of Jan 22, 2007).

C. CASE LAW OUTSIDE OF PENNSYLVANIA

Although the courts have found that there are restrictions on local zoning ordinances and reasonable accommodations must be given, zoning restrictions are not *per se* invalid under the FHAA.⁶⁰ In *Familystyle of St. Paul v. City of St. Paul, Minn.*,⁶¹ the Eighth Circuit upheld a quarter-mile spacing requirement for residential dwellings for the mentally ill. The court found that the state's dispersal requirements appeared on their face to discriminate against the housing choices made by the disabled, but there was no intent to discriminate. The government's real interest was in integrating the mentally ill into a typical neighborhood and limiting the number of mentally ill residents in the neighborhood would lead to segregation.⁶² Many jurisdictions have chosen not to follow the dispersal requirements or have created other tests to decide if they discriminate.⁶³ Dispersal requirements are another way that zoning is used to keep special needs housing out because it is legal to restrict where disabled housing can be placed.⁶⁴

⁶⁰ *Oxford House, Inc. v. City of Va. Beach*, 825 F. Supp. 1251 (E.D. Va. 1993).

⁶¹ 923 F.2d 91 (8th Cir. 1991).

⁶² *Familystyle*, 923 F.2d at 93 (citing Minn.Stat. § 245.461, subd. 4) (This created "settings that maximize community integration and opportunities for acceptance.").

⁶³ Lauber, *supra* note 4, at 401.

⁶⁴ *Id.*

V. SPECIAL NEEDS HOUSING OUTSIDE OF THE UNITED STATES

A. EUROPE

Only in the past ten years have there been any real changes within the European Union in regard to disability policy.⁶⁵ Europe was slower than North America, Australia, and the United Nations to recognize that the disabled should have the same anti-discrimination policies as other groups. Africa, Asia, and South America recognized anti-discrimination legislation around the same time as Europe did.⁶⁶ Previously in Europe, as in the United States, social opinion and policy was based on incorrect assumptions and prejudices. This is slowly beginning to change through new legislation and by reconsidering policies like “separation and segregation” and moving towards integrated living, working, and schooling.⁶⁷

“Separation and segregation” was based on the idea that the disabled person was the one with the problem and if he or she could not fit into an environment without adaptation then that person needed to be in a separate environment.⁶⁸ In the area of housing, the “separation and segregation” model was hostile to those with disabilities that required housing accommodations. The disabled had to be able to use regular housing the way it was and could not interfere with the neighbors’ enjoyment of their housing.⁶⁹ Housing was typically built for those without disabilities and those who needed accommodations were forced to live separately and

⁶⁵ Lisa Waddington, *Changing Attitudes to the Rights of People with Disabilities in Europe*, in *LAW, RIGHTS & DISABILITY* 33 (Jeremy Cooper ed., 2000).

⁶⁶ *Id.* at 52. For a detailed overview of disability rights in Africa, Australia, Austria, Bulgaria, Canada, China, Costa Rica, France, Germany, Greece, Guatemala, Hong Kong, Hungary, India, Ireland, Israel, Italy, Japan, Nepal, The Netherlands, New Zealand, Peru, The Philippines, Scandinavia, Thailand, and the United States, see Jeremy Cooper, *Improving the Civil Rights of People with Disabilities Through Domestic Law: A Global Overview*, in *LAW, RIGHTS & DISABILITY* 81 (Jeremy Cooper ed., 2000).

⁶⁷ Waddington, *supra* note 65.

⁶⁸ The original model held “that limitations or difficulties linked to a disability primarily result from the physical or mental impairment which an individual has, and are largely unconnected to the surrounding environment. This model has provided a theoretical justification for the separation and segregation of the people with disabilities.” *Id.* at 44.

⁶⁹ *Id.* at 43.

segregated in large institutions with dorm style rooms.⁷⁰ Most of these institutions have been closed or have decreased in size in the last few years as social attitudes and legislation changes. There is now a move towards modifying the environment to adjust to the disabled. There is now an understanding that the disabled are disadvantaged if the environment is unable to adjust and not the other way around.⁷¹

An example of legislation that has created change is the Disability Discrimination Act. It was enacted in 1995 and covers employment, discrimination in other areas (goods, facilities, and services; and premises), education, and public transport.⁷² One of the criticisms of this act is that it explains when discrimination is permitted without giving a basic right to non-discrimination.⁷³ One positive part of this act is that it forces service providers to make reasonable adjustments in anticipation that the disabled will use them.⁷⁴ This means they must make reasonable adjustments before they are needed or requested. But they do not have to make an adjustment if it would “fundamentally alter” the business.⁷⁵ This is similar to the “reasonable accommodations” required by Title II of the ADA, although the ADA does not require these accommodations to be anticipatory unless it is a public building and other requirements are fulfilled.

B. THE INTERNATIONAL MOVEMENT

One of the first international movements for the disabled occurred in 1948 with the Universal Declaration of Human Rights (UNHDR). The United Nations declared human rights for all people and an adequate

⁷⁰ *Id.*

⁷¹ The new model is the “social model,” which adopts the human rights approach. “This latter model holds that the disadvantages associated with disability stem primarily from the failure of the social environment to adjust to the needs and aspirations of people with disabilities, rather than from the inability of individuals to adapt to society and the environment.” *Id.* at 44.

⁷² Disability Discrimination Act, 1995, c. 50, available at <http://www.opsi.gov.uk/acts/acts1995/1995050.htm>

⁷³ Richard Light, *We Have Become People: A Report on the Results of Federal Disability Legislation in the United States of America*, DISABILITY AWARENESS IN ACTION (1995), available at http://www.daa.org.uk/e_tribune/e_1995_12.htm

⁷⁴ Catherine Casserley, *The Disability Discrimination Act: An Overview*, in LAW, RIGHTS & DISABILITY 139, 156 (Jeremy Cooper ed., 2000).

⁷⁵ Disability Discrimination Act, 1995, Part III, c. 21 para. 6, available at <http://www.opsi.gov.uk/acts/acts1995/95050-c.htm#22>.

standard of living for everyone including the disabled.⁷⁶ Although this document is not binding it has influenced many constitutions drafted after 1948 and is a symbol of equality.⁷⁷

On December 13, 2006 the General Assembly adopted a human rights treaty that protects and promotes the rights of the disabled across the world. Currently there are about 650 million disabled in the world.⁷⁸ The Convention reaffirms the commitment to ensuring that persons with disabilities “enjoy...the inherent right to life...on an equal basis with others.”⁷⁹ This demonstrates that the trend towards equality for the disabled is becoming important throughout the world, but there are still problems facing enforcement because signing is voluntary (but binding once signed) and changing social behavior is difficult.⁸⁰ However, international law does affect our world and can encourage the movement on a global scale.

VI. FINDING HOUSING

A. DISCRIMINATORY BARRIERS

Discrimination keeps the disabled from securing what affordable housing there is available. Neighbors resist the

⁷⁶ Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

U.N. Decl. art 25, para. 1, available at <http://www.un.org/rights/50/decla.htm>.

⁷⁷ Jeremy Cooper, *Improving the Civil Rights of People with Disabilities Through International Law*, in LAW, RIGHTS & DISABILITY 59, 60 (Jeremy Cooper ed., 2000) [*hereinafter* Cooper *International Law*].

⁷⁸ *General Assembly Adopts Groundbreaking Convention, Optional Protocol on Rights of Persons with Disabilities*, US Fed. News, Dec. 13, 2006, 2006 WLNR 21868226

⁷⁹ United Nations Convention on the Rights of Persons with Disabilities, Dec, 13, 2006, art. 10, available at <http://www.un.org/esa/socdev/enable>.

⁸⁰ “International lawyers concede that the framework of International Law has not yet found a solution to the problem of the enforcement of the standards of behaviour set out in the key international documents.” Cooper, *International Law*, *supra* note 77, at 60.

disabled moving into their neighborhoods because they continue to believe stereotypes based on misconceptions. This is a huge problem as one in five Americans is disabled⁸¹ and five percent of adults have severe mental illness.⁸²

Discrimination has taken on new and more deceptive tactics. In New Jersey in 1998, a group of neighbors in Mullica Hill were unhappy when they found out a facility for mentally ill youths would be moving in to the neighborhood. The home was to be a transitional home for eighteen to twenty-one year old males who had recently been discharged from mental homes. When the municipality told the neighbors there was nothing they could do to stop the sale, the neighbors pooled money together and bought the home before the non-profit could close on the property. One of the neighbors claimed that they feared for their safety.⁸³ In another situation, complaints came from a disabled person in a middle class neighborhood who was barred from making reasonable accommodations to his house based on condominium association rules.⁸⁴ These types of reactions are not uncommon, but communities are taking discrimination to an aggressive new level. While it is unclear whether these types of actions contradict the FHAA overall, they do seem to contradict the intent of the FHAA.⁸⁵

⁸¹ According to the Census Bureau one in five Americans or 53 million people reported a disability in 1997. Karaim, *supra* note 19.

⁸² "Severe mental illness is defined as a disorder that causes substantial interference with the ability to handle basic living skills – such as eating, bathing or managing money – or to function in family, job or social contexts." Karaim, *supra* note 19.

⁸³ "There were a lot of people who were nervous about security and safety." Jack Wagman, *Uniting to Defeat a Group Home*, PHILA. INQ., Sept. 23, 2002, at A01.

⁸⁴ "We have people with condos who try to put up a ramp, and they're getting all kinds of threats from the condo association," says Nancy Starnes, an official with the National Organization on Disability. Karaim, *supra* note 19.

⁸⁵ According to Michael Allen, who specializes in housing issues for the Bazelon Center for Mental Health Law in Washington, DC, buying this home "contradict[s] the intent of antidiscrimination housing laws, which seek equal distribution for group homes." *Id.*

B. FINANCIAL BARRIERS

The disabled also have trouble finding housing because of financial barriers.⁸⁶ The disabled are four times as likely to fall below the poverty line as the able-bodied. Additionally, the most affordable housing is the housing that is the least accessible to the disabled.⁸⁷ Poverty is probably the biggest problem for the disabled as most physical barriers to housing can be cured by paying for alterations. The irony is that integration actually creates the lowest burden on taxpayers. Integration leads to stability and a better quality of life which, in turn, leads to reduced hospital trips, cutting down the costs expended and the burden on taxpayers.⁸⁸ Integration can be successful if it is given the proper support, including treatment and other assistance.⁸⁹

As evidenced by “Priced Out in 2004: The Housing Crisis for People with Disabilities,” the housing situation in Philadelphia and across the country is extremely grim for those with disabilities. “Priced Out” is a report that is published to raise awareness and achieve benefits for those with disabilities and special needs. Housing affordability was evaluated in all of the States and the conclusion that was drawn is bleak. They found that it is practically unattainable for the disabled receiving Social Security Income (SSI) to find affordable, safe, and accessible housing.⁹⁰

⁸⁶ Reed Karaim, *People with Physical Disabilities*, National Public Radio, <http://www.npr.org/news/specials/housingfirst/whoneeds/physdisabled.html> (last visited June 18, 2008).

⁸⁷ *Id.*

⁸⁸ Researchers at Berkeley University’s Goldman School of Public Policy found that once those with mental illness moved into supportive housing there was a 58% decrease in emergency room visits and hospital stays and almost complete elimination of use of residential mental health facilities. Karaim, *supra* note 19.

⁸⁹ *Id.*

⁹⁰ “[I]t is virtually impossible for people with disabilities receiving SSI to obtain decent, safe, affordable, and accessible housing in the community unless they receive housing assistance.” Jack Reed, *Foreward* to Ann O’Hara & Emily Cooper, Technical Assistance Collaborative & Consortium for Citizens with Disabilities Hous. Task Force, *Priced Out in 2004: The Housing Crisis for*

SSI is a monthly benefit paid by the government to low income individuals who are disabled, blind, or over sixty-four. In 2004, the average rent for a one-bedroom apartment throughout the country was higher than the income of a disabled person receiving SSI; since 1998, the rent has increased by fifty-nine percent.⁹¹ Federal housing affordability guidelines state that a low-income household should not pay more than thirty percent of the monthly income to rental costs.⁹² In Pennsylvania, ninety-eight percent of SSI is needed to rent a one-bedroom housing unit.⁹³ In 2004, in Philadelphia, the monthly SSI payment was \$591.40 and 128.7% of income was needed for a one-bedroom, putting the amount of SSI as an hourly wage at \$3.41.⁹⁴ If someone who was disabled was working and they brought home the amount they were given by SSI for the month, they would be making approximately \$3.41 per hour based on a forty hour work week.

The conclusion of “Priced Out” is that the federal and state governments are not doing enough to house those with special needs. Two important programs to help those with disabilities stay independent have been under attack as the federal budget becomes more stressed by other programs: Section 8 vouchers⁹⁵ and Section 811 Supportive Housing for Persons with Disabilities program.⁹⁶ Funding needs to be re-directed back

People with Disabilities, at 2 (2005), http://www.c-c-d.org/press_room/pricedout04.pdf(last visited June 18, 2008).

⁹¹ *Id.*

⁹² *Id.* at 20.

⁹³ *Id.* at 8.

⁹⁴ The federal minimum wage in 2004 was \$5.15, making SSI \$1.74 below the minimum wage. *Id.* at 20, 43.

⁹⁵ “HUD pays rental subsidies so eligible families can afford decent, safe and sanitary housing....programs are generally administered by State or local governmental entities called public housing agencies (PHAs). HUD provides housing assistance funds to the PHA.” 24 C.F.R § 982.1(a) (2007).

⁹⁶ *See id.* § 891. “HUD provides funding to nonprofit organizations to develop rental housing with the availability of supportive services for very low-income adults with disabilities, and provides rent subsidies for the projects to help make them affordable.” Homes & Communities: U.S. Department of

into these programs. In addition, two goals were set out in “Priced Out”: (1) to continue to encourage and maintain programs that are working so that we can continue to help those with disabilities⁹⁷ and (2) to increase the amount of affordable rental housing for those with disabilities.⁹⁸

C. FEDERAL REACTION

Unfortunately, these goals have not been attained. Federal funding for public housing has dropped from \$7.1 billion in 2001 to \$ 5.6 billion in 2006.⁹⁹ This has affected Philadelphia greatly; the Philadelphia Housing Authority’s federal operating subsidy dropped from \$106 million in 2005 to \$93 million in 2007.¹⁰⁰

Affordable public housing is necessary to keep a city thriving. In Philadelphia, over 80,000 residents are served by the Philadelphia Housing Authority.¹⁰¹ The city and its citizens depend on this service and it is important that it continues to get the funding it needs.

Unfortunately, the Bush administration has not backed the disabled.¹⁰² Cuts in funding have led to less investigation of

Housing and Urban Development, <http://www.hud.gov/offices/hsg/mfh/progdesc/disab811.cfm> (last visited Feb. 18, 2008).

⁹⁷ REED, *supra* note 90, at 2. “First, Congress and the U.S. Department of Housing and Urban Development (HUD) need to ensure that the federal government maintains its commitment to critical programs that have a demonstrated track record of success in serving extremely low-income people with disabilities” *Id.*

⁹⁸ “Second, the production of new affordable rental housing needs to be a national priority.” *Id.* at 3.

⁹⁹ Carl R. Greene, *Deconstructing PHA’s Gains*, PHILA. INQUIRER, Dec. 13, 2006, at B02. (Carl R. Greene is the executive director of the Philadelphia Housing Authority.)

¹⁰⁰ The subsidy dropped thirteen million despite the increase in utility costs. *Id.*

¹⁰¹ In 2000, PHA served 18,500 households. In 2006, it served 31,000 households and did so with 36% fewer employees than in 2000. *Id.*

¹⁰² The Justice Department under Attorney General John Ashcroft has called “for a narrow interpretation of disability rights law” and “abandoned

discrimination cases. Only 701 investigations were performed in the disability rights section in 2002, which is a reduction of 181 investigations from the previous year; twenty-eight cases were filed, reduced from thirty-seven in 2001.¹⁰³ Meanwhile, the National Fair Housing Alliance has seen the number of disability discrimination cases increase and this does not include the cases that are not brought because of the difficulty involved in filing a discrimination case.¹⁰⁴

Although there are many complaints of discrimination based on disability, to bring a discrimination case you must first file with HUD within one year of the date of discrimination. The process is difficult and many do not understand the forms or miss the deadline while HUD does its best to dismiss the case at that level. The administration continues to ignore the problem.¹⁰⁵ The City of Philadelphia risks losing \$12 million of a \$350 million budget¹⁰⁶ and it is feared that this will lead to rent increases, job losses, weakened security, and maintenance.¹⁰⁷

lawsuits and settlements begun by prior administrations.” Lawyers claim that the Civil Rights Division “has been less aggressive in bringing new discrimination cases,” and only one employment discrimination case has been filed in the past 3 years as opposed to the 2 to 4 that are typically filed each year. Shannon McCaffrey, *Civil Rights Division Backs Away From Its Initial Activism*, PHILA. INQUIRER, Nov. 23, 2003, at A08.

¹⁰³ “The drop is particularly striking because it was Bush’s father who, as president, signed the Americans with Disabilities Act in 1991.” Although, there is an argument that more cases are settled out of court. *Id.* Some argue that the agencies that are supposed to be fighting discrimination “have been failing in their jobs.” *Hearings, supra* note 3, at 1 (statement of the Honorable Sue Kelly, Chairman, Subcomm. on Oversight and Investigations).

¹⁰⁴ *Id.* at 45 (statement of Shanna Smith, President and CEO, National Fair Housing Alliance).

¹⁰⁵ “There is this problem that is at HUD, but it permeates this administration of a kind of ambiguity toward recognizing, and admitting to the discrimination that exists in our society. But I really think the regulations are a problem, and a lack of serious leadership over at HUD on these matters.” *Hearings, supra* note 3, at 49 (statement of Barbara Arnwine, Executive Director, Lawyers Comm. for Civil Rights Under Law).

¹⁰⁶ Larry Eichel, *Housing Czars Ask Congress to Fights HUD Cuts*, PHILA. INQUIRER, Aug. 26, 2006, at B01. Carl R. Greene, the executive director of the Philadelphia Housing Authority, sent a letter to Congress requesting additional assistance, “[w]ithout the assistance of both you and your colleagues in Pennsylvania’s congressional delegation,” they wrote, “the poorest families in

VII. PROGRAMS

Philadelphia does make some efforts to be accessible to persons with disabilities. The city's webpage lists places that are accessible to the disabled including ATM's, the airport, the art museum, health centers, libraries, parking garages, police facilities, pools, recreation, and shelters.¹⁰⁸ Philadelphia also has the Mayor's Commission on People with Disabilities that has a subcommittee for housing. Their goal is to augment the number of accessible, decent housing in integrated neighborhoods.¹⁰⁹ Although public buildings are more accessible, not enough is done in the housing arena where there are an estimated 65,300 disabled in need of housing.¹¹⁰

Although there are estimates about how many people need accessible housing for their disability, it is still unclear whether they are correct. Philadelphia is a particularly difficult city for accommodations because much of the housing is made up of row homes.¹¹¹ Row homes are difficult to modify due to steep

both rural and urban communities, will not have clean, safe, affordable housing.'" *Id.*

¹⁰⁷ "[R]ent increases for PHA tenants, the elimination of 300 to 500 jobs, and cutbacks in security and maintenance services." *Id.*

¹⁰⁸ Philadelphia's Accessibility Compliance Office, Welcome to Accessible Philadelphia, <http://www.phila.gov/mcpd/facilities.html> (last visited Mar. 06, 2007).

¹⁰⁹ Their mission statement is "[t]o increase availability and supply of accessible, affordable, integrated, permanent housing for people with disabilities in neighborhoods throughout the City." Philadelphia's Accessibility Compliance Office, Housing Committee, <http://www.phila.gov/mcpd/mcpd/housing.html> (last visited Mar. 06, 2007).

¹¹⁰ *Consolidated Plan*, *supra* note 20, at 299. This estimate does not include persons with AIDS, persons with HIV, the elderly, persons with mental health or mental retardation (estimated population of 89,700 with housing needed 6,100) or persons with substance abuse problems. *Id.*

¹¹¹ AMY HILLER & DENNIS CULHANE, DEP'T OF CITY AND REG'L PLANNING, CLOSING THE GAP: HOUSING (UN)AFFORDABILITY IN PHILADELPHIA 22 (2003), <http://www.cml.upenn.edu/presentations/CLOSINGtheGAP3.pdf> (last visited June 15, 2008). Eighty percent of homeowners and fifty percent of renters in Philadelphia live in row homes. Twenty two percent of those renters in Philadelphia live in buildings with ten or more units, compared to twenty nine percent nationally and thirty six percent in central cities. Most homes in

steps and limited space.¹¹² To facilitate finding housing, the Office of Housing and Community Development (OHCD) maintains a list of subsidized accessible units, as does the Pennsylvania Housing Finance Agency (PHFA). In addition, the OHCD requires that any housing projects funded by the city must comply with the City's Model Affirmative Marketing Plan (MAMP). MAMP requires developers to first market accessible housing to the disabled for 30 days before marketing it to the general public.¹¹³

The PHFA lists the available disabled accessible apartments by region, shows what is available and lists which properties are subsidized through the Low Income Housing Tax Credit (LIHTC).¹¹⁴ The LIHTC is a federally funded program that gives a tax credit to the owners of multi-family properties if they will reserve a certain number of units for low income households.¹¹⁵ These properties are more dispersed and permit low income families to live in areas other than very poor neighborhoods, but the LIHTC doesn't subsidize operating costs so rent can vary greatly.¹¹⁶ The LIHTC is supposed to make rent affordable for those with income at fifty to sixty percent of the area median income of \$22,150 for a single person and \$31,650 for a family of four.¹¹⁷ These amounts are way above the annual income of

Philadelphia were built in the 1930's whereas in most other places, including the Philadelphia suburbs, most homes were built post WWII. Other problems with housing in Philadelphia include; lead paint, rodents, plumbing, poor upkeep, no electricity, exterior problems and crime. *Id.* at 24-25.

¹¹² *Id.* at 22.

¹¹³ *Consolidated Plan*, *supra* note 20, at app. 6.

¹¹⁴ Pennsylvania Affordable Apartment Locator (PAAL), <http://www.phfa.org/pal/> (last visited Mar. 06, 2007).

¹¹⁵ Federal Low Income Housing Tax Credit (LIHTC), <http://www.phfa.org/developers/developer/lihtc.aspx> (last visited Mar. 06, 2007). The LIHTC gives a dollar for dollar reduction in the taxpayer's federal taxes if the units are in a service assuming program and meet all of the requirements.

¹¹⁶ Hiller, *supra* note 111, at 35.

¹¹⁷ *Id.*

someone receiving SSI.¹¹⁸ SSI has not adjusted for inflation as quickly as housing has increased so many disabled on SSI are unable to find affordable housing. Under LIHTC the permissible rent for a one bedroom apartment is five hundred and ninety-three dollars or more a month. At the time, this was twenty dollars and sixty cents more than SSI (which was at the time of publication 572.40).¹¹⁹

The PHFA also provides mortgages to the disabled or those who have disabled family members living with them.¹²⁰ Purchasing a home cuts down on the need to continually find housing or make accommodations to rental properties, while creating a stable home. The OHCD also has a state funded program, Adaptive Modification Program (AMP), that funds modification to homeowner-occupied and renter-occupied homes to make them accessible for the disabled.¹²¹ This fund helps those in need make their accommodations accessible.

With higher rents and actual units decreasing, there is a need for action. In January 2005, the first Housing Trust Fund was created in Philadelphia. It is a permanent source of funding to

¹¹⁸ Supplemental Security Income in Pennsylvania, <http://www.ssa.gov/pubs/11150.html> (last visited Mar. 6, 2007). SSI is a federally funded program for those who are over sixty five, and disabled and blind adults and children. You must have little or no income and own less than \$2,000 worth of resources or \$3,000 for a couple. Many states supplement the federal payment, including Pennsylvania, unless you live in a Medicaid facility. Currently, the maximum monthly Supplemental Security Income (SSI) payment is six hundred and twenty three dollars and nine hundred and thirty four dollars for an eligible couple.

¹¹⁹ Hiller, *supra* note 111, at 21.

¹²⁰ Access Home Modification Program, <http://www.phfa.org/consumers/homebuyers/accesshomemod.aspx> (last visited Mar. 6, 2007). Access Mortgage loans are interest free and have no fees and no monthly payment. The loan is due when the first mortgage is paid off, or the property is sold, transferred or refinanced.

¹²¹ Adaptive Modification Program for Persons with Disabilities, <http://www.phila.gov/OHCD/adaptmod.htm> (last visited Mar. 6, 2007). The AMP helps those with physical disabilities become more independent by providing free adaptations to a house or an apartment. Modifications include, lowering sinks, cabinets, and countertops; wheelchair lifts and ramps, railings, widening doorways and adapting showers and bathrooms. The assistance is only available to low income families. The maximum monthly household income for a family of one is \$2,104. *Id.*

deal with the housing problems in Philadelphia for low income residents, including the disabled.¹²² The Office of Housing and Community Development states that 65,000 wheelchair accessible homes are needed within Philadelphia and to remedy that, the Housing Trust Fund will require the following of those who receive funding: ten percent of newly constructed housing units must be accessible to wheelchairs, half of the money will be set aside to build housing for households earning \$20,000 or less, all of the units constructed must be visitable by those in wheelchairs, and low-income homeowners will receive assistance for housing repairs.¹²³

Visitability permits anyone in a wheelchair to be able to enter the housing unit and also to use the bathroom in the housing unit.¹²⁴ Visitability can be just as important in the life of a disabled person as having a comfortable place to live because it gives one the ability to visit family and friends. The percentage of people in Philadelphia with a disability is higher than that in the nation overall and this is not because of the high population of elderly in Pennsylvania alone. Twenty-five percent of people over fifteen in Philadelphia have a disability.¹²⁵ There is a lot of need in Philadelphia for disabled housing and although the FHAA and the ADA require a percentage of the housing built to be accessible they do not require that apartments be visitable. Section 504 of the federal Rehabilitation Act requires that five percent of all federally financed housing be accessible to those

¹²² The Housing Trust Fund was created with support by the Philadelphia Affordable Housing Coalition (“PAHC”), Liberty Resources, and the Philadelphia Association of Community Development Corporations. Thomas Earle, *Housing Advocates Celebrate Announcement of Housing Trust Fund*, LIBERTY WORKS, Winter 2005, Vol. 25 No. 1, available at <http://old.libertyresources.org/Publications/LibertyWorks/LibWorkWin2005web.pdf> (last visited June 15, 2008).

¹²³ *Id.* at 1.

¹²⁴ New units must have a zero-step entrance and a ground floor bathroom that someone in a wheelchair can enter. This permits those in wheelchairs to be able to visit friends and family without struggle. *Id.* at 2. Doorways must be at least 32 inches wide. James, *supra* note 3.

¹²⁵ Nineteen percent of people in the nation over sixteen have a disability (six percent lower than Philadelphia). Hiller, *supra* note 111, at 20.

with physical disabilities and two percent be accessible to those with visual or hearing impairments.¹²⁶

Some actions currently being taking in regards to special needs housing include the Medicaid Community Attendant Services and Supports Act (MiCASSA). Medicaid does not guarantee a disabled person the right to live in the community, but only the right to live in a nursing home.¹²⁷ MiCASSA would permit more Medicaid dollars to be spent on assisting the disabled in their homes rather than putting them in nursing homes.¹²⁸ It would give the two million people living in nursing homes a choice of where to live because their medical assistance would follow them rather than apportioning sixty-five percent of Medicaid dollars directly to institutions.¹²⁹ The disabled will have a choice rather than being forced into nursing homes. This choice permits those eligible for nursing homes to decide if they want to use their Medicaid dollars for “Qualified Community-Based Attendant Services” and live independently. This will create a more satisfactory living environment for the disabled as they will be able to control their living situation, but it will also cut down on tax dollars.¹³⁰ This bill is supported by Senators Harkin, Kennedy, Clinton, Biden, and Specter.¹³¹

¹²⁶ *Id.* at 21. Physical accessibility requires lower sinks, doorways at least thirty six inches wide, bathrooms where a wheelchair bound person can get in and out. Visual and hearing impaired require fire alarms with flashing lights and a doorbell system with flashing lights. *Id.* at 20-21.

¹²⁷ LibertyResources.org, Housing, <http://libertyresources.org/housing.html> (last visited Feb. 28, 2008).

¹²⁸ Adapt.org, A Community Based Alternative to Nursing Homes and Institutions for People with Disabilities, <http://www.adapt.org/casaintr.htm> (last visited Feb. 28, 2008).

¹²⁹ *Id.* Adapt is an organization to help the disabled live in homes within the community rather than in nursing homes. Adapt’s goal is to keep the disabled within the community by getting twenty five percent of Medicaid dollars set aside to be spent on attendant services programs rather than putting the disabled in institutions. Attendant services include assistance with eating, dressing, using the facilities and some movement.

¹³⁰ *Id.* In-home attendant services cost less than a person living in a nursing home and, according to Liberty Resources, Inc., “nursing homes are our homeless shelters for people with disabilities.” JAMES, *supra* note 3; see also Barbara Prince, *Pennrose Properties and Liberty Resources Team Up*, LIBERTY WORKS, Fall 2004, Vol. 24 No. 3, at 7, available at

VIII. CONCLUSION

The number of elderly in this country is poised to skyrocket. By 2030, twenty percent of the nation's population will be sixty-five or older.¹³² Disability occurs the most frequently in the elderly, half of those over sixty-five have impaired faculties while thirty-three percent are severely handicapped.¹³³ On top of all that, the burden falls heavily on Pennsylvania, as Pennsylvania ranks second in the largest elderly population in the nation.¹³⁴ With the numbers of elderly increasing at such a rapid rate, it is clear that we will need even more accessible housing for the disabled and we will need it rather quickly (within the next twenty years). In addition, this rapid rise will in effect cut down on subsidized housing for the disabled because many units have become "senior only" to deal with the influx of elderly.¹³⁵

We are faced with a threefold problem: not only has the number of disabled increased, the housing shortage is getting

<http://old.libertyresources.org/Publications/LibertyWorks/LibWorkFall2004web.pdf> (last visited June 15, 2008). (Charmaine Robertson was moved from Riverview, a Philadelphia city-run boarding home with two or three people to a room, to the Martin Luther King Development. At Riverview, all of her SSI went directly to the Riverview and she was allocated a monthly stipend of 100 dollars. She is a low income, wheelchair bound woman who could not locate affordable handicapped accessible housing. Liberty Resources (an agency for the disabled) helped place her in the Martin Luther King Development where she lives independently and pays her own bills. In the past, many handicapped accessible apartments were given to those without handicaps because management companies had trouble finding handicapped residents. Liberty Resources has helped to fix this problem.)

¹³¹ Co-Sponsors of MiCASSA and Money Follows the Person Legislation, <http://www.adapt.org/casa/mapdoc.html> (last visited Feb. 28, 2008).

¹³² As of 2002, the figure was at 12%. Melissa Dribben, *As the Population Ages, the Barriers Rise*, PHILA. INQUIRER, Jan. 27, 2002 (Magazine), at 12.

¹³³ *Id.*

¹³⁴ There are an estimated 1.8 million people over sixty five in Pennsylvania and 705,188 of them have a disability. 1.13 million of the 9.3 million Pennsylvanians between five and sixty four are handicapped. *Id.*

¹³⁵ *Id.*

worse, and discrimination is on the rise.¹³⁶ Without proper options in housing, many disabled will end up institutionalized if their families cannot care for them or if housing cannot be found in Philadelphia.¹³⁷ The scope of this discrimination proves it is somewhat difficult to understand exactly how many cases of discrimination actually occur because many cases of discrimination based on disability are settled outside of court.¹³⁸ In addition, some cases are never brought at all due to fear, misunderstanding of rights, and lack of economic resources to bring the cases.

Everyone deserves a decent place to live. But if that is not enough to convince people, from a practical standpoint reasonable accommodations are helping business. For each dollar a business spends to make an accommodation, thirty-five dollars are made.¹³⁹ Housing, employing, and making the world accessible to the disabled does not decrease the value of the neighborhood, but makes it a richer place to live.

We have come a long way, but there is still much left to do. Public buildings are more accessible now than ever, but housing is still lacking.¹⁴⁰ Disability groups encourage building all new

¹³⁶ “The problem of housing for people with disabilities is huge,” said Mark Quigley, a spokesman for the National Council on Disability. “Huge.” Existing buildings are expensive to adapt to disabled use and not much is being built. In addition there are still problems with discrimination and a lack of investigation of complaints. *Id.*

¹³⁷ Joan Sullivan is a forty two year old who has been in a wheelchair since her youth. When her parents died nine years ago she was forced to move into an institution. Since then she has been unable to find housing and care so that she can live independently. Marc Kaufman, *Without a Home – the Disabled Pursue Dreams of Independence*, PHILA. INQUIRER, Jan. 15, 1984, at B01.

¹³⁸ Nancy Petersen, *Chester County Begins Drive to Ensure Fair Housing/ The County Housing Office Hosted a Conference for Those Who Work to Find and Prevent Discrimination*, PHILA. INQUIRER, Feb. 13, 1998, at B02. Legal Aid of Chester resolved many suits out of court where those with mental disabilities were evicted for behavior directly related to their disability.

¹³⁹ “For every dollar a company spends in making an accommodation, they get back USD35 in terms of increased productivity, reduced employee turnover, lowered training costs, and savings in insurance compensation costs.” Light, *supra* note 73.

¹⁴⁰ Karaim, *supra* note 86.

houses with some amount of accessibility to the disabled.¹⁴¹ Disability groups also encourage education to builders and architects who can incorporate “visitability” into their designs without creating added cost. Although this might seem excessive, “visitability” makes it possible for the disabled to travel to others’ homes comfortably. In addition, looking forward, many people will become disabled as they age. Those without pre-existing disabilities may not be able to stay in their homes if they develop a disability and are unable to make the accommodations.¹⁴² Visitability standards will give these people the freedom to stay in their home as long as they like.

We must meet the housing needs of the disabled in our community because we have taken on this challenge through our laws (the FHA and the ADA) and because everyone deserves to have a clean, affordable, safe place to live. Some argue that there are enough laws to stop discrimination, but the major problem is enforcement of those laws.¹⁴³ If they are enforced and HUD commits to enforcing these laws, much of the disability discrimination in housing will be resolved. In addition, cooperation between the community, the local government, and the federal government working in an efficient way could help resolve some of the problems. It is clear that we need to make a commitment now to fix the housing shortage before it spirals out of control in the next twenty years.

¹⁴¹ “A movement is slowly gaining ground to establish at least minimal accessibility standards for newly-built residential homes of all kinds. Several cities, counties, and the state of Vermont have established “visitability” standards intended to make sure there is at least one entrance to homes that is wheelchair accessible and one bathroom that can accommodate a person with a disability.” *Id.*

¹⁴² “‘People don't want to lose their homes just because they can't walk down a flight of stairs anymore,’ says Starnes. ‘But we hear about this all the time -- people being forced to move because they can't afford to fix up their house.’” (Nancy Starnes works for the National Organization on Disability.) *Id.*

¹⁴³ *Hearings, supra* note 3, at 3 (statement of Barney Frank, Member, Subcomm. on Hous. and Cmty. Opportunity).