

Oxford House, Inc.

1010 Wayne Avenue, Suite 300
Silver Spring, Maryland 20910

October 2010

To Police Departments or District Attorneys' Office

Regarding Expulsion of Residents from Oxford Houses

This letter is in regard to the status of an Oxford House resident with respect to local landlord/tenant laws. As you know, Oxford Houses are recovery homes for individuals recovering from alcoholism and/or drug addiction. Therefore, they are given special protections under the Federal Fair Housing Act [42 U.S.C. 3601], the Federal Americans with Disabilities Act [42 U.S.C. 12101 and § 2036 of the Federal Anti-Drug Abuse Act of 1988 [42 U.S.C. 300x-25].

Each local Oxford House receives a charter from Oxford House, Inc. – the national nonprofit 501(c)(3) umbrella organization for all Oxford Houses. The charter has three simple conditions: [1] the group must be democratically self-run following the process and procedures of the Oxford House Manual[©] (downloadable from our website: www.oxfordhouse.org by clicking forms and publications and then click the downloadable PDF manual), [2] the group must be financially self-supporting by paying the landlord and all other household bills on time, and [3] the group must immediately expel any resident who returns to drinking alcohol or using drugs in or outside the house in order to make sure that it stays a recovery house and does not encourage everyone to go back to drinking or using drugs.

Each Oxford House[™] has a separate FEIN tax identification number and a separate bank account. The houses operate autonomously but must follow the procedures of the Oxford House[™] Manual[©] and adhere to the conditions of its charter set forth above. There are no dues or fees to OHI by individual houses but by having a charter or conditional charter the houses are assured the technical assistance and support by OHI. In this regard, OHI has defended the civil rights of every Oxford House[™]. The residents of such self-run, self-supported recovery homes as Oxford House[™] are a protected class under the Federal Fair Housing Act [FFHA]¹ and the American with Disabilities Act [ADA]². Often defense of the civil rights of an Oxford House has resulted in litigation. A fair body of case law has developed with respect to Oxford Houses and application of the Federal Fair Housing Act and the Americans with Disabilities Act.

¹ 42 U.S.C. § 3604 *ET. seq.* (2000)

² 42 U.S.C. §12132 *ET. seq.* (2000)

The lead case is probably *City of Edmonds, WA v. Oxford House, Inc.* 514 U.S. 725 [1995]. In that case, the United States Supreme Court granted certiorari because of a conflict between Federal Circuit Courts of Appeal with respect to the application of the Federal Fair Housing Act to Oxford House™ and a similar home for individuals recovering from alcoholism and drug addiction. The 1995 Supreme Court's decision in the *Edmonds Case* resolved the threshold question of whether Oxford House™ residents fall within the protection of the Federal Fair Housing Act. Specifically, the Court found that recovering alcoholics and drug addicts were protected by the act by reason of their handicapping condition but if not in recovery such individuals are not protected.

The terms “handicap” and “disability” are used interchangeably. The statute defines handicap to mean “(1) physical or mental impairment which substantially limits one or more of such person's major life activities ... or (3) being regarded as having such impairment, but such term does not include, illegal use of or addiction of a control substance.”³ When a treatment provider attempted to rent several apartments for recovering substance abusers, the generally viewed conservative Fourth Circuit Court of Appeals found that persons in recovery from drug addiction were “handicap” and therefore within a class protected under the statute.⁴ More recently, the same circuit found that the Baltimore Port Authority were in violation of the both the FHA and ADA when it refused to rent a berthing space to a group to operate a former navy hospital ship as a residential education facility for women recovering from substance abuse.⁵

The resolution of the issue of whether recovering alcoholics and drug addicts are protected under the FHA rests both on common sense and the direct legislative history of the 1988 Amendments. Indeed, the U.S. House Report recognizes that “individuals who have a record of drug use or addiction but who are not currently using illegal drugs would continue to be protected if they fall under the definition of handicap ... like any other person with a disability such as cancer.”⁶

Oxford Houses are not substance abuse centers, halfway houses, shelters nor community care facilities. There is not treatment, counseling, therapy, or any type of health care services provided. In an Oxford House™, as opposed to a halfway house, residents live there by choice. There is no house manager, paid staff or other type of institutional personnel involved in the supervision or management of the house. All decisions relating to the functioning of the Oxford House™ are made democratically. An Oxford House™ manages its own finances and has its own bank account. There is no random testing for alcohol or drug use, or are there any rules relating to curfews. Oxford Houses are not halfway house, nor are they a substitute for halfway houses.

³ 42 U.S.C. § 3602(h) (2000)

⁴ *United States v. Southern Management, Inc.* 955 F. 2d 914 (4th Cir. 1992)

⁵ *Project Life, Inc. v. Glendening* 2002 WL 2012545 (4th Cir. Sept. 4, 2002), affirmed 139 F. Supp. 2d 703

⁶ H.R. Rept. No. 711, 100th Cong., 2d Sess 22 (1988)

Oxford House™ residents are considered to be the "functional equivalent" of a family for several reasons. First, all the residents have access to the entire house. Second, all the residents participate equally in the housekeeping functions of the house, *i.e.*, house chores, house finances. Each resident, however, is responsible for his own food and cooking. Third is the quality of the relationship among the residents. The emotional and mutual support and bonding given each Oxford House™ resident in support of his/her recovery from drug addiction and alcoholism is the equivalent of the type of love and support received in a traditional family. Finally, the living arrangement is not based upon a profit motive.

In addition, residents live in an Oxford House™ by choice. The choice is usually motivated by the individual's desire not to relapse into drug and/or alcohol use again after that individual has bottomed out, *i.e.*, lost job, home or family. It is also motivated by the desire that one must change their lifestyle, the manner in which they conduct their affairs, and the need to become a responsible, productive member of society. The final factor in determining that Oxford House™ residents are the "functional equivalent" of a family is the fact that there are no limits as to how long a resident can stay in Oxford House™. Conceivably, an individual can stay in Oxford House™ a lifetime if he/she does not relapse into drug and/or alcohol use, pay his/her rent on time, or engage in disruptive behavior. The average length of residence is about 13 months but some individuals may live in an Oxford House™ until they die unless they are found by their to have used alcohol and/or drugs. In that case they must immediately leave because the federal Anti-Drug Abuse Act [P.L. 100-690] requires it. As noted above, that law has a specific provision for group recovery homes. I have attached the codified version of §2036 of PL 100-690 to this letter.

After setting up a procedure to make start-up loans to groups of six or more recovering individuals establishing a group recovery home, the law then spells out the conditions applicable to the group home. They are as follows:

Such loans are made only to nonprofit private entities agreeing that, in the operation of the program established pursuant to the loan—

- (A) the use of alcohol or any illegal drug in the housing provided by the program will be prohibited;
- (B) any resident of the housing who violates such prohibition will be expelled from the housing;
- (C) the costs of the housing, including fees for rent and utilities, will be paid by the residents of the housing; and
- (D) the residents of the housing will, through a majority vote of the residents, otherwise establish policies governing residence in the housing, including the manner in which applications for residence in the housing are approved.

Notice that subparagraph (B) requires that any resident violating the prohibition against alcohol or illegal drug use must be expelled from the housing. This tracks the requirement of Oxford House and was patterned after the successful Oxford House program that had started in 1975 – thirteen years before the passage of this law. Subparagraph (D) goes on to give the residents of the house the power to make decisions

beyond the literal reading of subparagraph (A) and mandates that the group “will through a majority vote of the residents otherwise establish policies governing residence in the housing, including the manner in which applications for residence in the housing are approved.” This in effect trumps local landlord/tenant requirements related to notice or other procedural safeguards and the resident in any Oxford House is given warning or notice of this pre-emption in several places on the application for admission to the house. The membership application can be downloaded from our website by clicking forms and then click “Application for Membership.”

Common sense lies at the heart of the structure and operation of Oxford Houses. All the houses are rented family-type homes and the group really operates like a family with the common bond of learning how to develop sobriety without relapse. It is essential that the resident who is using drugs or alcohol be immediately evicted. When such an individual refuses to leave the premises he or she not only is a threat to the sobriety of the other residents in the house but also is a trespasser. As with any trespasser, such a person who refuses to voluntarily leave the premises should be subject to forcible eviction by a peace officer. Not only does such a remedy decrease the likelihood of self-help violence but it also helps preserve a living environment conducive to recovery without relapse for the recovering individuals maintaining the sober house.

Alcoholism and drug addiction are serious problems for individuals, families, communities and the nation. This is why the Anti-Drug Abuse Act was enacted and why billions of dollars a year are spent to try to get alcoholics and drug addicts to stop their addictive behavior. Sadly the normal success rate for the limited time detoxification and/or treatment is not very good. Studies have shown that fewer than 20 percent of alcoholics and/or drug addicts will stop their addiction and stay stopped. That is why the success rate for Oxford House has made it such a desirable program. DePaul University in Chicago studied the outcome of 897 Oxford House residents living in 219 Oxford House. After following each individual for two years, they found that 87% had stayed clean and sober. The normal or expected outcome would have been less than 20%. It is important that communities support the basic principles that make Oxford Houses work. The most basic of those principles is that if a resident relapses he or she must be immediately expelled. If that is not the case it jeopardizes the sobriety of the other residents and because it violates the basic tenant of an Oxford House charter the individual house would immediately lose its charter.

I hope this information is helpful and if you have any questions please give me a call at 301-589-0539.

Sincerely yours,

J. Paul Molloy

J. Paul Molloy
Cofounder and CEO

TITLE 42 USC • CHAPTER 6A • SUBCHAPTER XVII • Part B • subpart ii • § 300x–25

§ 300x–25. Group homes for recovering substance abusers

(a) State revolving funds for establishment of homes

A State, using funds available under section 300x–21 of this title, may establish and maintain the ongoing operation of a revolving fund in accordance with this section to support group homes for recovering substance abusers as follows:

- (1) The purpose of the fund is to make loans for the costs of establishing programs for the provision of housing in which individuals recovering from alcohol or drug abuse may reside in groups of not less than 6 individuals. The fund is established directly by the State or through the provision of a grant or contract to a nonprofit private entity.
- (2) The programs are carried out in accordance with guidelines issued under subsection (b) of this section.
- (3) Not less than \$100,000 is available for the fund.
- (4) Loans made from the revolving fund do not exceed \$4,000 and each such loan is repaid to the revolving fund by the residents of the housing involved not later than 2 years after the date on which the loan is made.
- (5) Each such loan is repaid by such residents through monthly installments, and a reasonable penalty is assessed for each failure to pay such periodic installments by the date specified in the loan agreement involved.
- (6) Such loans are made only to nonprofit private entities agreeing that, in the operation of the program established pursuant to the loan—
 - (A) the use of alcohol or any illegal drug in the housing provided by the program will be prohibited;
 - (B) any resident of the housing who violates such prohibition will be expelled from the housing;
 - (C) the costs of the housing, including fees for rent and utilities, will be paid by the residents of the housing; and
 - (D) the residents of the housing will, through a majority vote of the residents, otherwise establish policies governing residence in the housing, including the manner in which applications for residence in the housing are approved.

(b) Issuance by Secretary of guidelines

The Secretary shall ensure that there are in effect guidelines under this subpart for the operation of programs described in subsection (a) of this section.

(c) Applicability to territories

The requirements established in subsection (a) of this section shall not apply to any territory of the United States other than the Commonwealth of Puerto Rico.

Note: Law above reflects the October 17, 2000 amendment [PL 106-310] that made the provision permissive on the states rather than mandatory, as it had been under PL 100-690. However, even under the permissive provision the requirement on the houses stays the same and the federal criteria of paragraph (6) describe the Oxford House™ concept and system of operation.