

## Oxford House™ and The Law

Oxford House™ began in 1975 as both a traditional and unique sort of organization. It is traditional in its organization as a nonprofit tax-exempt corporation. It is unique in its purpose and its product is the development and application of a concept and system of operations for recovering alcoholics and drug addicts to operate self-run and self-supported recovery homes. From the uniqueness of Oxford House™ has grown a successful program that significantly improves treatment outcomes for thousands of individuals recovering from alcoholism and drug addiction.

This paper discusses how ordinary laws apply to the unique Oxford House program. Local government officials, landlords, casualty insurance companies and law enforcement officials may find the information useful.

### I. Oxford House™ Basis: §2036 of PL 100-690

Congress enacted PL 100-690 [42 USC 11707], the federal Anti-Drug Abuse Act of 1988, during the closing months of the Reagan Administration. Section 2036 of that Act relates to an incentive program to establish recovery self-help homes for alcoholics and drug addicts based upon the Oxford House model. The following remarks during consideration of the legislation by the late Congressman from Illinois, Edward R. Madigan, then ranking Republican on the House Energy and Commerce Committee Health Subcommittee, shows the nexus between the law and Oxford House.

Chairman Henry Waxman (D.CA) and I included, as part of the block grant treatment provisions of this bill, a mandatory set-aside of \$100,000 in each State to establish a revolving loan fund to provide loans to start self-run and self-supported recovery housing throughout the country. We did so because we believe that we have discovered a cost-effective program that has had great success in reducing relapse - a phenomenon that makes recovery from alcoholism or drug addiction so frustrating. I want to take a few minutes to share with my colleagues what we have learned.

Thirteen years ago a group of recovering individuals in the Washington, D.C. area responded to the closing of a Government run half-way house by assuming the lease on that half-way house and running it on their own. They called the operation Oxford House, Today over 200 recovering individual live in 18 such houses in the Washington, D.C. area and in Bethlehem, PA. Fifteen are for men and four are for women.

Each is an alcohol and drug free group house rented by recovering individuals and democratically run on a self-supporting basis. Each house was started by borrowing enough money for the first month's rent and security deposit. Within 2 years, each house has repaid the money it has borrowed. The repayment of the start-up loans has permitted other loans for new houses to get started.

The loan concept in this bill provides the catalyst to replicate recovery housing throughout the country without taking anything away from the self-help concept that makes Oxford House work.

Congressman Madigan and full Committee Chairman John Dingle (D. MI) went on to encourage the Secretary of Health and Human Services to work with Oxford House to implement the new program immediately. President Ronald Reagan signed the Anti-Drug Abuse Act of 1988 into law November 18, 1988. By 2004, the number of Oxford Houses has grown from 18 in 1988 to 1,087. The law is a catalyst for Oxford House™ expansion.

*Congressional Record*, Vol. 134, No. 152 November 10, 1988, reprinting floor remarks of Friday, October 21, 1988 made during consideration of the bill.

## II. Oxford House™: Defined by Federal Law

The Federal Anti-Drug Abuse Act of 1988, PL 100-690 §2036, established the requirement that states establish recovery home revolving loan funds and, in the following subsection, spells out how such homes should operate:

- "(6) to ensure that such loans are made only to nonprofit 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 shall 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 such 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."<sup>2</sup>

The importance of the specific criteria is two-fold:

- (1) it limits recipients of the recovery house revolving loan fund money to entities having the program content enumerated in paragraphs (A) through (D) printed above; and
- (2) it supersedes local landlord/tenant laws that might otherwise afford notice, hearings or other due process to the expulsion or admission of residents from or into the self-run, self-supported recovery home.

The federal guidelines issued by the Department of Health and Human Resources, April 19, 1989, further clarify the federal requirements for self-run, self-supported recovery homes receiving a start-up loan under the program. Specifically, the federal guidelines defined the requirements on the recipient group as follows:

They must agree: (1) To maintain the house as an alcohol and drug free environment; (2) that the residents of the house will remain alcohol and drug free; (3) that any resident of the house who violates the pledge will be expelled from the house; (4) that the costs of the housing, including rent and utilities, will be borne by the residents; and (5) that the house will be operated as a self-managed democracy.<sup>3</sup>

The requirements of federal law place a responsibility upon an individual Oxford House that has received a start-up loan under the program. However, the requirements also provide local law enforcement officials the rationale for assisting a house trying to expel a resident who has relapsed or otherwise violated the rules adopted by the group by majority vote in compliance with subparagraph (D) of the statute. Residents expelled by their peers usually leave without trouble. However, the federal law enables local law enforcement to assist should an expelled resident refuse to leave.

It is always a good idea to acquaint the local police and judicial system about the Oxford House program shortly after a new house opens. Knowledge of the program and the laws under which it operates can pay an important dividend later. These entities may also refer new residents in recovery to the house.

In summary, because the federal law has specific criteria, those criteria trump any local laws related to expulsion or eviction. Oxford Houses are not rooming houses or landlords. (See III. Federal Courts Find Oxford Houses Protected under Federal Fair Housing Act.) They are recovery homes authorized and funded under the Federal Anti-Drug Abuse Act of 1988. As such, the residents of each house must follow democratic majority rule in all their house affairs and always immediately expel any resident who returns to using alcohol and/or drugs.

<sup>2</sup> Codified §11916A, 42 USC 300x-4a

<sup>3</sup> Federal Register, Vol. 54, No. 54, page 15809, April 29, 1989.

### III. Federal Courts Find Oxford Houses Protected Under Federal Fair Housing Act

Oxford House™ prides itself on renting good houses in good neighborhoods. Its by-laws preclude Oxford House from ever owning property because it does not want to divert its attention from helping alcoholics and drug addicts gain comfortable recovery without relapse. To increase the odds of recovering individuals staying clean and sober without relapse, Oxford Houses seek good houses in good neighborhoods. The 'Not-In-My- Backyard' fear sometimes erupts in neighborhoods where Oxford House groups rent a house. Before the federal government encouraged the national expansion, Oxford House groups would simply ask the neighbors to give them a chance to prove they were good neighbors. "If you do not want us in your neighborhood at the end of the year, we will move." they said. In every case, the neighbors did not ask the men or women to move at the end of the year.

With passage of the Anti-Drug Abuse Act of 1988, expansion of Oxford Houses exploded. During the early 1990s dozens of communities sought to close Oxford Houses located in good neighborhoods because local zoning ordinances restricted the number of unrelated individuals that could live together in a single-family home. Fortunately for Oxford House and other recovering individuals, Congress amended the Federal Fair Housing Act in 1988 to include protection against discrimination for handicapped individuals. A number of federal District Courts found that because Oxford House residents are in recovery from alcoholism and drug addiction, they are handicapped under the act and therefore a protected class. The question then became whether Oxford Houses were rooming houses or other commercial establishments.

Federal Courts quickly resolved that question. Following 4 full days of trial, the Federal District Court in *Oxford House, Inc. v. Township of Cherry, NJ*, 799 F. Supp. 450, 452 (D.N.J. 1992) found:

Oxford Houses are not health care facilities, rehabilitation centers, or supervised halfway houses. They are simply residential dwellings rented by a group of individuals who are recovering from alcoholism and drug addiction....No professional treatment, therapy, or paid staff is provided. Unlike a boarding house where a proprietor is responsible to run and operate the premises, at Oxford House, the residents are responsible for their own food and care as well as for running the home. Because the house must be self-supporting, each of the residents needs a source of income to pay his or her fair share of expenses.

Similarly, in *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329, 1335 (D.N.J. 1991) the court rejected the argument of the city that Oxford House was a halfway house and distinguished Oxford House from a traditional halfway house as well as a boarding house:

The instant case, by contrast does not involve a halfway house. The residents share more than household responsibilities and meals. The residents make all house decisions in a democratic fashion. But even more importantly, the support they lend each other is therapeutic, in the same manner as that of a well-functioning family rather than the relationship between residents of a boarding house.

In these and a dozen other cases, Federal Courts took time to learn about how Oxford Houses work and came to the conclusion that it is a special sort of family where all the residents work together toward the common goal of becoming comfortable with sobriety without relapse. The United States Supreme Court in its 1994- 1995 term decided to review one of the Oxford House cases that been affirmed by the 9<sup>th</sup> Circuit Court of Appeals. In *City of Edmonds, WA v. Oxford House, Inc.* 514 US 725 (1995), handed down March 5,1995, the Supreme Court found that recovering alcoholics and drug addicts are a protected class under the Federal Fair Housing Act. Although decided on narrow grounds, the *City of Edmonds* case clearly upheld the right of twelve recovering individuals to live in a part of the city zoned for single families. The exemption under the FFHA that permits restriction in the number of residents permitted to live in a dwelling (to prohibit overcrowding) does not apply to family composition rules designed to preserve the nature of a neighborhood. An accommodation in zoning restrictions did not place an undue hardship on the City of Edmonds.

Since the Supreme Court's decision in the *Edmonds Case*, most communities have accepted the fact that Oxford Houses are just like an ordinary family for purposes of zoning. However, it is in the nature of democracy and a litigious society that some jurisdictions continue to try to accommodate intolerant neighbors, rather than the disabled in congregate living in order to help each other function as productive citizens. As noted in part IV of this paper, Federal pre-emption works to assure nondiscrimination of Oxford House residents in various situations.

#### IV. Pre-Eminence of Federal Law on Oxford House™

The best guideline for determining how to treat Oxford Houses is to ask how the law or private sector roles apply to ordinary families. For example, cable television systems should offer services and charge Oxford Houses just as they provide service to ordinary families. Homeowners' insurance policies held by landlords should be just the same as if the landlord were renting his or her house to a single family. Fire safety requirements should apply to an Oxford House just as they do to ordinary families living in single-family homes.

Both the federal Fair Housing Act<sup>4</sup>(FFHA) and the Americans with Disabilities Act<sup>5</sup> (ADA) prohibit anyone from discriminating against handicapped individuals. Both the FFHA and the ADA are federal civil rights statutes protecting the class of handicap and disabled. When Congress amended the FFHA in 1988, the Report of the House Committee noted:

Just like any other person with a disability, such as cancer or tuberculosis, former, drug.-dependent persons do not pose a threat to a dwelling or its inhabitants simply on the basis. of status Depriving such individuals of housing, or evicting them would constitute irrational discrimination that may seriously jeopardize their continued recovery.<sup>6</sup>

A plaintiff can prove an FHAA violation by showing (1) intentional discrimination; (2) discriminatory impact; or (3) a refusal to make a reasonable accommodation.<sup>7</sup> The ADA was enacted in part to prevent the isolation and segregation of individuals with disabilities and to promote their assimilation into the mainstream of all aspects of community life, including housing.<sup>8</sup> The legal analyses under both statutes are the same for plaintiff's discrimination claims<sup>9</sup>

Together the FFHA and ADA provide a strong measure of protection to landlords renting to Oxford Houses. In *Tsombanidis v. City of West Haven*, Ct\_ 129 F. Supp. 2d 136, the city and state fire commission were required to treat the particular Oxford House the same as they would an ordinary family and had to make a reasonable accommodation and not require installation of a sprinkler system in the property. In other words, treat Oxford House residents the same as a family is treated.

In *Wai v. Allstate Insurance Co.* 75 F. Supp. 2d 1 (D.D.C. 1999), two landlords who rented their homes to people with disabilities were denied standard landlord insurance and were directed to purchase costlier commercial insurance policies. The Court held that although insurance policies are not explicitly mentioned in the text of the FFHA, denial of homeowners' insurance on the basis of disability violates §3604(f)(1), which declares it unlawful to "discriminate in the sale, or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of handicap." The court held that denial of insurance coverage would make a dwelling unavailable to the persons with disability and the insurer had to make a reasonable accommodation. Oxford House was a party to the suit *The Wai Case* and numerous other disputes with casualty insurance companies settled the fact that they are subject to the nondiscrimination provisions of both FFHA and ADA.

Today, recovering individuals who follow the disciplined self-help structure of an Oxford House™ know with confidence that the law is on their side.

<sup>4</sup> 42 USC §3601 *et. seq.*

<sup>5</sup> 42 USC §§12131-12165

<sup>6</sup> H.R. Rep. No. 100-177, 100<sup>th</sup> Congress, 2d Session. App.II-12 to 13 (1988)

<sup>7</sup> *LeBlanc-Sternburg v. Fletcher*, 67 F. 3d 425; *Smith and Lee Assocs., Inc. vY. City of Taylor*, 102 F. 3d 781, 790 (6<sup>th</sup> Cir. 1996).

<sup>8</sup> *Pack v. Clayton County*, 47 F3d 430 (11<sup>th</sup> Cir. 1995)

<sup>9</sup> See Judge Gerard L. Goettel's erudite discussion of the differences between discrimination and refusal to make accommodation in *Beverly Tsombanidis, Oxford House, Inc. v. City of West Haven, Ct.* 129 F.Supp. 2d 136 (2001). The 2<sup>nd</sup> Circuit Ct. of Appeals upheld the outcome of the case holding for Plaintiff in 2003 on basis of "reasonable accommodation."