

A publication of Housing Opportunities Project for Excellence (HOPE), Inc.

“Are you requesting to saddle the camel or cut off its hump?” Reasonable Accommodations Under Disability Rights Laws



This article, written by HOPE partner attorney Matthew Dietz, highlights his recent reasonable accommodations court victory on behalf of Albert Schaw, pictured far left. Congratulations!

On September 18th, 2019, the Eleventh Circuit Court of Appeals decided *Schaw v. Habitat for Humanity of Citrus County*, in a very easy to read opinion that spelled out the process for determining whether an accommodation for a disability is reasonable and necessary. U.S. Circuit Court Judge Kevin Newsom, the author of the opinion, acknowledged that the concept is a “little squishy”, and analogized that the difference between an accommodation that is required and one that is a fundamental alteration is the difference between saddling a camel and removing its hump.

In 2006, when Albert Schaw was 20, he fractured his cervical spine in a wrestling accident and became a quadriplegic. Because of his disability, he was not able to get gainful employment and received Social Security Disability Income (SSDI). In 2015, Albert rented a two bedroom home for \$675 per month, but it was not accessible for him, to the extent that he could not even close the door of the bathroom because he used a wheelchair.

Albert decided to apply for Habitat for Humanity’s Home Ownership Program because the payment would be less than his rent, and he would have the ability to be a homeowner of a house that he could actually use. However, Habitat for Humanity’s minimum income qualification to qualify for a home was more than Albert’s income received from Social Security. Albert requested that Habitat for Humanity either take into account his food stamp payment or a \$100 per month support from his family to meet the minimum income requirement.

This was refused, because Habitat for Humanity demanded assurances that the family support would not cease and requested the family set up an annuity plan or a trust. Not only would the creation of a trust be expensive, it may have also disqualified Albert from other benefits that he would have received. As a result, Albert Schaw could not qualify for a Habitat home.

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Housing Opportunities Project for Excellence (HOPE), Inc. fights housing discrimination to ensure your civil rights. We are the only full-service non-profit fair housing agency servicing Miami-Dade and Broward Counties.

We have a three-tiered strategy of (1) Education & Outreach, (2) Intake & Counseling, and (3) Private Enforcement. Thanks to federal, state and local funding, all of our services are **free to the public**. We are here to honor the legacy of the civil rights movement by striving for a truly just and equal society.

To become a tester or volunteer, please call (305) 651-4673 in Miami-Dade or (954) 742-3778 in Broward.

Thank you!

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HOPE Inc.'s mission is to fight housing discrimination in Miami-Dade and Broward Counties and to ensure equal housing opportunities throughout Florida.

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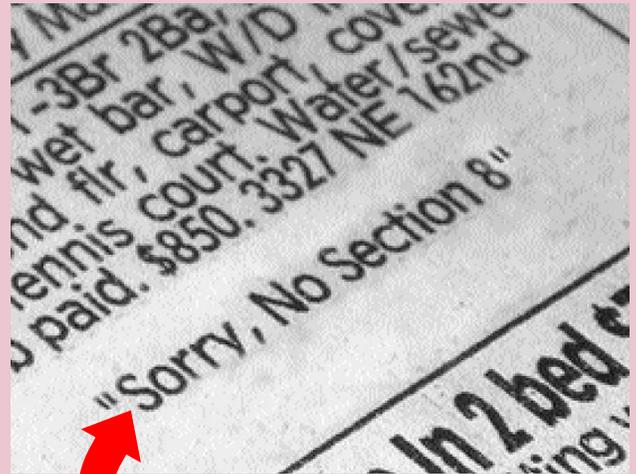
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Can't say this in an ad for housing!

Source of income discrimination is illegal in Broward and Miami-Dade Counties!

It is illegal for a housing provider to keep a person out simply because that person is paying for housing with a subsidy or assistance like Section 8, Housing Opportunities for Persons with AIDS (HOPWA), or other benefits programs.

Please call HOPE for more information or if you think you are facing discrimination!

Broward: (954) 742-3778

Miami-Dade: (305) 651-4673

Please Comment (Yes, YOU!) to Defend our Fair Housing Protections!

On the federal level, the current administration is proposing crippling changes to the Fair Housing Act which will benefit corporations to the detriment of individuals and families. The administration has launched an aggressive attack on civil rights protections, and the latest involves the proposed disparate impact rule recently published by the Department of Housing and Urban Development (HUD). The proposed rule would destroy a key civil rights tool under the Fair Housing Act which allows challenges to policies which may appear neutral but have a discriminatory effect.

Disparate impact claims have been brought under the federal Fair Housing Act for decades to tackle damaging — though at times subtle — discrimination that has perpetuated segregation. The proposed rule would make it virtually impossible to bring a fair housing disparate impact claim by forcing advocates to go through an arduous 5-step process, making it more difficult to enforce the Fair Housing Act effectively.

Public comments are accepted through Oct. 18—only a few days left! We need each one of you, supporters of fair housing rights and civil liberties, to join us in this fight by submitting a comment to HUD in opposition to the rule. **For commenting, template letters, fact sheets, background, and other information, please visit www.defendcivilrights.org (national advocates).** Also, any sharing of this information (in meetings, at events, via social media, and otherwise) is appreciated!

Housing is only one part of the dismantling of civil rights. Every industry — education, employment, transportation, etc. — will all be impacted, and leave the most vulnerable populations behind. We need to stand up now and fight so that HUD cannot pass this proposal easily.

Who does this harm? More than 4 million instances of housing discrimination still occur each year, and the vast majority are unreported. When Americans are denied equal access to housing, it impacts their access to good jobs, quality education, and a clean and healthy environment. Disparate impact claims have offered advocates a crucial legal tool to fight discrimination and ensure

equal housing opportunity. Courts have allowed disparate impact claims for over 45 years, and its use was affirmed by the Supreme Court in a 2015 ruling in *Texas Dept. of Housing & Community Affairs v. Inclusive Communities Project*.

Millions of our families, friends and neighbors, and communities could be harmed. For example, an apartment complex could restrict occupancy to one person per bedroom, which would mean families with children would be barred from renting at that complex or would be forced to rent larger, more expensive apartments. We receive complaints every year from families who have been denied housing because of the number of children in their family.

The systemic practice of seemingly neutral policies that have a discriminatory impact is relevant in the banking and insurance industries. We see that large communities of color have been and continue to be impacted negatively by the policies of big banks, credit bureaus, and insurance companies. This creates a cycle of redlining that perpetuates racial residential segregation.

~With thanks to the Fair Housing Advocates of Northern California for the assistance on messaging!



DEFEND CIVIL RIGHTS

We need YOU! For commenting, template letters, fact sheets, background, and other information, please visit www.defendcivilrights.org

Albert Schaw sued Habitat for Humanity under the Fair Housing Act. The district court judge granted judgment for Habitat for Humanity, deciding that the accommodation was based on Mr. Schaw's lack of financial means, and not necessary because of his disability. Further, a financial accommodation would have given Mr. Schaw a better opportunity, instead of an equal opportunity to use and enjoy Habitat's dwelling. Lastly, the court found that even if the accommodation was based upon disability, Habitat provided Mr. Schaw a reasonable accommodation by allowing an annuity, and Mr. Schaw did not prove that an annuity would have affected his SSDI benefits. Because Habitat offered Schaw an alternative reasonable accommodation, then it satisfied its duty.

The Eleventh Circuit reversed the district court's judgment and found that the effect of Mr. Schaw's disability did not allow him to work, and as such, the accommodation was necessary because of Mr. Schaw's disability, and the accommodation was reasonable because he was still held to the same income qualification standards as others. Lastly, the court held that it was error to consider the alternative accommodations.

The importance of the decision is how the Circuit Court walked the reader through the required analysis and how the burden shifts from the person with a disability to the defendant.

1. The burden starts with a person with a disability requesting a reasonable accommodation that is both reasonable and necessary.

A necessary accommodation is one that alleviates the effects of a disability. A disability includes an impairment that substantially limits such major life activities as "walking, seeing, hearing, speaking, breathing, learning and working," 24 C.F.R. § 100.201(b). Following are two examples of how a necessary accommodation alleviates the effects of a disability:

- The accommodation of an exception to a "no pets" rule for a seeing-eye dog. "Blindness (the handicap) creates an inability to walk around safely (the effect on a major life activity) and thus a need for a waiver of the prohibition on pets (the accommodation)."
- A sober house is an accommodation for a disability created by a substance addiction and was necessary to break the addiction and maintain sobriety.

The Circuit Court recognized that the inability to work was a disability and then completely rejected the lower court's finding that a person with a disability cannot get an accommodation because of the financial

effects of a disability. If person with a disability's financial state is related to his disability, an accommodation with a financial aspect—even one that appears to provide a preference—could be "necessary to afford [an] equal opportunity to use or enjoy a dwelling" within the meaning of Fair Housing Act.

However, the Circuit Court cautioned that it may be necessary to look at Mr. Schaw's pre-accident earning ability to determine whether his earning ability was affected by his disability. In the situation with Habitat for Humanity, the Circuit Court acknowledged that Mr. Schaw would need to be eligible for a job that earned less than minimum wage to be qualified for a Habitat for Humanity home. As such, this Court's guidance was likely targeted to future cases where the eligibility qualifications for a home are substantially higher. The confusing aspect of this analysis is that it is nearly impossible to quantify the effect that disability has on future earnings ability for a child or for a person with intellectual or developmental disability, while, at the same time, there is no question that but for the disability, there would be a higher earning potential.

The reasonability prong for an accommodation is an "initial threshold [that] presents a relatively low bar." The standard is whether the accommodation is reasonable on its face – "ordinarily or in the run of cases." "This Court has explained—in imaginative terms—that '[t]he difference between [an] accommodation that is required and [a] transformation that is not is the difference between saddling a camel and removing its hump.'"

2. If a reasonable accommodation is made, the burden shifts to the defendant to show that the request would pose an undue burden or result in a fundamental alteration of the program.

The Court stated that an accommodation requires a fundamental alteration if it would eliminate an essential aspect of the relevant activity, or, in other words, it would remove the camel's hump. For fundamental alteration, the court must evaluate the "basic purposes of the rule or policy at issue" The Eleventh Circuit gave several examples (the citations are in the opinion):

- The Professional Golf Association's walking rule was not an essential rule of competition and as such, a contestant can use a golf cart instead of walking.
- A group home is allowed in multi-family zoning rule because the quiet, safety and permanence element of a single family zoning ordinance is not an essential aspect of such multifamily zoning ordinance .

- Allowing a miniature therapy horse to reside in a disabled girl's backyard wouldn't fundamentally alter the nature of a single family neighborhood.
- Requiring a nursing school to waive all clinical requirements for a deaf applicant would fundamentally alter the nature of a nursing program.
- Requiring a housing provider to participate in a federal housing program where the program entails many other requirements may be a fundamental alteration.

3. A Court may not consider alternate accommodation until the court considers whether the person with a disability's requested accommodation is reasonable on its face.

The Circuit Court found that the shifting the burden to Mr. Schaw when the housing provider offered an accommodation without determining the reasonability of the requested accommodation was error by the district court. The purpose of first considering and giving deference to a person with a disability is due to the fact that the person with a disability has the best knowledge of what would work for them.

The issue of alternate accommodations is only relevant when the requested accommodation is not reasonable because it is an undue burden or a fundamental alteration. This obligation was detailed in the Joint Statement of the U.S. Department of Housing and Urban Development and the U.S. Department of Justice Reasonable Accommodations Under the Fair Housing Act- Question 7 to 10.

4. Additional requirements cannot be imposed on persons with disabilities that are not placed on able-bodied persons.

Footnotes are always a great place to find direction and guidance for future cases. In this case, the Circuit Court held that considering the alternate accommodation was error without first considering the accommodation. However, in the footnote, the court questioned the alternate accommodation of having the family contribution placed in a trust:

What Habitat asks for is essentially a guarantee that Schaw's income will continue. That's understandable enough—Habitat wants assurance that if it risks accepting an alternate form of income, it will continue to be paid. But providing "insurance" in the form of a trust or annuity costs money and takes time, and the record does not reflect that Habitat requires the same level of assurance from non-disabled applicants. ...

When a condition is not placed on a similarly situated able-bodied person, then the extra charge or condition can be deemed to be a discriminatory term or condition that would also be a violation of the Fair Housing Act or the Americans with Disabilities act. Furthermore, the Joint Statement clarifies that housing providers cannot impose additional fees, charges, or requirements to obtain insurance as a condition to granting an accommodation.

What's next? Albert Schaw's case was sent back down to the trial court to determine whether his accommodation was reasonable and, if so, whether it would cause an undue burden or fundamental alteration to Habitat for Humanity.

This case will have far reaching effects on providers of housing or entities under the Americans with Disabilities Act. For housing providers, the ability to look at other sources of income to determine eligibility requirements will expand housing opportunities for persons with disabilities. It will also require housing providers to focus more on the burdens that a requested accommodation would have on their programs or services instead of attempting to substitute their preferred accommodation from the accommodation requested by the person with a disability.

~By Matthew W. Dietz, Esq.



Join the fight against discrimination! Become a tester!

Please join us in this movement (and make some extra cash as well!) - become a civil rights investigator! Interested people should contact HOPE's Testing Coordinators. Training consists of a paid training session, and after training, available testers are contacted as needed. Each assignment pays \$65-\$100.

Call today! Miami-Dade: (305) 651-4673, Broward: (954) 742-3778.

Applicant must:

- Be 18 years of age or older
- Have no convictions of a misdemeanor involving truth, veracity or honesty or of any felony
- Have good observational and writing skills
- Be able to donate approximately 4 hours for each test
- Be punctual with reliable transportation

Affirmatively Furthering Fair Housing

The concept of “affirmatively furthering fair housing” is based on Section 808 (e) (5) of the federal Fair Housing Act which states that the Secretary of HUD shall administer housing and community development programs in a manner that affirmatively furthers the purpose of the Fair Housing Act. We dedicate this space to Miami-Dade and Broward jurisdictions that receive Community Development Block Grant (CDBG) funds and partner with HOPE to implement the following outreach.

Broward Area Outreach

The following jurisdictions were impacted by Broward area outreach activities during the quarter: Broward County, Davie, Fort Lauderdale, and other Broward locations.

Fair Housing and Predatory Lending Presentations: These presentations consist of PowerPoint visuals, formal lectures, question and answer periods, and informational packages. All presentations are modified to meet the individual needs of the sponsor. The following presentations were conducted (in English, unless otherwise noted).

- Amazing Community Partners, Lauderhill: 7/27/19
- Broward County Housing Authority, Lauderdale Lakes: 7/13/19, 8/10/19, 9/14/19
- Consolidated Credit Solutions, Plantation: 7/27/19, 8/24/19, 9/28/19
- Global Empowerment Development Corp., Pompano Beach: 7/27/19
- Hispanic Unity, Hollywood: 7/27/19
- Housing Foundation of America, Broward County: 8/10/19, 8/24/19
- Oasis of Hope, Pompano Beach: 7/27/19, 8/17/19, 9/21/19
- R.E.A.C.H, Fort Lauderdale: 7/13/19, 8/10/19, 9/14/19
- Urban League of Broward County, Fort Lauderdale: 7/13/19, 7/17/19, 7/27/19, 8/10/19, 8/24/19, 9/14/19, 9/18/19, 9/28/19

Housing Provider Rights and Responsibilities Presentations: These presentations consist of PowerPoint visuals, formal lectures, question and answer periods, and information packages custom designed for the specific needs of local housing providers.

- Henderson Behavioral Health, Lauderdale Lakes: 8/7/19
- Housing Foundation of America, Pembroke Pines: 7/25/19
- Social Service Advisory Board, Sunrise: 7/2/19

Community, Cultural, Health, and Job Fairs: HOPE participates in local community events to diversify outreach efforts, counseling members of the general public on their rights and responsibilities.

- L.A. Lee YMCA, Fort Lauderdale: 8/6/19
- Veterans Summit, Consolidated Credit Solutions, Plantation: 8/10/19

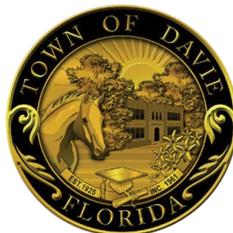


Rob Collins, Esq., HOPE's Education and Outreach Coordinator for Miami-Dade County, hangs out with some festive friends at the Children's Trust Family Expo on September 7, 2019.



#GIVINGTUESDAY™
December 3, 2019

HOPE is participating in Giving Tuesday in 2019! Please visit givingtuesday.org to support us!



Would you like to get this newsletter via e-mail?

Please e-mail rob@hopefhc.com to be added to our list, and receive HOPE Forum in your inbox each quarter!

Miami-Dade Area Outreach

The following entitlement jurisdictions were impacted by Miami-Dade area outreach activities during the quarter: the Cities of Miami, Miami Beach, and North Miami, as well as other Miami-Dade locations.

Fair Housing and Predatory Lending Presentations (conducted in English, unless otherwise noted):

- ASA College, Hialeah: 9/23/19
- Barry University, Social Work Course of Professor Charania, Miami Shores: 9/10/19
- Centro Campesino (English & Spanish), Florida City: 7/20/19
- Cuban American National Council, Little Havana: 7/20/19, 8/24/19, 9/21/19
- Dax Dunn Radio Program, 1170AM: 9/28/19
- Edison Service Center, Little River: 9/19/19
- Experts Resource Community Center/NID (English, Spanish, and Creole), Miami Gardens & North Miami: 7/13/19, 7/27/19, 8/10/19, 8/24/19, 9/14/19
- Haitian American CDC (Creole), Little Haiti: 9/13/19
- Helios Biblios Hour, BlogTalkRadio: 8/25/19
- Housing Foundation of America (Spanish), Kendall: 7/13/19, 8/24/19, 9/14/19
- Miami-Dade Economic Advocacy Trust (MDEAT) Youth Action Committee (YAC), Miami Gardens: 7/29/19
- Miami Rescue Mission Radio, Brownsville: 9/16/19
- Neighborhood Housing Services (English & Spanish), Little Havana: 7/13/19, 7/26/19, 7/27/19, 9/14/19
- Opa-locka CDC (English & Spanish), Opa-locka: 7/13/19, 7/27/19, 8/24/19, 9/14/19
- Real Estate, Education and Community Housing, Kendall: 7/21/19, 8/18/19, 9/15/19
- Trinity Empowerment (English & Spanish), Goulds: 7/20/19, 8/17/19
- University of Miami School of Law, Law Courses of Professors Bekkevold, Emami, and Mahoney, Coral Gables: 8/20/19, 9/5/19, 9/12/19

Provider Presentations:

- Catalyst Miami, Overtown: 7/31/19
- Hampton Village, Brownsville: 7/11/19
- Karis Village, Goulds: 7/10/19
- Little River Bend, Little River: 7/8/19

Community Fairs:

- Barry University, Community Fair, Miami Shores: 9/25/19
- Children's Trust Family Expo, Miami-Dade Fair Center, University Park: 9/7/19
- (City of) Miami Beach, Family Service Day, Miami Beach: 9/21/19
- Miami Beach Regional Library, Miami Beach: 7/16/19
- Miami Dade College Homestead Campus, Community Fair, Homestead: 9/19/19
- Miami Dade College North Campus, Job Fair, Westview: 9/24/19
- Miami Dade College Wolfson Campus, Community Fair, Downtown Miami: 9/18/19
- (City of) Miami Gardens, Elder Abuse Forum, Miami Gardens: 8/14/19
- (City of) Miami Gardens, HIV Awareness Event, Miami Gardens: 9/26/19
- Miami Rescue Mission, Christmas in July, Wynwood: 7/25/19
- South Shore Community Center, South Beach: 7/3/19
- State Attorney's Office Seal and Expunge Community Fairs, Model City & Westview: 8/15/19, 9/18/19
- U.S. Attorney's Office, Farmshare Community Fairs, Gwen Cherry Community Center, Liberty City: 7/25/19, 8/15/19



On November 21, 2019, HOPE is again participating in Give Miami Day, the Miami Foundation's initiative to support non-profits by matching a percentage of credit and debit card contributions of \$25 - \$10,000 during a 24-hour online giving period (from 12:01am to 11:59pm on November 21st). **On November 21st, please go to givemiamiday.org to contribute to Housing Opportunities Project for Excellence (HOPE), Inc.!**

All support is appreciated!



HOPE FORUM

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_____ Juniors For Justice (\$5.00) (13-18 years old)

_____ Pennies from Heaven (children 12 and under)

_____ I am unable to contribute but please send me *HOPE Forum*

There are laws against discrimination in the rental or sale of housing on the basis of:

- ◇ Race or Color
- ◇ National Origin
- ◇ Religion
- ◇ Marital Status
- ◇ Pregnancy
- ◇ Familial Status (having children)
- ◇ Disability
- ◇ Sex (gender)
- ◇ Veteran Status
- ◇ Age
- ◇ HIV Status
- ◇ Sexual Orientation
- ◇ Gender Identity
- ◇ Gender Expression
- ◇ Political Affiliation
- ◇ Source of Income
- ◇ Ancestry
- ◇ Being a victim of domestic violence

Do you suspect that you have been a victim of housing discrimination?
Help is available; don't delay!

Call the HOPE DISCRIMINATION HELPLINE!
Miami-Dade: 305-651-HOPE (4673)
Broward: 954-742-3778
TDD: 800-955-8771
or file a complaint at www.hopefhc.com