



### **LANDLORDS, TENANTS AND A FEW TOTAL STRANGERS (3)**

By W. Christopher Barrier

Mitchell, Williams, Selig, Gates & Woodyard, P. L. L. C.

Almost all landlords, property managers and contractors are familiar with the basic federal statutes and regulations impacting what they do, as regards primarily (but not exclusively) residential properties. They know they can't discriminate in making leasing decisions based on certain characteristics of their prospects. They know they have to accommodate certain handicaps by eliminating barriers to access, sometimes even in existing properties and also in public properties, such as curbs and sidewalks.

I have never met a landlord or developer who had a basic disagreement with the aims of these laws or, for the most part, their specific requirements. However, sometimes those specifics can take surprising turns.

#### **No snail darters they...**

Bedbugs are not a protected species, but they achieved a certain elevated status in *Rutland Court Owners, Inc. v. Taylor*, a District of Columbia case decided in 2010 but which started not that long after bedbug jokes were a late night TV staple and the critters even made the cover of *The New Yorker* magazine. The property involved was a cooperative apartment project, but there is no reason why the ultimate issues and results would not be the same with a standard multi-family project or a horizontal property regime.

Management decided to take an aggressive approach to extermination of bedbugs throughout the complex. Taylor was a unit owner who suffered (along with Catherine Zeta-Jones and very likely Abe Lincoln) from bipolar disorder. He was given detailed instructions on how to get his unit ready for the bug man, but he refused to let him in. Several other mental conditions could have very likely produced the same result.

#### **Somebody call the bug man...**

The manager and Taylor's mental health caseworker met with him to explain the problem, especially as it related to the extremely cluttered condition of his unit, which obviously exacerbated the problem. They surely explained to him the results for other units of leaving one unit untreated.

Taylor tried to get his place ready for treatment but, due to his condition, he just could not do it himself. Two companies contacted by the manager tried to make a deal with Taylor, without success. Two months later yet another company reported that the clutter and filth were even worse. The cooperative board voted to revoke Taylor shares and evict him.

### **Maybe the Terminator...**

Taylor hired his own exterminator and nine months later, he declared victory. But the Fair Housing Act issues remained to be resolved. Clearly, Taylor suffered from a "handicap" under the terms of the FHA and was thus entitled to "reasonable accommodations" for that condition so he might use and enjoy his dwelling. While not unsympathetic to the management board and its loss of patience, the court found that Taylor was entitled under the FHA to more time to clean and to exterminate his unit, because of his handicap, which interfered with his ability to function daily, and of which the board had become painfully aware.

The board probably could not have refused allow Taylor to purchase a unit in the cooperative because of the handicap and could not refuse to accommodate his limitations, since the delay did not pose a direct threat to his fellow owners (unless they were light sleepers, presumably). However, Taylor could not refuse to clean altogether, with or without the help of his social worker and his lawyer.

### **Don't bug me...**

As it happened, the holistic extermination and the court proceeding took about the same amount of time. The lesson for the managers? Maybe they could have seen this coming and told Taylor on the front end, before he moved in, that he was entitled to more time and help, but that, were he unwilling to accept those conditions, he could not buy a unit. Probably not realistic, but "reasonable accommodation" can, at the very least, call for extraordinary patience and not a little creative flexibility.

*CHRIS BARRIER practices real estate law in Mitchell Williams' Little Rock office.*