

PUBLIC HOUSING FOR THE ELDERLY IN MASSACHUSETTS: HOW FEDERAL AND STATE DISABILITY LAWS AND REGULATIONS HAVE CREATED A SENSE OF CONFINEMENT

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Ms. Cedrone explores the difficulty the elderly have in finding safe and affordable housing, particularly in Massachusetts. Her article focuses on the impact of "mixed housing" on the elderly population. Even though Housing and Urban Development (HUD) and the state of Massachusetts have dedicated funding to public housing for the elderly, a portion of this housing becomes available to the nonelderly disabled. Because the Americans with Disabilities Act of 1990 (ADA) included alcoholism in the definition of disability, and the Fair Housing Act, as amended in 1988, extends protection to individuals with disabilities, alcoholics that meet the statutory definition of disabled cannot be excluded from public housing. Placing these disparate groups together in public housing has led the elderly to a feeling of confinement. Among Ms. Cedrone's suggestions for insuring elderly residents' safety is community group homes. The success of these group homes reveals that it is a solution that would benefit not only the nonelderly disabled protected under the ADA, but the elderly population as well, returning a portion of public housing solely to this vulnerable group.

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I. Introduction

The elderly in Massachusetts is a growing population that has consistently been placed on the back burner with regard to public housing. Because of the social needs of individuals in this country and the increased need for housing,¹ the elderly have been forced to live with individuals they would never have chosen.²

There are two funding sources for public housing for the elderly run by local housing authorities. There is housing funded by the federal government through the legislative branch of Housing and Urban Development (HUD)³ and state funded housing through the Commonwealth of Massachusetts's Department of Housing and Community Development (DHCD).⁴ Both are administered by local housing authorities (LHA) in the city or town where the housing is located.⁵ HUD and DHCD have different regulations that LHA's must follow.

Because their income is fixed and their housing is limited, elderly individuals have had to put up with increasing problems associated with their housing. The influx of "mixed housing"⁶ has increased the level of confinement among this elderly population.⁷ In addition, the definition of disability has changed over the years.⁸ It now encompasses alcoholics and drug addicts.⁹

1. See *State of the Cities Report* (visited Oct. 2, 2000) <<http://www.hudusev.org/>>.

2. See *Improving Public Housing*, B. HERALD, July 17, 1995, at O18.

3. See 42 U.S.C.A. § 3532 (1994). The Department of Housing and Community Development is part of the executive department of the U.S. Government. The head of the department is the Secretary, who is appointed by the President of the United States by and with the advice and consent of the Senate. See *id.* § 3532(a).

4. See MASS. ANN. LAWS ch. 23B, § 3 (Law. Co-op. 1996). "The department shall be the principal agency of the government of the commonwealth to: mobilize the human, physical and financial resources available to combat poverty and provide economic training and open housing opportunity . . ." *Id.* The department should also "formulate and submit to the governor and the general court on or before December 4, 1970, a comprehensive housing for the elderly program and matter relating thereto including but not limited to, the identification of elderly housing needs, locational and financial requirements . . ." *Id.* § 3(q).

5. See *infra* Part II.B.

6. "Mixed housing" is that which includes elderly and nonelderly disabled persons. Typically, this includes populations that are over 62 and populations between the ages of 30-62. See *Improving Public Housing*, *supra* note 2, at O18.

7. See *id.*

8. See *id.*

9. See *id.*

Because mixed housing includes the elderly and nonelderly disabled persons,¹⁰ alcoholics and drug addicts can live among the elderly. Therefore, the elderly are concerned for their safety and the issues surrounding nonelderly disabled individuals' addictions.¹¹ The actions feared include physical attacks and threats.¹² The elderly are not only afraid to leave their apartments, but to complain to local housing officials as well because they feel that they will lose their housing or suffer other consequences from their nonelderly disabled neighbors if they do.¹³

There have been limited support services for the nonelderly disabled living in elderly housing. For example, local housing authorities cannot mandate that those who are suffering from alcohol or drug addiction attend support programs. Nor can LHA's randomly check to make sure that once they are approved for housing, nonelderly disabled residents do not continue the behavior that would have kept them from obtaining the housing in the first place.¹⁴

Alcohol and drug abusers are typically younger than those currently living in elderly housing.¹⁵ This fact alone has created friction between them.¹⁶ Elderly housing was once a safe haven.¹⁷ It is now a place where the elderly feel threatened by drugs and crime.¹⁸

The purpose of this article is to explore the issues the elderly face in public housing due to drug abusers and alcoholics living in the same apartment buildings. Through laws specifically meant to help the disabled, the elderly population has been left unprotected and unfairly treated.

Part II of this article provides the background to this disturbing living arrangement and explains how alcoholics and drug abusers are allowed to live in public elderly housing due to federal and state legislation. Part III identifies the problems associated with mixed housing and the reasons why the arrangement is unhealthy. Part IV introduces the methods that the Commonwealth of Massachusetts and the

10. See *id.*

11. See *id.*

12. See *id.*

13. See *id.*

14. See *id.*

15. See *Return to Separate Housing for the Elderly*, ST. LOUIS POST-DISPATCH, Oct. 15, 1992, at 2C.

16. See *id.*

17. See *id.*

18. See *id.*

federal government have employed in an attempt to combat the problems associated with mixed housing, and explains why they are not working. Part V details realistic possibilities to correct the situation in Massachusetts, and part VI analyzes and describes how these possibilities can work for Massachusetts and become a model for other states.

II. Defining Disabled: Application of Federal and State Laws

A. Federal Law

Federal statutes provide the most protection to persons with disabilities.¹⁹ The Fair Housing Act of 1968, as amended in 1988, prohibits discrimination in housing based on disability.²⁰ Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability whether or not the programs receive federal assistance.²¹ The Americans with Disabilities Act of 1990 also prohibits discrimination in both public and private programs regardless of whether they receive public federal assistance.²²

1. FAIR HOUSING ACT OF 1968 AS AMENDED IN 1988²³

Congress extended the protection of persons with disabilities by passing the Fair Housing Amendments Act of 1988 (FHAA or Act).²⁴ Under the Act, it is unlawful

[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of (A) the buyer or renter, (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or (C) any person associated with that buyer or renter.²⁵

It "broadened the definition of the disabled to include people with drug or alcohol problems."²⁶ This broadened definition has placed

19. See Alicia Hancock Apfel, Comment, *Cast Adrift: Homeless Mentally Ill, Alcoholic and Drug Addicted*, 44 CATH. U. L. REV. 551, 555 (1995).

20. *See id.*

21. *See id.* at 562.

22. *See id.* at 565.

23. 42 U.S.C. §§ 3601–3631 (1994).

24. *See id.* § 3604(f)(1).

25. *Id.*

26. *Return to Separate Housing for the Elderly*, *supra* note 15, at 2C. "The Fair Housing Act as amended in 1988 and section 504 of the Rehabilitation Act refer to persons with disabilities as persons with handicaps. Congress replaced the term

substance abusers in housing designed for the elderly.²⁷ "The FHAA's prohibition against handicapped discrimination was designed with two goals in mind: (1) to alter attitudes toward individuals with disabilities; and (2) to eradicate the manifestation of such stereotyping and bias-discrimination."²⁸ The FHAA's definition of a handicap is functional.²⁹

Congress included recovery from drug and alcohol addiction within the FHAA's definition of 'handicap' for three reasons: (1) experts recognize substance abuse as a disease, and therefore, a disability; (2) prior related legislation includes former addicts within the definition of disability; and (3) courts consider persons in recovery to be in need of protection from discrimination.³⁰

Judicial opinions have recognized Congress's intent.³¹ "The leading authority on recovering substance abusers' rights under the FHAA is the 1992 decision, *United States v. Southern Management Corp.*,³² in which the Fourth Circuit held that a management company's refusal to rent apartments to a program dedicated to recovering drug addicts and alcohol abusers violated the FHAA."³³ Addicts are covered by the FHAA "as long as they can demonstrate that (1) they are perceived as having an impairment and (2) they are not currently using illegal substances."³⁴ Later cases have followed suit.³⁵ In *Oxford House, Inc. v. Township of Cherry Hill*,³⁶ "[t]he court cites extensive expert testimony on the 'severe limitations' a history of addiction places on individuals."³⁷

'handicap' with the term 'disabilities' in its definition of protected persons in the Americans With Disabilities Act of 1990 in response to objections to the use of the term 'handicap' as perpetuating stereotypes and patronizing attitudes towards persons with disabilities." Apfel, *supra* note 19, at 555 n.26.

27. See *Return to Separate Housing for the Elderly*, *supra* note 15, at 2C.

28. Laurie C. Malkin, *Troubles at the Doorstep: The Fair Housing Amendments Act of 1988 and Group Homes for Recovering Substance Abusers*, 144 U. PA. L. REV. 757, 776 (1995).

29. See *id.* at 778.

30. *Id.* at 780.

31. See *id.* at 781.

32. 955 F.2d 914 (4th Cir. 1992).

33. Malkin, *supra* note 28, at 783.

34. *Id.*

35. See *id.*

36. 799 F. Supp. 450 (D.N.J. 1992).

37. Malkin, *supra* note 28, at 757.

2. REHABILITATION ACT OF 1973³⁸

Section 504 of the Rehabilitation Act of 1973 does not explicitly include alcoholism or drug addiction as a disability, but courts have consistently recognized alcoholism and drug addiction as such.³⁹ "The definition of a physical or mental impairment specifically includes emotions or mental illness, alcoholism and drug addiction."⁴⁰ Section 504 specifically excludes those currently engaged in the use of illegal drugs and permits such discrimination.⁴¹ Section 504 does not, however, exclude those currently engaged in drinking alcohol, which is considered a legal drug.⁴²

3. AMERICANS WITH DISABILITIES ACT OF 1990⁴³

Under Section II of the Americans with Disabilities Act of 1990, the prohibitions of Section 504 against discrimination are extended "to cover all services, programs and activities provided or made available by state and local governments regardless of whether they receive federal financial assistance."⁴⁴ This means that anything that the government provides is regulated to disallow any discrimination. "Congress intended Title II to ensure not only that disabled persons have access to public benefits and services, but also to encourage disabled persons' integration into society."⁴⁵ It states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, pro-

38. 29 U.S.C. § 794 (1999).

No otherwise qualified individual with a disability in the United States, as defined in section 706(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

Id. § 794(a).

39. See *Apfel, supra* note 19, at 565 (citing *Rogers v. Lehman*, 869 F.2d 251, 258 (4th Cir. 1989); *Crewer v. United States Office of Personnel Management*, 834 F.2d 140, 141 (8th Cir. 1987); *Sullivan v. City of Pittsburgh*, 811 F.2d 171, 182 (3d Cir. 1987), cert. denied, 484 U.S. 849 (1987); *Oxford House, Inc. v. Township of Cherry Hill*, 799 F. Supp. 450, 459 (D.N.J. 1992); *United States v. Borough of Audubon*, 797 F. Supp. 353, 358 (D.N.J. 1991)).

40. *Apfel, supra* note 19, at 566.

41. *See id.*

42. *See id.*

43. 42 U.S.C. §§ 12131, 12181 (1993).

44. *Apfel, supra* note 19, at 568.

45. *Id.*

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gram or activities of a public entity, or be subjected to discrimination by any such entity.”⁴⁶

The original purpose of the Act was to “provide wheelchair ramps in buildings and appropriate restroom accommodations for the physically disabled.”⁴⁷ “But the alcohol abuse industry wormed its way through the backdoor of the Americans with Disabilities Act, creating a nightmare for administrators and a potential dream for litigious lawyers.”⁴⁸ Opponents warned that alcoholics and drug abusers would not get the help they needed.⁴⁹ Instead, they would be enabled to continue their habits.⁵⁰ Senator Dan Coats (R-IN) insisted on keeping drug abuse out of the legislation but alcohol abuse remained, establishing a new legal status for alcoholism.⁵¹ The inclusion of alcoholism assumes “that a person who abuses alcohol is not responsible for his or her drinking habit and must have several chances at treatment before becoming legally responsible to sober up.”⁵²

4. DETERMINING COVERAGE UNDER FEDERAL LAW

Three tests are set forth under Section 504 of the Fair Housing Act and the Americans with Disabilities Act.⁵³ These tests explicitly define whether a person is disabled or is considered disabled.⁵⁴ A person is considered disabled if he or she “(1) has a physical or mental impairment that substantially limits one or more of the major life activities,⁵⁵ (2) has a record of such impairment, (3) or is regarded as having such an impairment.”⁵⁶

The first test determines whether a physical or mental impairment substantially limits one or more of a person’s major life activi-

46. 42 U.S.C. § 12132(1993). The definition of “public entity” includes “any State or local government” as well as “any department, agency, special purpose district, or other instrumentality of a State . . . or local government.” 42 U.S.C. § 12131(1)(A), (B).

47. Russ Pulliam, *Mixing Alcohol with Disabilities*, INDIANAPOLIS NEWS, Apr. 8, 1998, at A14.

48. *Id.*

49. *See id.*

50. *See id.*

51. *See id.*

52. *Id.*

53. *See Apfel, supra* note 19, at 568.

54. *See id.*

55. Major life activities are “caring for one’s self, performing manual task, walking, seeing, hearing, speaking, breathing, learning, and working.” 45 C.F.R. § 84.3(j)(2)(ii) (1999).

56. 28 C.F.R. § 35.104 (1999).

ties.⁵⁷ It does so by determining whether the activities are “restricted as to the conditions, manner or duration under which they can be performed in comparison to most people.”⁵⁸ This test would protect alcoholics because while drunk people are unable to perform such tasks.⁵⁹ It would also protect individuals with a history of drug addiction for the same reason.⁶⁰

The second test, regarding a record of such impairment, prohibits discrimination based on past impairment.⁶¹ This test requires that persons have a record of an impairment from which they have recovered.⁶² Such impairments could include emotional or mental illness and include persons who are recovered alcoholics or drug abusers.⁶³

The third test prohibits discrimination on the basis of being regarded as having an impairment.⁶⁴ This test provides protection against those who are treated as if they have “an impairment that substantially limits a major life activity,” regardless of whether they actually suffer from such an impairment.⁶⁵ This is a subjective test focusing on the perception of one individual by another individual.⁶⁶

B. Massachusetts Law: Housing for the Elderly and the Handicapped of Low Income⁶⁷

Massachusetts General Law Chapter 121B, section 39 outlines the power that local housing authorities possess in this area.⁶⁸ A housing authority in a city or town in the Commonwealth of Massachusetts has the power to provide housing for the elderly, low-income persons, and handicapped persons of low income.⁶⁹ Local housing authorities are given strict guidelines in determining priority of placement within elderly housing.⁷⁰ Priority placement is provided to

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- 57. See Apfel, *supra* note 19, at 572.
 - 58. 28 C.F.R. app. A pt. 35 (1999); *see also id.* § 35.104.
 - 59. See Apfel, *supra* note 19, at 572–73.
 - 60. *See id.*
 - 61. See 28 C.F.R. app. A pt. 35; *see also id.* § 35.104.
 - 62. See 28 C.F.R. app. A pt. 35 (1999).
 - 63. See Apfel, *supra* note 19, at 574–75.
 - 64. See 28 C.F.R. app. A pt. 35; *see also id.* § 35.104.
 - 65. 28 C.F.R. app. A pt. 35.
 - 66. See Apfel, *supra* note 19, at 573.
 - 67. MASS. ANN. LAWS ch. 121B, § 39 (Law. Co-op 1989 & Supp. 2000).
 - 68. *See id.*
 - 69. *See id.*
 - 70. *See id.*

non-elderly handicapped persons of low income, who are eligible to receive such housing and who are qualified under the criteria established in regulations promulgated by the [D]epartment [of Housing and Community Development], in thirteen and one-half percent of said units. If a local housing authority determines that there are insufficient numbers of eligible and qualified non-elderly handicapped persons of low income to fill thirteen and one-half percent of the housing units, the local housing authority shall then place eligible and qualified elderly persons of low income in said units.⁷¹

This law provides 13.5% of each development with a priority for low-income disabled persons before the elderly are even considered.⁷² Housing designed specifically for the elderly is no longer a priority in elderly housing.⁷³

III. Problems in Elderly Housing

A. Who Lives With the Elderly?

Public housing for the elderly has not been limited to senior citizens at all.⁷⁴ Since 1970, younger people with disabilities have been living in this type of housing.⁷⁵ Over the years, the definition of a disability has changed.⁷⁶ "No longer are we talking about those in a wheelchair or the visually impaired. Now, in the late '80s the definition was expanded to include mental disabilities. Then it was ex-

71. *Id.*

The department shall, after consultation with the secretaries of elder affairs and health and human services, promulgate rules and regulations concerning the implementation of the priorities in placement, as set forth herein not later than October first, nineteen hundred and ninety-five, and may establish placement ratios among elderly persons of low income and non-elderly handicapped persons of low income to provide for an equitable transition to encourage the percentage policy objectives stated herein for said persons of low income.

Id.

72. *See id.*

Notwithstanding any general or special law to the contrary, a housing authority which manages units provided under this section and section forty shall give priority in placement to non-elderly handicapped persons of low income, who are eligible to receive such housing and who are qualified under the criteria established in regulations promulgated by the department, in thirteen and one-half percent of said units.

Id.

73. *See id.*

74. *See Improving Public Housing, supra* note 2, at O18.

75. *See id.*

76. *See id.*

panded to include drug and alcohol abusers.”⁷⁷ “State officials began placing disabled people in elderly housing because there were not enough units for them in family housing.”⁷⁸ “In the past five years [from 1990 to 1995], the increasing number of younger, disabled people in housing for the elderly has caused problems and tension across the state.”⁷⁹

1. LIVING IN FEAR

A cry for help has been heard all across the country by elderly residents who feel unsafe in their homes.⁸⁰ Senior citizens have complained of “drunks and vagrants found asleep in the halls and of the intimidating, sometimes destructive behavior of some of the buildings’ younger residents.”⁸¹ Tenants feel confined to their apartments due to the presence of these individuals.⁸² They do not like to go out in the evening because of the loud parties, visitors, and disruptive behavior these residents create.⁸³ They are afraid for their safety.⁸⁴ Those who have been burglarized blame the younger residents because the burglaries began once these younger residents began living among them.⁸⁵

Elderly tenants have repeatedly requested that the individuals who are considered disabled because of drug addiction or alcoholism be moved out of their buildings.⁸⁶ The elderly feel they have made their contribution to the country and that they have a right to live in a safe place.⁸⁷ “Officials say only a few of the younger tenants cause difficulty, but that they can be significant.”⁸⁸ Some of these problems are the result of drug abuse.⁸⁹ More are attributed to alcohol abuse or to people who stop taking their medications for mental illness.⁹⁰

77. *Id.*

78. Sue Scheible, *Building Security Bill Gives Housing Projects Back to Elderly*, PATRIOT LEDGER, Oct. 19, 1995, at 01.

79. *Id.*

80. See Will Tacy, *Elderly Residents Cry out for Help: Apartment Dwellers Say They No Longer Feel Safe at Home*, HARTFORD COURANT, May 28, 1994, at E3.

81. *Id.*

82. See Scheible, *supra* note 78, at 01.

83. *See id.*

84. *See id.*

85. See Tacy, *supra* note 80, at E3.

86. *See id.*

87. *See id.*

88. Scheible, *supra* note 78, at 01.

89. *See id.*

90. *See id.*

a. *Examples of Incidents in Elderly Housing* A seventy-five-year-old female resident of federally funded housing for the elderly stated that her building has been plagued by drug dealers and prostitutes since younger people, many of them substance abusers or mentally ill, were allowed to move in.⁹¹ "One young man . . . 'took off all his clothes and ran around naked in the hall.'"⁹²

A twenty-two-year-old disabled man moved into another elderly complex, where he hosts loud parties.⁹³ Residents have complained about these parties and the teen drinking that occurs at them.⁹⁴ "Housing authorities can evict tenants who create a substantial nuisance to their neighbors, but they must hold a hearing first. Most leases state that tenants cannot deprive their neighbors of the peaceful enjoyment of their property."⁹⁵ However, they cannot be evicted without evidence of a violation.⁹⁶

An eighty-year-old woman was assaulted by two younger handicapped tenants of a public housing complex. "[She has not] taken [her] lawn chair out in two years."⁹⁷ "[W]e used to sit in the middle and have so much fun until these kids moved in."⁹⁸

The apartments are open to younger tenants eligible for housing assistance, including handicapped tenants.⁹⁹ "But in some cases, the handicaps have not prevented them from partying with others their age, a right that has led to a clash of lifestyles in the usually quiet complex."¹⁰⁰ The loud music and young guests stumbling around the hallways create talk among the residents of drug use and underage drinking occurring in their building.¹⁰¹ Elderly tenants also complain about the verbal abuse they receive from these tenants and how it is

91. See Weld Backs Blute Plan on Housing, TELEGRAM & GAZETTE (WORCESTER), Nov. 7, 1995, at B6.

92. *Id.*

93. See Steve Adams, *Disruption at Senior Complex/Residents Complain of Loud Parties, Underage Drinking*, PATRIOT LEDGER, Oct. 21, 1998, at 1.

94. *See id.*

95. *Id.*

96. *See id.*

97. See Bob Datz, *Friction Results When Elders Rub Elbows with Younger Residents*, TELEGRAM & GAZETTE (WORCESTER), Aug. 26, 1999, at B1.

98. *Id.*

99. *See id.*

100. *Id.*

101. *See id.*

affecting their health.¹⁰² They feel the housing authority is not listening to them, and they have no way to stop the abuse.¹⁰³

b. *Problems with Enforcement* Unfortunately, most violations are never reported.¹⁰⁴ Fear of retribution discourages many tenants from complaining to police or housing authority staff.¹⁰⁵ Police cannot act unless residents promptly report their complaints.¹⁰⁶ Without the tenants' help, housing authorities cannot determine whether violations have occurred.¹⁰⁷

"Employing a security force, limiting entry to buildings and installing dead bolt locks on apartments [were] measures already taken by the Worcester Housing Authority . . ."¹⁰⁸ Even with these security measures in place, a stabbing occurred at a Worcester elderly public housing complex in 1998.¹⁰⁹ The attacker, a thirty-one-year-old man, was charged with assault and battery with a dangerous weapon, armed assault with attempt to murder, and mayhem.¹¹⁰ The attacker told police that he lived in the complex with his mother.¹¹¹ Housing officials stated that the attacker was not listed on the lease, and the mother denied that he lived with her.¹¹²

Although tenants know they can be evicted for allowing their children (or others) to live with them,¹¹³ they allow it because they fear the retribution from their own children.¹¹⁴ This behavior increases the inherent problems tenants of elderly housing already face.

2. LIVING ON A FIXED INCOME

Due to limited resources, the elderly feel trapped in public housing. Typically, residents have been forced to sell their homes because

102. See *id.*

103. See *id.*

104. See *id.*

105. See *id.*

106. See *id.*

107. See *id.*

108. Emilie Astell, *Prevention of Violence Impossible*, TELEGRAM & GAZETTE (WORCESTER), Jan. 20, 1998, at B1.

109. See *id.* A 41-year-old resident was stabbed in the face by another resident who was only 31 and told police he lived with his mother in the complex. See *id.*

110. See *id.*

111. See *id.*

112. See *id.*

113. See *id.*

114. See *id.*

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of the burdens of homeownership.¹¹⁵ The lack of affordable housing is worsening.¹¹⁶ "As the water and sewage rates go up, so will the rents. [F]rail, elderly senior or disabled persons [are] living on \$700 a month and paying more than 65 percent of that income for rent and utilities"¹¹⁷ This creates severe worry for those who cannot afford to live anywhere else.¹¹⁸ There must be a way to keep "elders and other economically vulnerable people from being priced out of the housing market."¹¹⁹ For the elderly, minor problems become major. "Stretching the food budget beyond the basics. Running the heater on a few more chilly nights. Knowing there's enough money in the bank to cover car repairs."¹²⁰ These are costs that people on fixed incomes consider luxuries.¹²¹

Those who live in their own homes are worried that tax increases will force them to sell their homes.¹²² "Pensions are often adequate early in retirement . . . [b]ut after 10 years, the pensions' buying power may be reduced by 40 percent . . ."¹²³ The elderly are concerned with whether they will be able to survive if their spouse dies and Social Security Benefits are lost.¹²⁴ "If he should die before me . . . I wouldn't be able to keep my house . . . I could never make it . . ."¹²⁵

IV. Steps Taken to Correct This Problem

A. What Massachusetts Has Done

An elderly woman at O'Brien Towers in Quincy, Massachusetts, was raped in 1993.¹²⁶ Her attacker was never apprehended.¹²⁷ "The rape was the impetus for Massachusetts legislators to draft a bill that

115. The cost of improvements to heating, plumbing, and electrical maintenance can cause the elderly to sell their homes. Mowing the lawn, repainting the house, and replacing old windows are only a few of the problems elderly face when keeping their homes.

116. See Shirley Zane, *In Prosperous Times, Don't Forget Elderly, Poor*, PRESS DEMOCRAT, Dec. 12, 1999, at G1.

117. *Id.*

118. *See id.*

119. *Affordable Housing*, PATRIOT LEDGER, Sept. 28, 1999, at 10.

120. Sandra Pedicini, *Elderly Get a Breather on Tax Bill; The County Council Approved an Additional Homestead Exemption*, ORLANDO SENTINEL, Dec. 1, 1999, at D1.

121. *See id.*

122. *See id.*

123. *Id.*

124. *See id.*

125. *Id.*

126. *See Improving Public Housing*, *supra* note 2, at O18.

127. *See id.*

would bar people who are classified as disabled because of drug or alcohol abuse from moving into scarce senior housing.”¹²⁸ The bill, drafted by House Ways and Means Committee Chairman Thomas Finneran (D-MA), would also allow public housing authorities to speed up the eviction process and strengthen screening provisions so that disruptive tenants would not be allowed to terrorize other tenants.¹²⁹

The housing bill is aimed at a problem that has been building in recent years, as the elderly have seen a great number of people with disabilities moving into their buildings.¹³⁰ The bill sets aside twelve percent of housing slots for the disabled and eighty-eight percent for the elderly.¹³¹ The House approved the bill in 1995 and also approved \$4 million in rental vouchers to help the disabled currently living in elderly housing to find housing elsewhere.¹³²

B. What the Federal Government Has Done

In 1995, Massachusetts Governor William Weld and Lt. Governor Paul Cellucci urged the U.S. Senate to change the law that allows young alcoholics and drug addicts to live in federally funded housing projects for the elderly.¹³³ The House had already unanimously agreed to the change, and U.S. Representative Peter Blute (R-MA) lobbied the Senate to agree.¹³⁴ “Blute became concerned about the issues several years ago when he began getting reports from elderly housing residents in Worcester and other communities about criminal activity—including robbery, burglaries and prostitution—perpetuated by nonelderly residents who supposedly had overcome their substance abuse disabilities.”¹³⁵ The Senate passed the measure, and President Clinton signed it into law in 1996.¹³⁶

128. *Id.*

129. *See id.*

130. *See Bill Denies Public Housing to Drug Abusers*, TELEGRAM & GAZETTE (WORCESTER), July 12, 1995, at A2.

131. *See id.*

132. *See id.*

133. *See Weld Backs Blute Plan on Housing*, *supra* note 91, at B6.

134. *See id.*

135. *The People's Voice/Persistence Brings Protection for Seniors*, TELEGRAM & GAZETTE (WORCESTER), Mar. 31, 1996, at C1.

136. *See id.*

V. Temporary Resolution or Permanent Repair?

A. Examples of Events After Passage of the New Laws

The first person to be evicted under these new laws was a thirty-nine-year-old man from Scituate.¹³⁷ He was arrested in a drug raid on his apartment in an elderly complex.¹³⁸ His disability was due to a stroke, which kept him unemployed.¹³⁹ He was able to move in because, under Massachusetts law, a number of elderly units are guaranteed to younger mentally and physically disabled people.¹⁴⁰

"The new law eliminates lengthy housing authority hearings previously required before a tenant could be taken to court and evicted."¹⁴¹ This is a victory for the elderly but the problem is far from solved. "[T]hree years after a bill was passed to protect the vulnerable seniors in public housing, they [are] still forced to live side by side with people they fear."¹⁴²

In 1998, a stabbing occurred at an elderly housing apartment building in Worcester.¹⁴³ A building designed as a sanctuary for the elderly was a crime scene.¹⁴⁴ Dianne Williamson, a reporter from the *Telegram & Gazette Worcester*, visited the elderly housing complex after the stabbing to determine how seniors felt about their living arrangements.¹⁴⁵ She did not find elderly congregating in the halls or getting their mail.¹⁴⁶ What she found was people like a fifty-six-year-old man who smelled as if he had been drinking sitting in the hallway.¹⁴⁷ The man happened to be a friend of the man who was arrested for the stabbing.¹⁴⁸ He explained to Ms. Williamson that he told the alleged stabber to leave his apartment the night of the stabbing.¹⁴⁹ Ms. Williamson was suspicious that the two men had been drinking.¹⁵⁰

137. See Carolyn Ryan, *Suspect Evicted by State; Housing Officials Use New Law for First Time in Scituate Case*, PATRIOT LEDGER, July 24, 1996, at 1.

138. See *id.*

139. See *id.*

140. See *id.*

141. *Id.*

142. Dianne Williamson, *Fear Invades Sanctuary for Elderly/Stabbing Highlights Shortcomings of Policy*, TELEGRAM & GAZETTE (WORCESTER), Jan. 29, 1998, at B1.

143. See *id.*

144. See *id.*

145. See *id.*

146. See *id.*

147. See *id.*

148. See *id.*

149. See *id.*

150. See *id.*

The mother of the alleged stabber lives in the complex because she is disabled due to arthritis and bursitis.¹⁵¹ "She also claimed that her son doesn't live with her, even though several tenants seemed to know him, he was there at one in the morning, and she said she doesn't know where he lives."¹⁵²

A resident of another elderly complex was charged with murder for fatally shooting a sixty-one-year-old fellow resident in 1999.¹⁵³ The attacker, "who uses a wheelchair, was arrested shortly after the shooting."¹⁵⁴ The shooter actually took the elevator to the first floor to ask three employees to call 911.¹⁵⁵ The tenants in the building were stunned over the incident.¹⁵⁶ One woman said she was shocked when asked about the attacker.¹⁵⁷ "He was such a nice man. You never saw him in any trouble. He was always polite . . . would open the door for you and always speak."¹⁵⁸

As police investigated the shooting, they found that the front door to the building, which is usually locked, had been left open.¹⁵⁹ Lack of accountability for security only increases the inherent problems, like those discussed above, within the buildings by allowing outsiders in.¹⁶⁰

B. The Obstacles

Local housing authorities are often caught between federal regulation and the judicial system.

Local housing agencies attempting to address the serious problems of crime and drugs in public housing thus find themselves in a dilemma. On the one hand, the federal government has pro-

151. See *id.*

152. *Id.*

153. See Emilie Astell, *Man Slain in Pleasant Tower*, TELEGRAM & GAZETTE (WORCESTER), Apr. 6, 1999, at A1. "Cruz was shot with a handgun three or four times in the face and chest between 11:30 and 11:45 a.m. yesterday on the third floor of the building where the two men lived." *Id.*

154. *Id.*

155. See *id.*

156. See *id.*

157. See *id.*

158. *Id.*

159. See *id.*

160. See *id.* "Safety also might improve if elderly tenants were more diligent about refusing to admit strangers and reporting suspicious comings and goings in the building." *Unpleasant Tower; More Problems with Mixed-Population Housing*, TELEGRAM & GAZETTE (WORCESTER), Apr. 15, 1999, at A18.

claimed a policy of ‘One Strike and You’re Out’¹⁶¹ that seeks to impose zero tolerance for drug-related and other serious crimes in public housing developments. On the other, many courts, following a growing body of case precedent, simply refuse to go along.¹⁶²

Local housing authorities given the power to evict by HUD regulations are now being penalized by federal authorities for doing so.¹⁶³

HUD requires public housing leases to state that the tenant is obligated “to assure that the tenant, any member of the household, a guest, or other person under the tenant’s control” will not engage in criminal activity threatening ‘the health, safety or right of peaceful enjoyment’ of others and that such behavior ‘shall be a cause for termination of tenancy.’¹⁶⁴ The courts do not argue what the language states, but argue that it does not state whether the head of a household is required to have knowledge of the acts of others.¹⁶⁵ “It doesn’t say, for example, whether knowledge by the head of household of another’s criminal activity is necessary, or whether there must be some

161. HUD Notice PIH 96-16 (HA) Apr. 29, 1996 (transmitting guidelines: “One Strike and You’re Out” Policy in Public Housing). “On March 28, 1996, the President announced a ‘One Strike and You’re Out’ policy for public housing residents. . . . [It] provides guidance to enhance the ability and related efforts of public housing agencies to develop and enforce stricter screening and eviction as a part of their anti-drug, anti-crime initiatives.” *Id.*

162. William F. Maher, *Wisdom Revisited: Judicial Intervention and the Exercise of Discretion in “Strict Liability” Public Housing Evictions*, 8 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 218, 218-19 (1999).

163. *See id.* “In the context of the federal ‘One Strike and You’re Out’ initiative, and prior to it, the courts most frequently have asserted themselves to overturn housing agency decisions to evict entire households, based on the criminal misconduct of household members other than the heads of household.” *Id.*

164. *Id.* at 219 (citing 24 C.F.R. § 966.4(f)(12)(I)(A)-(B) (1999)).

165. *See id.* at 219. A local housing authority can evict a tenant from the unit either:

(i) By bringing a court action or (ii) By bringing an administrative action if law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties. In order to evict without bringing a court action, the PHA must afford the tenant the opportunity for a pre-eviction hearing in accordance with the PHA grievance procedure.

24 C.F.R. § 966.4(l)(2)(v)(C)(4)(i)(ii).

Either of the following types of criminal activity by the tenant, any member of the household, a guest, or another person under the tenant’s control, shall be cause for termination of tenancy: (A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the PHA’s public housing premises by other residents. (B) Any drug-related criminal activity on or near such premises.

Id. § 966.4(l)(2)(ii)(A)-(B).

element of personal participation or negligence on the part of the tenant that is required to determine responsibility.”¹⁶⁶

“Pringle’s family is one of 18 to face eviction from the 1,200 unit Bromley-Health housing complex . . .”¹⁶⁷ Her son, who was fourteen at the time of his arrest, was accused of selling crack cocaine.¹⁶⁸ His case was thrown out after he stated that two others put the drugs in his pocket.¹⁶⁹ However, the ‘one-strike’ law allows for eviction “if even one family member . . . listed on the lease is connected to a drug-related crime.”¹⁷⁰ Although it seems unfair, “[p]eople signed lease agreements and one of the conditions in the lease [is] that unlawful possession of drugs or weapons by a tenant, a member of the tenant’s family or a tenant’s guest is grounds for eviction.”¹⁷¹

A seventy-eight-year-old woman who lives in a senior complex was told that she would have to leave her apartment after her son was convicted of selling drugs from her apartment.¹⁷² She was told she had four months, “[b]ut the judge gave her six months to find another place to live.”¹⁷³ “Interestingly enough, despite many of our tenants complaining about drug problems, not one of them was willing to stand up and talk about what they saw . . .”¹⁷⁴ Another tenant was evicted due to her failure to keep guests from engaging in criminal activity.¹⁷⁵

Courts trying to redress perceived unfairness to “so-called innocent tenants, who allege a lack of knowledge of and participation in the criminal activities of [others], start by finding the . . . statutory and regulatory language . . . ambiguous.”¹⁷⁶ The judiciary has become the

166. Maher, *supra* note 162, at 219.

167. Paisley Dodds, ‘One-Strike’ Evictions Take Harsh Toll, PATRIOT LEDGER, June 19, 1999, at 20.

168. *See id.*

169. *See id.*

170. *Id.* “The law goes so far as to evict a family whose member may have sold or used drugs in another state.” *Id.*

171. *Id.*

172. See Sid Cassese, *Strike 1 and Mom Gets Boot; Eviction Notice Over Son’s Drug Conviction*, NEWSDAY, Oct. 27, 1999, at A26.

173. *Id.*

174. *Id.*

175. See Jim O’Hara, *One-Strike Eviction Policy Upheld for Public Housing Case of Syracuse; Tenant Tests Federal Rules Aiming to Prevent Drug Dealing*, POST-STANDARD SYRACUSE, Oct. 8, 1999, at C16. The tenant asked the father of one of her two children to baby-sit when her regular baby-sitter cancelled so that she could go to work. “While [she] was at work, the father invited two friends over to her apartment” and began dealing drugs from there. *Id.*

176. Maher, *supra* note 166, at 219.

housing authority in many cases.¹⁷⁷ “[W]hat began as a judicial supervision to ensure that beneficiaries of housing assistance received procedural due process and were protected from arbitrary or capricious conduct on the part of local housing officials, has evolved into a circumstance in which the courts may be playing too important a role.”¹⁷⁸

The court’s role has diminished some over the years since “One-Strike and You’re Out” became law, but the battle still continues.¹⁷⁹

C. Resident Requests

Due to problems with enforcement and speedy evictions, residents have asked for round-the-clock security so that no one can get in without passing through a checkpoint.¹⁸⁰ After visiting the complex, the mayor of Worcester stated that he would ask the city council to appropriate funding for security in public housing buildings.¹⁸¹ He stated that the housing authority simply needs more security in their buildings.¹⁸²

Residents want the housing authority to provide twenty-four-hour security, but the agency does not receive funding for security services.¹⁸³ The Worcester City Council cannot do much to ensure the safety of the elderly living in public housing.¹⁸⁴ “There are real serious legal issues as to how far the city administration or city councilors can intrude and tell the housing authority what it can and cannot do.”¹⁸⁵ The problem is the federal legislation that comingled younger residents with the elderly.¹⁸⁶ There are varied needs of these two dis-

177. See *id.* at 223.

178. *Id.*

179. See generally O’Hara, *supra* note 175. “We reject the contention of [the tenant] that, because she was not aware of the drug-related criminal activity and did not consent to it, good cause did not exist for her eviction.” *Id.* at C16.

180. See Astell, *supra* note 153, at A1. “This building was built for people 62 and over, but you can’t discriminate. There’s a lot of younger people here now and that’s where the trouble starts.” *Id.*

181. See *id.*

182. See *id.*

183. See Emilie Astell, *Federal Rulings Blamed for Mix; Elderly Residents Concerned at Tower*, TELEGRAM & GAZETTE (WORCESTER), Apr. 12, 1999, at B1.

184. See *id.*

185. *Id.* (citing Councilor-at-Large Konstantina B. Lukes). “The WHA is an autonomous agency and not a part of city government. While the current WHA administration is responsive . . . it is hampered by financial restraints.” *Id.*

186. See *id.*

tinct populations.¹⁸⁷ The only way to solve this problem is to separate the populations or provide security and support services within the buildings. Exacerbating the problem is the fact that the young disabled residents of elderly housing are beginning to have children of their own.¹⁸⁸ Buildings meant for the elderly are now housing infants.¹⁸⁹

D. What Is the Solution?

How can the growing elderly population be cared for without creating a sense of confinement in their lives? Creating a positive experience in elderly public housing requires support for both the elderly and nonelderly disabled tenants. To support one population without the other would create another imbalance and confinement of the nonelderly disabled population.

Part of the problem is that not as many elderly are moving into elderly housing, partly due to their "staying home longer, better assisted-living programs, [and] more competition in the elder housing market."¹⁹⁰ This opens federal units to nonelderly tenants.¹⁹¹ "According to federal guidelines, an apartment vacant for more than 60 days must be rented to the next person on the list, including someone categorized as disabled."¹⁹² If local housing authorities do not follow the guidelines, they risk losing their federal subsidy.¹⁹³

Attracting more elders to elderly housing is a problem.¹⁹⁴ The elderly do not want to live in such housing because of the problems plaguing the buildings.¹⁹⁵ "[They] are entitled to a safe environment, free of fear or intimidation."¹⁹⁶

Yet, communities must also have compassion for young or middle-aged people disabled by substance abuse or other disabilities.¹⁹⁷ "But the lifestyles of some of these tenants work counter to another

187. See *id.*

188. See *id.*

189. See *id.*

190. Williamson, *supra* note 142, at B1.

191. See *id.*

192. *Id.*

193. See *id.*

194. See *id.*

195. See *id.*

196. *Id.*

197. See *Unpleasant Tower; More Problems with Mixed-Population Housing*, *supra* note 160, at A18.

obligation of elder housing: providing living conditions that are safe and reasonably free of intimidation and fear for senior citizens.”¹⁹⁸ “The solution is not turning public housing into an armed camp, but amending misguided federal policies that mandate the mixing of these often incompatible classes of tenants.”¹⁹⁹

VI. Realistic Possibilities

A. Housing and Supportive Services for Alcoholics and Drug Addicts

The way to provide help to those living in elderly housing is to provide separate group homes for recovering alcoholics and former drug addicts.²⁰⁰ “[They] are similar to group residences for the elderly, the mentally and physically disabled, AIDS patients, and troubled teenagers in that they serve individuals struggling to develop healthier, more stable independent lifestyles.”²⁰¹ They are effective in rehabilitating such individuals.²⁰² The problem is that providing housing for former addicts evokes immense local opposition.²⁰³ Though most often manifested through local zoning laws, the opposition also includes threats, acts of arson, and signed petitions by local residents.²⁰⁴ “For every group home that is successfully established, experts estimate that another closes or never opens because of community opposition.”²⁰⁵

Community residents feel that they purchase homes where they feel safe. “[People] seek out communities that share their values and interests.”²⁰⁶ Many individuals feel that it is inconsistent to place such housing in these neighborhoods because they want “to escape crime, drugs and similar social ills [that can be associated with such addictions].”²⁰⁷ These fears are not irrational.²⁰⁸ However, they are not fac-

198. *Id.*

199. *Id.*

200. See generally Malkin, *supra* note 28, at 762 (explaining that group homes for recovering alcoholics and former drug addicts are very effective).

201. *Id.* at 758.

202. *See id.*

203. *See id.* at 794–98.

204. *See id.* at 759.

205. *Id.* at 793. “Communities claim that the presence of group homes will cause crime rates to increase and drugs to become more prevalent. They fear that group homes will make property values plummet, and they fear that group homes imperil family values and destroy community character.” *Id.* at 794–95.

206. *Id.* at 759.

207. *Id.*

tual.²⁰⁹ Research has shown that group homes improve the communities where they operate.²¹⁰ "Communities may not always welcome group homes for recovering substance abusers, but they cannot dispute the fact that [the] programs work."²¹¹ The lack of effective rehabilitation programs makes substance abuse problems worse.²¹² "Among the general population of addicts, eighty percent of those in treatment relapse."²¹³ Those who live in group homes are more likely to achieve sobriety.²¹⁴ "Among group home residents, eighty percent remain clean and sober."²¹⁵

The group homes for recovering substance abusers use a model that requires that addicted individuals help each other abstain from alcohol and drug use one day at a time.²¹⁶ The program is similar to Alcoholics Anonymous.²¹⁷ The goal is to provide individuals time to establish a new set of values that will substitute for the lifestyle where alcohol and drugs were used.²¹⁸ "Substance abusers frequently lack the independent living skills, communication abilities, sense of responsibility, self-esteem, and independence necessary to make it on their own."²¹⁹ The group home setting provides the residents with the

208. See *id.* at 796. "Neighborhoods often operate as extraordinarily defensive social organizations, mobilizing rapidly when something threatens their character and stability. When community members feel threatened, they exhibit protectionist attitudes and exercise oppositional tactics to defend their turf." *Id.* at 797. "Such fears are based on a variety of sociological and psychological principles, particularly heuristics." *Id.*

209. See *id.* at 796.

210. See *id.*

211. *Id.* at 762.

212. See *id.* at 764.

213. *Id.* at 764-65.

214. See *id.* at 765.

215. *Id.*

216. See *id.* at 768.

217. See *id.*

Alcoholics Anonymous is a fellowship of men and women who share their experience, strength and hope with each other that they may solve their common problem and help others to recover from alcoholism. The only requirement for membership is a desire to stop drinking. There are no dues or fees for A.A. membership; we are self-supporting through our own contributions. A.A. is not allied with any sect, denomination, politics, organization or institution; does not wish to engage in any controversy; neither endorses nor opposes any causes. Our primary purpose is to stay sober and help other alcoholics to achieve sobriety.

Defining "Alcoholics Anonymous" (visited Jan. 17, 2000) <<http://www.alcoholics-anonymous.org/em24doc3.html>>.

218. See Malkin, *supra* note 28, at 768.

219. *Id.*

support they need to achieve what they could not on their own.²²⁰ It does so without the help of trained professionals, thus decreasing the recovering addict's role as a patient focusing on deviance, and instead stressing normalization and providing a recovering substance abuser with the ability to gain control over his or her own environment.²²¹

Providing a group home setting is not enough.²²² The home must be located in a community that allows drug and alcohol rehabilitation.²²³ Proper location is important for a number of reasons.²²⁴ "First, because recovering substance abusers are trying to reintegrate into society, it is important that they be treated no differently than 'mainstream' community members."²²⁵ "Second, living in single-family areas has been found to be a necessary component of group housing for former drug addicts and alcoholics."²²⁶ Living in areas where there is decreased safety and poor living conditions does not help the addict.²²⁷ Being near other people, transportation, and services promotes recovery.²²⁸ "[T]he key to successful treatment is to provide social and physical environments where sobriety is positively valued."²²⁹ The better the neighborhood, the greater the chances of recovery.²³⁰

The Oxford House organization, the most widespread recovery house program, best illustrates how the theory of group homes can be successfully implemented.²³¹

The national organization began with one house in 1975, when a group of recovering alcoholics were faced with the closing of their county-supported halfway house. Since then, the organization has grown to more than 526 homes, located in thirty-seven states and the District of Columbia, and has helped more than 20,000 individuals on the road to remaining clean and sober.²³²

220. *See id.*

221. *See id.* at 769.

222. *See id.*

223. *See id.* at 769-70.

224. *See id.* at 770.

225. *Id.* "[A] person in recovery wants a home, not merely housing." *Id.* This explains why recovering addicts cannot make it in elderly housing. The housing is not meant for recovering addicts, and they are not being mainstreamed into the community, but are being placed with the elderly.

226. *Id.*

227. *See id.*

228. *See id.*

229. *Id.* at 771.

230. *See id.*

231. *See id.*

232. *Id.*

Participants in the program come from all social climates and ages.²³³ The average length of stay is approximately fifteen months, but some stay with the program for longer or shorter periods of time, depending on the individuals' needs.²³⁴ "The program's rules are straightforward: Participating homes must be run democratically; they must be financially self-supporting; and they must immediately expel anyone who uses drugs and alcohol."²³⁵ The program has become a national model.²³⁶ "Legislators describe it as the 'missing link' in the treatment process for alcoholism and drug addiction, and courts commend it as a 'nationally recognized program, which, through peer pressure and strict conditions of abstinence, successfully maintains freedom from addiction and improves the lives and opportunities of its participants.'"²³⁷

Congress twice has enacted legislation encouraging the development of Oxford House and similar programs with the Anti-Drug Abuse Act of 1988²³⁸ and the ADAMHA Reorganization Act.²³⁹

With the passage of the Anti-Drug Abuse Act of 1988, each state became obligated to encourage the development of such programs and to establish revolving loan funds of at least \$100,000 to mitigate group-home start-up costs. States failing to comply with the legislation can lose their eligibility for all federal block grants for drugs and alcohol treatment.²⁴⁰

There are only a few exceptions to the broad protection afforded to group homes under the Fair Housing Amendments Act.²⁴¹

First, current users of drugs and alcohol are expressly excluded from the FHAA's protection. Second, those who pose a direct threat to the health or safety of others are also exempted. Third, and finally, the FHAA does not affect "reasonable local, State or

233. See *id.* at 771-72.

234. See *id.* at 772.

235. *Id.*

236. See *id.* The model is one that could be used for enhanced support services for the elderly. Providing services for complexes by creating a self-supporting program would create a sense of self-reliance for the elderly while at the same time providing a sense of security for the future for those who will enter the elderly housing market.

237. *Id.* (quoting *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329, 1331 (D.N.J. 1991)).

238. 42 U.S.C. § 300x-4a (1988).

239. 42 U.S.C. § 300x-25 (Supp. 1993).

240. Malkin, *supra* note 28, at 773.

241. See *id.* at 789.

Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.”²⁴²

The “direct threat” and “current users” provisions are the most important FHAA exemptions.²⁴³ “They help to ensure that former users in recovery are able to get the housing support they need while denying current drug and alcohol abusers similar protections.”²⁴⁴

Congress recognizes that group homes for recovering substance abusers work and are necessary.²⁴⁵ “Yet communities labor feverishly to exclude these programs, and courts too frequently let cities and towns get away with such efforts.”²⁴⁶ The only way to combat such efforts is for courts to use the “legal tools at their disposal to protect the rights of former drug addicts and alcoholics.”²⁴⁷

Providing the proper facilities and support to former drug addicts and alcoholics will lessen the burden on elderly housing, low-income housing, local police resources, and other municipal services.

B. Enhanced Supportive Services for the Elderly

Assisted living development has seen a boom in Massachusetts in recent years.²⁴⁸ The idea of providing similar services for low-income elders has not been discussed until recently.²⁴⁹ The need for affordable assisted living is acute.²⁵⁰ For example, in the City of Somerville, almost 10,500 of its 76,000 residents are elderly.²⁵¹ Several of the elderly living in elderly public housing are in need of some services.²⁵² “[They may] not require 24-hour skilled nursing care but

242. *Id.* “The ‘direct threat’ exclusion provides: Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.” *Id.* at 790.

243. *See id.*

244. *Id.*

245. *See id.* “The record on recovery houses is clear—experts, participants, and legislators agree that this mode of rehabilitation markedly improves individuals’ abilities to free themselves from addiction and to meaningfully contribute to society.” *Id.* at 762.

246. *Id.* at 815.

247. *Id.*

248. *See* Paul Restuccia, *Riding the Third Wave; Making Assisted Living Affordable/Bringing Affordability to Assisted Living*, BOSTON HERALD, Jan. 30, 1998, at 36.

249. *See id.*

250. *See id.*

251. *See id.*

252. *See id.*

[they] are having difficulty living on their own."²⁵³ This complicates the issues surrounding elderly housing.²⁵⁴

Many elders who moved into elderly housing in their sixties are now in their eighties and beginning to need what assisted living programs can provide.²⁵⁵ "[The Massachusetts] Department of Elder Services recently ruled that elderly housing developments can designate a certain number of units as assisted living and residents can receive Group Adult Foster Care and SSIG funds."²⁵⁶ Housing and Urban Development has already provided \$1 million for a three-year demonstration project in Lowell to provide supportive living services to elders already in senior housing.²⁵⁷ Services that can be provided in these types of living situations include: three meals a day in a common dining area; housekeeping services; transportation; assistance with eating, bathing, dressing, toileting and walking; twenty-four hour security; emergency call systems for each unit; health promotion and exercise programs, medication management, personal laundry services, and social/recreational activities.²⁵⁸

These services could be available to all tenants living in elderly public housing. For example, units allocated for assisted living would benefit from all the services and the units not allocated would still gain the benefit of 24-hour security, health promotion, and exercise programs.

However, in order to ensure the elderly are benefiting from these programs and services, there must be oversight and accountability.²⁵⁹

253. *Id.*

254. *See id.*

255. *See id.*

256. *Id.* SSIG funds are State Student Incentive Grant awards. The purpose of the fund is "to make incentive grants to States to assist in providing grant and work-study assistance to students attending postsecondary educational institutions." *Biennial Evaluation Rep.*—FY 93-94 (visited Sept. 22, 2000) <<http://www.ed.gov/pubs/Biennial/507.html>>. Group Adult Foster Care funding is available to individuals that are Medicaid recipients or are determined to be financially eligible. "Services may include minimal help with personal care, help with activities or daily living, and provision of, or arrangement for, transportation." Texas Dep't Human Servs., *Adult Foster Care* (visited Sept. 22, 2000) <<http://www.dhs.state.tx.usprograms/Elderly/fostercare.html>>. It is a program administered by the state's Department of Medical Assistance, providing up to \$1000 a month in assisted living situations. *See Restuccia, supra* note 248, at 36.

257. *See id.*

258. *See id.* Most elderly housing complexes have the facilities already in place to accommodate these services.

259. *See* Nancy Boland Johnson, *Mediating Conflicts at Elder Housing*, BOSTON GLOBE, May 9, 1999, at 18.

Grievance procedures must be in place and the elderly must be aware of their rights and the responsibilities of those that service them.²⁶⁰

One way to ensure that these issues are addressed is to procure ombudsmen.²⁶¹ "Assisted living ombudsmen stand up for the health, safety, welfare and rights of the elders in their community."²⁶² There is currently a statewide ombudsman program in Massachusetts run by the Executive Office of Elder Affairs.²⁶³ Individuals of all ages can become ombudsmen.²⁶⁴ "Many young professionals find it helps them develop interpersonal relationships and also mediation skills which they can use in their professional careers."²⁶⁵ These volunteers help create positive experiences for the elderly in their housing.²⁶⁶

This new program, Supportive Senior Housing, brings assisted living-like services to elders in their own homes.²⁶⁷ It has been implemented in Gardner, Salem, and Watertown.²⁶⁸ Massachusetts Governor Paul Cellucci expanded the concept to twelve new sites in the budget passed in November 1999.²⁶⁹ The services provided under this program include "meals, bathing, dressing, shopping, and laundry" services and "access to 24-hour on-site staff to meet emergency needs."²⁷⁰

VII. Conclusion

Massachusetts's elderly are a growing population. With the ability to cure more diseases and meet individuals' health needs, more people are living longer. Yet, the elderly continue to be a highly vulnerable population. Efforts must be made to ensure that their needs are being met and they are living in peace in their retirement.

The problem is that affordable housing for the elderly remains scarce. Combating the problem requires the help of both the public and private sectors. Providing services to the elderly in affordable housing can create a sense of pride and independence among those

260. *See id.*

261. *See id.*

262. *Id.*

263. *See id.*

264. *See id.*

265. *Id.*

266. *See id.*

267. *See id.*

268. *See id.*

269. *See id.*

270. *Id.*

who require it. Similarly, providing services to the nonelderly handicapped population fosters a sense of pride, accomplishment, and independence among these populations as well.

No one will disagree that those currently abusing drugs and alcohol do not belong in public elderly housing. People will disagree, however, on whether to set up an Oxford House, or similar group home, in their neighborhood. Would it not be better to create a group home for recovering alcoholics and drug abusers in order for them to be rehabilitated once and for all? The programs work and should be allowed in local neighborhoods.

Those who need help will only stay as long as they have to and then move on to lives that are more productive. The group homes help decrease drug and alcohol use and crime in the cities where they are located.

A community with elderly housing in it already has those abusing alcohol and drugs living in their neighborhood due to "mixed housing." The only difference is that they are not rehabilitated and they continue to use drugs and abuse alcohol. This creates more crime and abuse to those who live with them—the elderly.

The elderly are afraid of leaving their apartments in public housing. Murders, drugs use, prostitution and theft are only some of the activities that the elderly have to deal with in their homes. They do not have many housing options due to their fixed income. Their increased age requires services that are currently not provided to them. They deserve better.

Those who are recovering drug and alcohol abusers also need help. Providing proper group housing along with rehabilitation is essential to combating the problems of addiction and the crimes associated with it.

In order to remedy this situation permanently, additional funding sources independent from the government are needed. Because of the politics involved, funding sources need to come from private investors who can gain tax incentives for aiding in this fight to provide safe housing for the elderly and help this population that has been placed in inappropriate and unhealthy housing. To think that the government will always be there to pay these bills is not realistic.

Without private funding and vision, the situation in elderly public housing will not improve. In the near future, those who have cho-

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sen to ignore the issue may be the next generation of elderly confined to this housing.