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Don't mistake HUD's rollback for freedom from fair-housing law | Opinion



A “Rent” sign is displayed on an apartment building in Miami, Florida on January 20, 2022. (Photo by CHANDAN KHANNA/AFP via Getty Images)



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Condo and homeowners' associations are suddenly on their own when it comes to interpreting fair housing law — and that's a dangerous place to be.

HUD's decision to withdraw years of guidance on discrimination, assistance animals and protected classes may appear to be deregulation. Still, it underscores the importance of boards staying disciplined, documenting their decisions, and seeking legal counsel before acting.



JoAnn Nesta Burnett is a senior attorney in Becker's Community Association Practice. (courtesy, JoAnn Nesta Burnett)

In September, the Department of Housing and Urban Development [rescinded](#) more than a decade of internal guidance that community associations had relied on to stay compliant with the Fair Housing Act. Those memos covered how to evaluate requests for emotional support animals, address residents with limited English proficiency, address criminal background screenings, and apply protections related to gender identity and sexual orientation, among others. They weren't laws, but they filled in the practical details that helped boards avoid lawsuits and investigations.

With that guidance withdrawn, associations now face the same obligations with far less clarity about how to satisfy, or what will satisfy, these obligations.

Many board members have not even realized the change occurred. HUD's withdrawal notices were sent internally to agency staff, not to the public. But the effect is real. Attorneys advising associations no longer have a federal roadmap to reference when helping boards handle accommodation requests or respond to discrimination complaints.

For volunteer boards already juggling layers of state, county and federal regulation, the loss of clear administrative direction creates new risk at the worst possible time.

It does not necessarily mean enforcement is easing up. The Fair Housing Act [still governs](#) almost every association, and state and local agencies still enforce it, including Florida's [Commission on Human Relations](#) and county human rights offices. In Miami-Dade, Broward and Palm Beach counties, local ordinances extend protections to additional protected classes beyond the federal minimum.

Private fair-housing organizations and “tester” plaintiffs also continue to operate independently of HUD’s priorities, bringing cases in both state and federal court. Oversight now comes from multiple directions — state agencies, private litigators, and the DOJ — which makes compliance more complex and more essential to manage carefully.

The legal landscape also shifted with the Supreme Court’s recent [Loper Bright Enterprises v. Raimondo](#) decision, which ended what’s known as Chevron deference — the rule that courts should defer to federal agencies when laws are ambiguous. Now, courts (rather than agencies) must interpret those gray areas for themselves — a shift that will produce more varied rulings and less predictability for associations.

A Florida court might reach a different conclusion from a federal court in another circuit, leaving boards without a single authoritative source. That unpredictability makes early consultation with counsel essential before enforcing any rule that touches protected-class issues.

Even as HUD narrows its own enforcement priorities, other federal and state actors are stepping in. The Department of Justice continues to pursue certain cases, and private fair-housing organizations funded through the [Fair Housing Initiatives Program](#) are still conducting investigations and filing suits across the country. State laws around discrimination also remain fully enforceable.

Together, these forces create a broader, more fragmented enforcement landscape that demands greater attention from every board. That starts with adopting or reaffirming written policies for processing accommodation requests, maintaining detailed records of all correspondence and decisions, and providing refresher training for every new board member.

Education is equally critical. Most volunteer board members lack formal legal or property-management training, and HUD’s withdrawal only widens that knowledge gap. Associations should schedule briefings with their attorneys to review current obligations and how [local ordinances differ](#) from the federal baseline.

Another best practice is professional restraint. Accommodation requests should not be addressed at open meetings and should never disclose the name, unit number or other identifying information regarding someone making a request. Confidentiality is key and must be observed. Offhand remarks can become evidence in a discrimination claim. Written communication should stick to what the governing documents allow and to what the Fair Housing Act requires.

When the rules become less clear, risk multiplies — and enforcement often shifts from administrative review to litigation.

Fair-housing compliance has never been about politics. It's about governance, fairness and protecting the communities that boards are elected to serve. The withdrawal of HUD's guidance does not end those responsibilities. It simply requires boards to meet them with greater care and awareness.

The roadmap is gone, but the obligation to follow it remains.

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