

In true Montana spirit, the Chuckwagon . . . the newsletter to fill your fair housing appetite.



## Tales Roun' the Campfire

*A synopsis and/or update of cases filed with the Montana Human Rights Bureau (HRB), the Department of Housing and Urban Development (HUD), and/or federal or district court. This summary is not all inclusive. . .*

**MFH v. Boote** – In March MFH filed an administrative complaint with HUD alleging violations of the Fair Housing Act's design and construction requirements. The property, located in Missoula, is owned by Anthony Boote. The complaint is currently under investigation.

**MFH v. Staudacher** - After receiving allegations of housing discrimination, MFH conducted an investigation ultimately culminating in the filing of a complaint of housing discrimination with HUD against Carol Staudacher of Havre. The administrative complaint was filed in October 2011. Allegedly, Respondent made housing unavailable because of a person's disability and refused to make a reasonable accommodation. Respondent denies the allegations and has refused to enter into discussions to conciliate the matter. In April 2012 HUD issued a charge of discrimination against the Respondent. Montana Fair Housing has elected to move the matter to Federal Court.

## Shootin' the Bull

Montana Fair Housing receives an increasing number of allegations against Homeowners' Associations (HOA), particularly in regards to compliance with the disability provisions included in the Federal and State fair housing laws. Because of these calls, we've decided to include a synopsis of a preliminary injunction issued in June.

**JENNIFER GARCIA, Plaintiff v. SUNSHINE VILLAGE HOMEOWNERS ASSOCIATION - WALNUT, et al., Defendants. Case No. CV 11-05033 DMG (MANx)**

The Plaintiff uses a wheel chair for mobility because of limitations arising from paraplegia. She is married and has two children, ages six and fifteen. Both children have autism. Plaintiff and her family reside in Sunshine Village.

According to the injunction, Sunshine Village has 125 units, all of which have a detached two-car garage. Garages are located behind each unit. Inside the garage are two steps leading to a door opening onto a patio located behind each

residence.

Sunshine Village also has 64 unassigned parking spaces that can only be used 24-hours at a time. The parking spaces are owned by the unit owners, and controlled by the HOA Board of Directors. These spots are available on a first-come, first-served basis.

There are two ways in and out of Plaintiff's garage – through the garage and up the steps crossing the patio to a back door, and from the front of the garage to the Plaintiff's front entrance. An alley is located in front of the Plaintiff's garage and two of the open parking spaces. The two open parking spaces are located right next to the Plaintiff's garage.

To travel, the Plaintiff must be transferred to and from the vehicle, and the garage is not wide enough to allow a transfer from her wheelchair.

Plaintiff requested as an accommodation from the HOA a reserved accessible parking space next to her dwelling unit. The HOA approved this request.

President of the HOA, Defendant Yang, and other Sunshine Village homeowners, believed that Plaintiff's reserved accessible parking space reduced the number of unassigned parking spaces. Defendant Yang also believed that the accessible parking spaces were improperly assigned by the former HOA president.

In September of 2009 the Plaintiff offered a "compromise." She said that if Defendant Yang was successful in preventing former HOA Board President, Sherri Lee, from being re-elected she would give up the reserved accessible parking space the HOA had previously provided her. Yang agreed to Plaintiff's proposal. Once the election was complete and Ms. Lee was not re-elected, the Plaintiff did not give up the parking spot. In December of 2010 the Board decided to remove all accessible parking spaces and in January 2011, Plaintiff's reserved parking space was converted back into two open spaces.

As a result, when the two open parking spaces are occupied, Plaintiff must transfer to and from her wheelchair in a lane of traffic next to her dwelling. The Plaintiff's husband must transfer the Plaintiff and the Plaintiff is concerned that while the transfer occurs her children may



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#### Upcoming Events:

**Montana Fair Housing has several training opportunities for individuals, advocates, and housing providers scheduled. The workshops are approved for continuing education credits for Property Managers and Realtors.**

August 21, 2012 – Butte  
September 6, 2012 – Billings  
September 7, 2012 - Bozeman  
September 18, 2012 – Havre  
September 19, 2012 – Lewistown  
September 25, 2012 – Missoula  
September 27, 2012 – Kalispell  
September 28, 2012 - Helena

Pre-registration is required.  
For more information contact our office.

Discrimination in housing occurs when a housing provider makes a decision about a consumer's eligibility for services based on the consumer's protected class status. A housing provider cannot deny you services nor place different terms and conditions on you BECAUSE OF your membership in a protected class. Federal protected classes include: Race, Color, National Origin, Religion, Sex (including sexual harassment), Familial Status (presence of children under the age of 18 or pregnancy), and/or Disability (Mental or Physical, including requests for reasonable accommodations and reasonable modifications). In the state of Montana, in addition to the federally protected classes, it is a violation of the state's Human Rights Act to discriminate in housing related transactions based on marital status, age, and/or creed. In the City of Missoula, a housing provider cannot discriminate against a household because of gender identity or sexual orientation.

*For More Information about Discrimination in Housing, or to File a Complaint, contact:*

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be in danger. Additionally, because of sloping issues, while Plaintiff travels on the traffic lane, Plaintiff must hold onto the wheels of her chair to prevent the chair from rolling to one side. Since her reserved handicapped parking space was removed, Plaintiff has made several requests for an accommodation, granting her a reserved accessible parking space. All requests have been denied.

Defendants do not deny that the Plaintiff meets the definition of a person with a disability nor do Defendants dispute that they have denied her requests. The parties dispute what is "necessary" to afford Plaintiff "an equal opportunity to use and enjoy" her home and what is a "reasonable" accommodation.

To prove that an accommodation under the FHA is "necessary," Plaintiff needs to establish that "but for the accommodation, [she] likely will be denied an equal opportunity to enjoy the housing of [her] choice." Defendants assert that Plaintiff has "the right and 'equal opportunity' to use the common area parking spaces closest to her unit, just like every other owner," and that, in light of their proposed alternatives, it is not necessary to "extinguish the property rights of other owners" by designating spaces as "handicapped use only."

The Ninth Circuit has recognized that where a handicapped person must travel long distances from the house to the car, the individual's use and enjoyment of the dwelling is diminished. The question for the Court, therefore, is whether Plaintiff establishes a likelihood of success on her claim that the accommodation she has requested is reasonable and that Defendants refused to make the requested accommodation.

In its decision, the Court states, "The parties spill much ink debating whether providing Plaintiff with assigned handicapped parking would be impermissible "preferential treatment." In the Ninth Circuit, an accommodation that provides a disabled person equal access is not rendered unreasonable merely because certain "preferential" concessions are required. "[A]n accommodation may indeed result in a preference for disabled individuals over otherwise similarly situated non-disabled individuals." Defendants argue that it is not reasonable for Plaintiff to request reserved handicapped parking, while also keeping her existing parking spaces, because it would result in a "net gain" to Plaintiff and require "all other owners forfeit a net loss of up to two common area spaces."

"The balance of equities tips in Plaintiff's favor. A reserved handicapped space would allow her to safely board her husband's truck or a para-transit van. . . . The cost of converting the two spaces does not out weigh the value of Plaintiff's and her children's safety and ease of access to their home. . . . the Court must consider the public interest. The public has an interest in eliminating discrimination on the basis of disabilities. . . . where the facts and the law clearly favor Plaintiff, as they do here, the mandatory injunction should be granted."

"In light of the foregoing, Plaintiff's Motion for Preliminary Injunction requiring Defendant HOA to restore Plaintiff's reserved handicapped parking space is GRANTED. Defendants shall implement this order by June 21, 2012 and shall file a notice of compliance by June 28, 2012."