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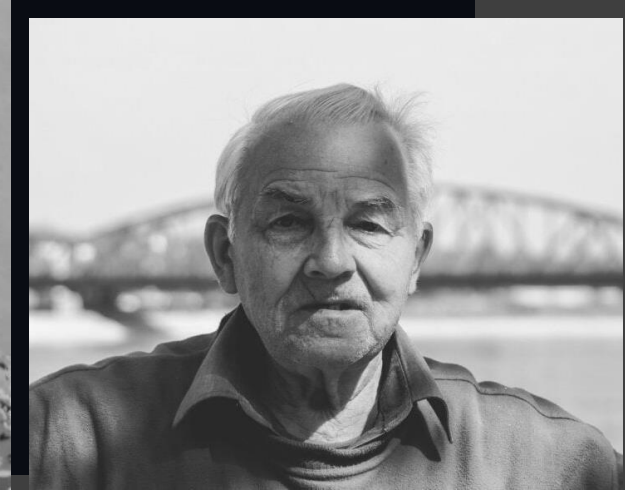
**FAIR HOUSING  
– HELPING  
OLDER ADULTS  
AGE IN  
COMMUNITY**



LeadingAge



**LIMITLESS**  
2023 ANNUAL CONFERENCE  
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## **Disclaimer**

This presentation is not legal advice. It is intended to be educational only. Please consult your legal counsel for advice specific to your situation.

# LEARNING OBJECTIVES

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## THE PROBLEM

Understand how zoning and ideas about age have created an age-segregated society in the United States.



## HOUSING CHOICE

Understand the growth of the residential assisted living market and the care model.



## FAIR HOUSING

Understand how fair housing laws take precedence over local zoning restrictions.



## GETTING IT DONE

Understand the approval process for residential assisted living homes in single-family neighborhoods.

# FAIR HOUSING BASICS

01

All people have the right to adequate housing in a location of their choosing.

02

As a legal concept in the United States, fair housing means that certain protected groups of people are protected from housing discrimination by federal and state law.



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## FHA Application to Assisted Living or Behavioral Health

For people with disabilities, the right to housing choice has been guaranteed since the Fair Housing Act was amended in 1988

“Disability” = physical OR mental impairment that substantially limits a major life activity





## Age Segregation

But if housing choice is guaranteed, why does recent demographical research show that the US now is as segregated by age as it has been by race? This suggests that people who develop disabilities uniformly want to move out of their familiar neighborhoods and into a part of town “appropriately zoned” for assisted living.



## **The U.S. Isn't Just Getting Older. It's Getting More Segregated by Age.**

by Marc Freedman and Trent Stamp

June 06, 2018



HBR/Martin Barraud/Getty Images

*“Research in 2013 from demographer Richelle Winkler shows that in the U.S., age segregation is often as ingrained as racial segregation.”*

*“A 2011 study from MetLife and the National Association of Homebuilders found that nearly one-third of people over the age of 55 live in communities that entirely or mostly comprise people 55 and older.”*

*“I think we’re in the midst of a dangerous experiment,” Cornell University professor Karl Pillemer told The Huffington Post. “This is the most age-segregated society that’s ever been. Vast numbers of younger people are likely to live into their 90s without contact with older people. As a result, young people’s view of aging is highly unrealistic and absurd.”*

*In fact, surveys show that people at least hope to have the choice to age in community. Many, of course, may choose to move to larger senior communities. But others would prefer a smaller environment.*



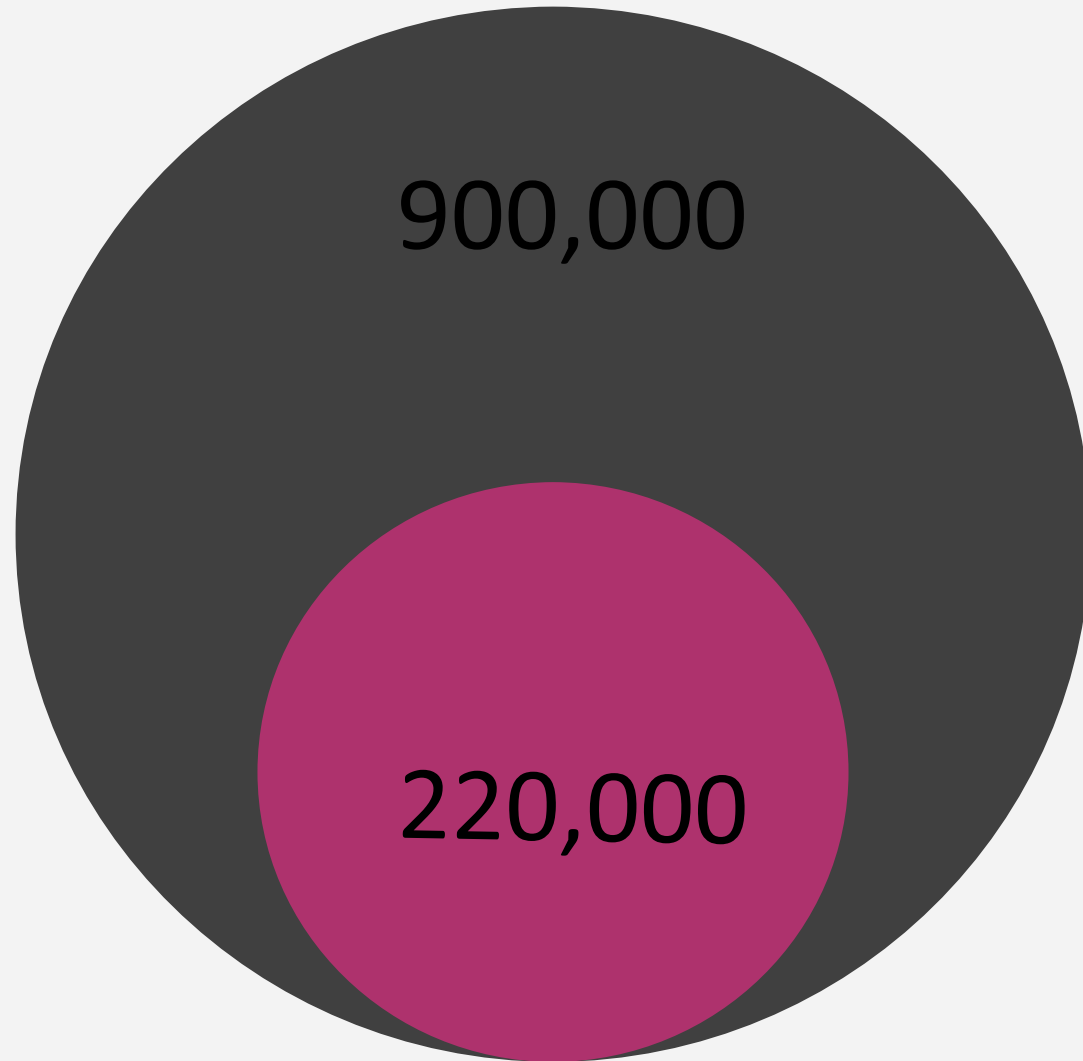
# Residential Assisted Living Care Model

Care models don't have to just be home-like, they can actually be homes in single-family residential neighborhoods.





# Residential Assisted Living Market



## Size of the AL Market

- Number of people in Assisted Living (2022) (est)  
**900,000**
- Number of people served by RALs (est):  
**220,000**

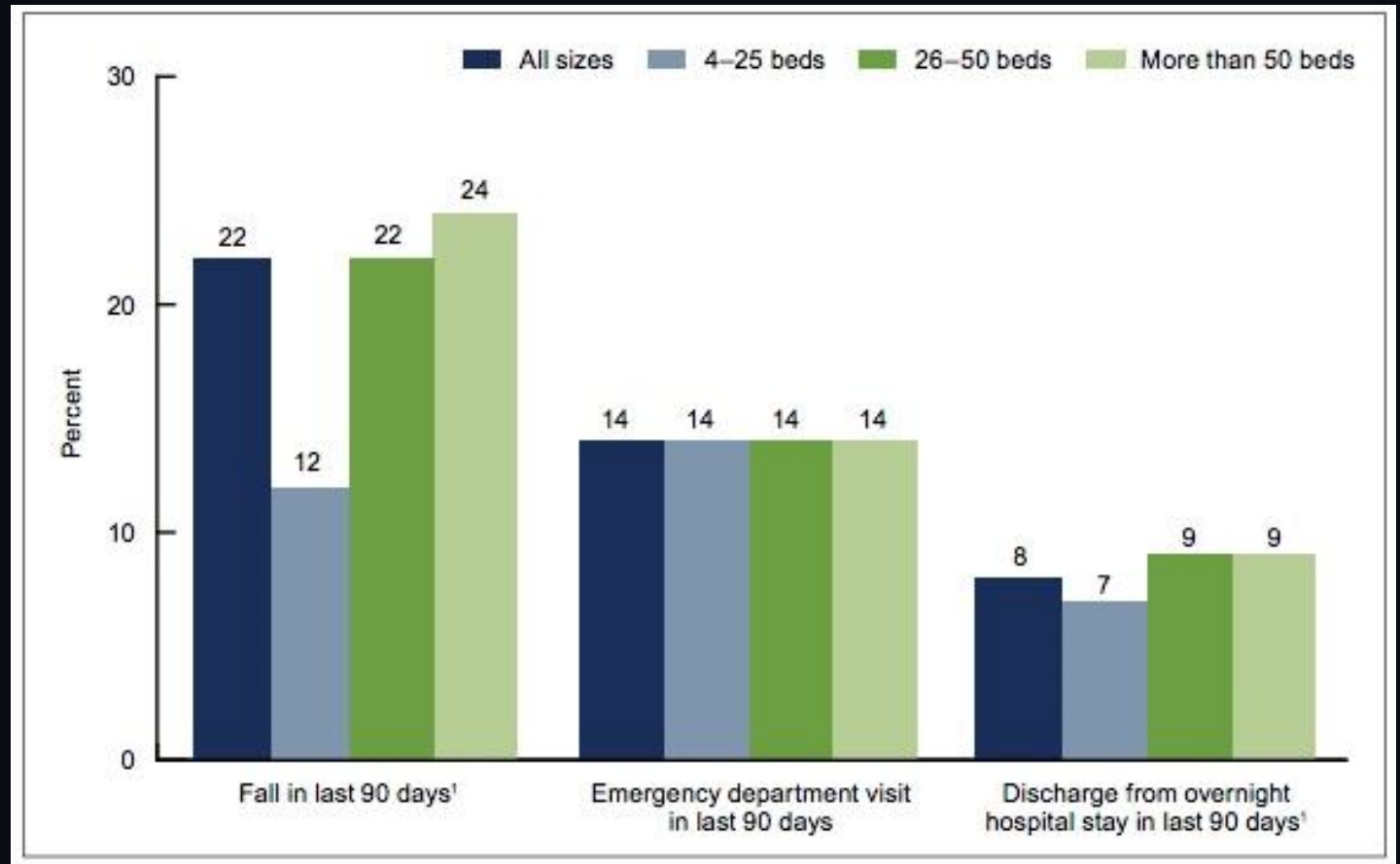
# Arizona's Assisted Living Eco-system



- AZ DHS licenses Assisted Living “Facilities” – including both
  - Assisted Living Homes (up to 10 residents), and
  - Assisted Living Centers (11 residents and more)
- Most facilities are licensed to provide all levels of care: Supervisory, Personal & Direct (the highest level), as those terms are defined by statute. There is presently no separate agency licensing category for “memory care.”

	# Licensed Centers	Total Center Bed Capacity	# Licensed Homes (RALs)	Total RAL bed capacity	From January 2017 - Present
Jan-17	270	20,980	1,707	13,203	22.6% increase in # of licensed centers
May-22	335	29,101	1,650	13,456	38.5% increase in # of bed capacity inside centers
May-23	331	29,051	1,611	13,252	5.6% <b>decrease</b> in # of licensed RALs
					0.4% increase in bed capacity of licensed RALS
					(numbers rounded to the tenths of a percent)

# Benefits of Small Home Living



Source: *Variation in Residential Care Community Resident Characteristics, by Size of Community: United States, 2016.*



# Additional benefits for people with dementia in small-scale living environments



- Better cognitive and functional status.
- More likely to become engaged in socialization and activities.
- Positive outcomes such as higher emotional well-being, pleasure, and social interaction among residents and with the care staff.
- Less resident agitation/anxiety, depression, withdrawal, behavioral and mood disturbance.

# Fair Housing Law



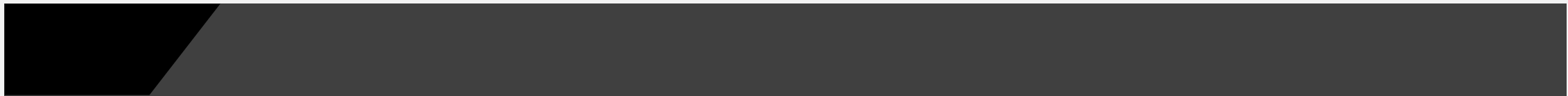
Envisioned by MLK



Originally enacted in 1968.  
Part of the Civil Rights Act.



Amended in 1988 to add  
disability



# Fair Housing Amendments Act

## What does it do?

- *“It is the policy of the United States to provide . . . fair housing throughout the United States.”*
- **Prohibits discrimination** in housing against **people with disabilities**
- Requires that **“reasonable accommodation”** be made to “rules, policies, practices” when necessary to afford a disabled person “equal opportunity to use and enjoy a dwelling”





Who is protected  
under the FHA as a  
person with  
disabilities?

## POP QUIZ

“Old People”

People who  
are using drugs

Homeless /  
Transition  
Housing

Victims of Domestic  
Violence

Developmental  
Disabilities

People in  
Recovery

People who need  
Assisted /  
Supportive Living

# Arizona Fair Housing

## A.R.S. § 41-1491.19

- Prohibits discrimination due to a disability
- Substantially similar to federal FHA

## A.R.S. § 9-500.09

- Cities with a population over 350,000 may adopt their own fair housing ordinance.

(i.e. “Source of income” amendments to Phoenix & Tucson ordinances condoned by AZ Attorney General Mayes @ March, 2023, overturning predecessor’s opinion)



# Arizona Fair Housing, cont.

A.R.S. § 36-551.01

Prohibits housing discrimination based on developmental disability

FHA & AZ FHA extend to other housing-related matters (i.e. emotional support animals; building modifications; etc.)  
**REGARDLESS** of the size of the facility



# Fair Housing vs Zoning

The federal Fair Housing Act is a federal law that is senior to (preempts) state and local laws *and* private agreements.

Zoning  
Restrictions

HOA  
Covenants

Spacing  
Rules

Occupancy  
Limitations

Deed  
Restrictions

Building  
Codes



# Fair Housing & HOAs

A homeowners' association must consider a reasonable accommodation request per state and federal law.

One of the purposes behind the reasonable accommodation provision is to address individual needs and respond to individual circumstances.

Equal opportunity gives handicapped individuals the right to choose to live in neighborhoods of their choice ...end(ing) their exclusion from mainstream society.

*Canady v. Prescott Canyon Estates Homeowners' Assoc.*, 204 Ariz. 91 (AZ Court of Appeals 2002)





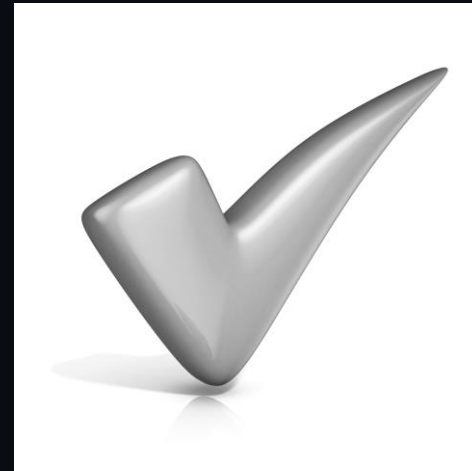
# New Arizona Spacing Legislation

A.R.S. § 9-462.09

- A. If a municipality has a zoning ordinance that restricts the distance between assisted living homes, the municipality shall establish an administrative procedure in which a deviation from the separation requirement may be granted as a reasonable accommodation under the fair housing act.
- B. On registration as an assisted living home or when a land use application for an assisted living home is filed, the municipality shall provide written notice of the administrative procedure to request a reasonable accommodation as prescribed in subsection A of this section.
- C. If a municipality has a zoning ordinance that restricts the distance between assisted living homes, the distance shall be measured on a linear foot basis from lot line to lot line.
- D. For the purposes of this section, “assisted living home” has the same meaning prescribed in § 36-401.

# Approval Pathways

- Zoning as a matter of right
- Reasonable accommodation
- Conditional use / special use



Thank you!





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