



ADA Live! Episode 103: Welcome Home: Your Right to Fair and Accessible Housing

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Guest: Jack Humburg, Chief Operating Officer for the Boley Centers

Host: Barry Whaley, Project Director for the Southeast ADA Center

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Jack Humburg: Hi, I am Jack Humburg and you're listening to ADA Live!

Intro: Yo. Hi, let's roll (singing)

Barry Whaley:

Hi, everybody. On behalf of the Southeast ADA Center, the Burton Blatt Institute at Syracuse University, and the ADA national network, welcome to ADA I'm Barry Whaley. I'm the director of the Southeast ADA Center. As a reminder, listening audience, if you have questions about the Americans with Disabilities Act, you can use our online form anytime at adalive.org. We're happy today to welcome our guest Jack Humburg. Jack is the chief operating officer for the Boley Centers, a private not for profit organization that provides housing, supported housing, and employment services for people with disabilities, individuals and families who are homeless, veterans, and youth in the Tampa Bay area of Florida. Jack is also our long time Florida affiliate for the Southeast ADA Center. So Jack, thanks for being with us today. And although the ADA does not specifically address housing, the ADA does have four aspirational goals, full participation,

independent living, equal opportunity, and economic self efficiency. And none of those four goals would be possible without fair and accessible housing. So maybe a place to start Jack is, what do we mean when we say fair and accessible housing?

Jack Humburg:

Well, that's a great question, Barry. I think it means the right for all people to live where they choose, to have access to how housing, and to enjoy the full use of their homes without unlawful discrimination, or interference, or coercion, or threats, or intimidation by owners, or landlords, or real estate agents, or anyone for that matter. So yeah, I think about fair housing in terms of four basic principles. That being individuality, housing providers must respect the unique needs and circumstances of individuals with disabilities. Equality, people with disabilities should have an equal opportunity to live where they want and not be subjected to rules or requirements that are different from those that apply to people without disabilities.

Jack Humburg:

Integration, of course, people with disabilities are entitled to live in communities with their neighbors, integrated into their community. It doesn't just mean a physical presence, but participation in community services, condo boards, neighborhood associations, being a part of your community. And of course, choice, people with disabilities should be able to live where they choose to live. So that's how I would frame fair housing as it stands today in 2022. Of course, there's still plenty of discrimination in the housing world.

Barry Whaley:

So when we say fair and accessible housing, it's so much more than just having a roof over your head or a place to live. It's all these elements. It's quality that you mentioned, integration, it really is kind of a cohesive thing. So from fair and accessible housing, obviously the ADA, as we said doesn't address housing. What is the Fair Housing Act and how does that protect people from housing discrimination?

Jack Humburg:

Well, the Fair Housing Act is a federal civil rights law dating back to 1988. You may recall that the Civil Rights Acts in the early sixties and the Fair Housing Act that came out in 1968, providing protection for people from discrimination in housing. Didn't initially include disability, that was not added until the amendments in 1988, where disability was added to the Fair Housing Act and provides protections for people with disabilities and provides a investigation and remedies under the Fair Housing Act. So, you do have the availability of filing a complaint with the U.S. Department of Housing and Urban Development, HUD, and they are the enforcement agent for the Fair Housing Act. Most housing, most privately owned housing in the United States is not covered by the ADA, but there are obligations under the Fair Housing Act dating back to 1988.

Barry Whaley:

Thanks Jack. So, what about people with disabilities? How is disability defined under the Fair Housing Act? Is it similar to ADA or is there a different definition?

Jack Humburg:

No, it is essentially the same definition. And fortunately, the definition under the ADA and the Fair Housing Act are identical. So with respect to the individual, it's a physical or mental impairment that substantially limits one or more of a major life activity. You can have protection under the Fair Housing Act if you have a record of impairment or a record of disability and are discriminated against on the basis of that record, and you can have protection under the Fair Housing Act if you are regarded as having a disability and are discriminated against on the basis of that assumption, even though you may not be disabled, if you are discriminated against based upon that false assumption, you could still have protection under the Fair Housing Act much like the ADA.

Barry Whaley:

So, and that definition originates from the Rehabilitation Act, is that right?

Jack Humburg:

That's correct. That's correct. It does go back to the Rehabilitation Act. And it's important to understand that the Rehabilitation Act, 1973 under Section 504, providers of federally assisted housing, have a higher obligation to be accessible to people with disabilities. That covers publicly funded housing and we can talk more about that if you're interested.

Barry Whaley:

Let's get to that in a minute. So, to better understand fair housing, does everybody have to comply with the law or are there exceptions?

Jack Humburg:

There are some exceptions. Certain housing is exempt for small owner occupied buildings. So if you have a triplex or even a quadplex and the owner lives on property, they're really not covered under the Fair Housing Act. That individual owns say, three family homes and rents those out, they are not covered by the Fair Housing Act. So it applies to four or more units. And that includes all of the protections under the Fair Housing Act. I should point out that even if you're a small landlord with just three units, it is a violation of the Fair Housing Act to advertise in a discriminatory manner. So that still applies to a small landlord, but in general, the provisions of the Fair Housing Act only apply if you have four or more units.

Jack Humburg:

There's also some exemptions for senior housing and developments for individuals who are 62 or older. And those are typically federally funded projects, but possibly not. If it is senior housing for 62 or older, they do not have the protections under the familial status or the presence of children. They can legally discriminate based on familial status and age protections. That also applies to 55 or older communities. The rules are a little bit different for the 55 or older. They have to have at least 80% of their units with that provision of 55 or older. But the point is, that to both the senior housing and 55 and older housing does have exemptions from the familial status provisions of the Fair Housing Act. And of course, religious organizations and some private clubs also have some exemptions. So you can discriminate on the basis of religion in your convent. Those

exemptions are there. That does not exclude the provisions for discrimination against a person with a disability, however.

Barry Whaley:

So just so I'm clear when we're talking about familial status and essentially what you're saying is, in senior housing, I can exclude families with young children regardless if it's a child, or a grandchild, or whatever. Those people can be excluded from that senior housing. Is that right?

Jack Humburg:

That's correct. Converse is also correct in that, if you are providing housing and you are not a senior housing, designated by HUD as senior housing, you cannot discriminate against the presence of children in a family. So, you sometimes see ads running in... Well, you used to see ads, now everything's done online, but to advertise it, no children allowed would be a violation of the Fair Housing Act, regardless of how many units you're renting.

Barry Whaley:

It's that HUD designation of senior housing that triggers that.

Jack Humburg:

That's correct. That triggers the exemptions.

Barry Whaley:

Right okay. Thanks. So we know the Fair Housing Act has different rules, different regulations for housing that's privately built, versus as you mentioned, government built housing or government funded housing. Can you spend a few minutes maybe talking about those differences between private built housing and government built?

Jack Humburg:

Sure, sure. And this is important to understand, as we mentioned before, publicly funded or publicly owned housing is covered by Section 504, the Rehabilitation Act. So, they have a higher obligation to provide accessibility, both in terms of the design and construction standards. So if you're building with federal funds as Boley Centers does for example, we have to build in accessibility that goes beyond the Fair Housing Act design and construction requirements. So we have at least 5% of our units, no less than one, that are fully accessible with rolling showers, accessible kitchens, et cetera. And 2% that are provided for individuals with sensory disabilities, visual impairments, hearing impairments. And so there are special features built into those units, because of the federal money that triggers Section 504 and those requirements. The other important distinction is that landlords who are using federal financial assistance have an obligation to provide the reasonable modifications to the unit to make it accessible and enjoyable for a person with a disability that may go beyond required of the design and construction standards.

Jack Humburg:

In privately owned housing, and this is very important, in privately owned housing that is not federally funded, the provision of a reasonable modification should be allowed by the landlord, but not paid for by the landlord. In those situations where I need to make a physical modification to my apartment or my home that I'm renting or in a condo that I own, they cannot stop me from making the reasonable modifications to my unit. But it's at my expense, not the landlords. In the federally funded, that cost is born by the landlord, not the tenant.

Barry Whaley:

Well, that's an interesting distinction. So, staying with that topic, let's say that I need to install a ramp, or I need to make some sort of modification to my housing that's owned by somebody else. What happens when I leave that housing?

Jack Humburg:

Well, your landlord may require you to escrow funds to put the unit or the modification back to its original condition. That's usually not required in public and common use areas. A curb cut or something that benefits the community in general. But if I'm lowering my kitchen cabinets, because I'm a wheelchair user and I can't reach them, so I lower my kitchen cabinets, my landlord may require me to put those back when I leave and they can require you to escrow funds when you do that kind of renovation. So that the money is available to put it back to its original condition when you leave.

Barry Whaley:

Those costs both for the modification and for restoring the property, that's all on me, right?

Jack Humburg:

That's correct. That's on the tenant, not the landlord.

Barry Whaley:

Correct yeah. Well, thanks Jack. ADA Live! listening audience, if you have questions about this topic or any other ADA Live! topic, you can submit those questions online at adalive.org, or you can call the Southeast ADA center. Our number is one, four, zero, four, five, four, one, nine, zero, zero, one. And now a word from this episode's sponsor.

Voice Over:

Boley Centers provide information, training, and guidance on the Americans with Disabilities Act and disability access tailored to the needs of business, government, and individuals at local, state, and regional levels. Boley Centers is located in St. Petersburg, Florida, and serves as the Florida state affiliate of the Southeast ADA center, a member of the ADA national network. For answers to your ADA questions, contact the ADA national network at one eight hundred, nine, four, nine, four, two, three, two.

Barry Whaley:

Hi, welcome back everybody. We're talking with Jack Humburg. He is the chief operating officer for Boley Centers in St. Petersburg, Florida. We're talking about fair and accessible housing today. Jack, what is a frequent issue or problem that people with disabilities face under the Fair Housing Act?

Jack Humburg:

Well, one of the, probably the most frequent call I get is about parking. Individuals with disabilities who are renting an apartment or living in a condominium community, where there is reserve parking, frequently have a need for a reasonable accommodation to change that policy, to allow them to reserve a parking place near their unit. Due to a physical disability, they're unable to walk long distances and simply need a reserve parking space. This happens very often and many landlords are reluctant to allow that type of accommodation for a person with a disability. Keep in mind this reserved parking space doesn't need to be necessarily a fully accessible space. Which in Florida, for example, would be a 12 foot wide space with a five foot wide access aisle and above ground signage for a person with a disability. No, in housing, if a person needs a parking space, it may not even need to be larger than other spaces. They simply need a space close to their unit.

Jack Humburg:

They may need a van accessible space, but in most cases that's not required. And the landlord has an obligation to make reasonable accommodations to their policy of not reserving parking to allow that person with a disability to have that parking space reserved for them closer to their unit to make their housing more accessible to them. That's one of our more frequent examples of complaints we get where landlords are reluctant to do that because they're concerned it will trigger an avalanche of requests for reserve parking, which typically doesn't really happen. You may get a couple people who do truly need accessible parking and the landlord, the condo association, can determine and ask for documentation that there is a disability before reserving that parking space.

Barry Whaley:

So to be clear, you can designate a reserve parking place, but it does not necessarily need to meet all the accessibility guidelines for accessible parking unless of course, somebody is wheelchair user.

Jack Humburg:

Yes, that's correct. And it does not necessarily have to meet all of the requirements for an accessible parking space. It simply needs to meet that individual tenant's need to be closer to their apartment. Let me just expand on that a little bit. When we are looking at fair housing accommodations, it's much like accommodating an employee under the ADA. You don't necessarily need to go to the design and construction standards to determine what is needed for that tenant. You need to ask them what they need, and it may be a grab bar in an unusual location. It may be modifications to the unit that are not contained in the design and construction standards, but meet that individual tenant's need and allow them to enjoy their apartment.

Barry Whaley:

Right. Very good point. Thanks Jack. I'm a little confused about the Fair Housing Accessibility Guidelines. Can you maybe walk us through what those are?

Jack Humburg:

Yes. Under the Fair Housing Act, U.S. Department of Housing and Urban Development, HUD, developed the Fair Housing Accessibility Guidelines. They cover any building with four or more units occupied on or after March 13th, 1991. Single family homes and town homes, by the way, are not covered by the accessibility standards. It covers buildings with elevators. If you've got an elevator in your building, all units must be usable by people with disabilities and meet these standards. If it does not have an elevator, then all of the ground floor units must be usable by people with disabilities. There are generally seven different items that need to be addressed. And let me say that, if you follow the Fair Housing Act Accessibility Guidelines, you're not necessarily going to achieve a fully accessible unit. You remember, we were discussing federally assisted properties, and under 504, you have an obligation to have at least 5% of the units fully accessible with

features like a roll in shower. That's not contained in the Fair Housing Act accessibility standards, or the seven items. If you'd like me to go over them.

Barry Whaley:

Yeah, please

Jack Humburg:

Is at least one accessible building entrance, that's the first. The second is an accessible route to the building main entrance that has a 36 wide door and 32 inch wide doors throughout the unit. All common areas must be accessible. And that includes the pool deck, the clubhouse, and other common areas. An accessible route into and through the unit. And that doesn't mean to every space, but into and through the unit. There's a requirement for accessible light switches, thermostats, and other environmental controls installed at a height no higher than 48 inches to the device and electrical outlets, no lower than 15 inches. There's a requirement for reinforced bathroom walls around the tub and the commode for future installation of grab bars. The grab bars do not have to be installed, but there needs to be backing in your bathroom walls for the future installation if needed. And usable kitchens and bathrooms in which a person in a wheelchair can maneuver.

Jack Humburg:

And as I mentioned a minute ago, that doesn't mean a fully accessible kitchen and bathroom. That means a usable kitchen and bathroom with a maneuvering space. So I think it's important to understand that these guidelines or the Fair Housing Act Accessibility Guidelines are a minimum and just basically gets you in the door and through your unit, but does not necessarily provide full accessibility. And this applies to all units. So it applies to every unit in a building with an elevator and every unit on the first floor, if it doesn't have an elevator. Minimum standards.

Barry Whaley:

Yeah. That's what I was going to say. That these are the bare minimum standards then, but we should always aspire to greater accessibility when possible. Are there state laws then that may offer greater accessibility standards? And how does that work with federal law?

Jack Humburg:

Well, there are, and you need to look to your state to be sure you are following both the federal and state guidelines. Obviously, the states cannot lower those thresholds. In some cases, they exceed these and require greater accessibility. I mentioned earlier, Florida's accessible parking space. That's a Florida law that goes above and beyond what's at the federal level. And there are other requirements in both Florida law and other states that have specific provisions for housing and also in commercial facilities covered by the ADA.

Barry Whaley:

Right. So, as a rule of thumb, look to your state guidelines to... When you are in the design and construction of these facilities.

Jack Humburg:

Yes. And I think, as we said, the Fair Housing Act Accessibility Guidelines are the minimums start there. You're going to need to meet those requirements at a minimum, and then look to your state code to see if there are additional accessibility features that need to be included.

Barry Whaley:

Right, right. Thanks Jack. Hey, I've got a question for you. How does fair housing address service animals and emotional support animals? We know under the ADA, for instance, a service animal handler has protections where emotional support animals handlers do not, but we're talking about housing here. So what's the difference?

Jack Humburg:

Well, that's a good question, and this would be the other answer to what's the most common complaint we get. If it's not parking, it's a service animal or an emotional support animal. The Fair Housing Act says that you can have both a service animal that provides a specific service to that individual, and an emotional- And/or I should say, an emotional support animal. They are covered by the Fair Housing Act. Such animals are not subject to the general rules and fees applicable to pets. So you can't charge a pet deposit. They may not be rejected, because of a lack of specialized training. So an emotional support animal, say a cat that provides emotional support to an individual with a disability doesn't have to be specifically trained, unlike a service animal under the ADA. They may be required to be inoculated and registered in compliance with state or local laws. And the animal's owner may be held responsible for ensuring that it's properly restrained, and it's waste is properly disposed of, and so on.

Jack Humburg:

So it's important to understand the difference there. Service animals are categorized as animals that are trained to do a specific task for their owner. And the most common example, of course, is a guide dog. An assistance animal may be a cat, or a dog, or other type of companion animal that does not need to be trained to perform a service. The emotional and physical benefits from an animal living in a home are what qualifies that animal as an assistance animal. Unlike under the ADA, where you can't require documentation, a landlord can require a letter from a medical doctor or therapist, and that's all that's needed to classify that animal as an assistance animal. The fact that the term service animals often used by landlords and public housing authorities to refer to both service dogs and assistance animals often creates confusion. But in either case, in housing, you can have both or either a service animal or an assistive animal. You could have two actually, but it's obviously handled differently than under the ADA.

Barry Whaley:

If I am a renter and I have an emotional support animal, my landlord can ask for documentation that I need that emotional support animal, but my landlord cannot ask for that documentation if I have a service animal.

Jack Humburg:

A landlord can ask for documentation in either case.

Barry Whaley:

I see, okay.

Jack Humburg:

And that there is a need, that there is a disability and a need for the animal.

Barry Whaley:

Okay.

Jack Humburg:

Without asking for diagnosis or any other medical information, just the fact that this individual has a disability and this animal provides a service to that individual.

Barry Whaley:

Right. Just to make sure we're clear, so thank you. Jack. I've followed your career for years now. I know that the Boley Centers in the Tampa bay area have a long and successful history of assisting people with fair and affordable housing. Tell me a little bit more about Boley Center for people who may not know about all the great work you do.

Jack Humburg:

Well Boley Centers is a private nonprofit. Our mission is to help individuals in recovery from mental illness. We have a separate corporation called Pinellas Affordable Living that has a slightly different mission. And that is to provide affordable housing to people with disabilities. In our housing, we do have... You're not required to have a mental health disability. Although, we have some properties that are funded by HUD specifically to serve that population. So we have about 1200 units of housing, and that includes serving as a housing authority. And we have housing choice vouchers for individuals with

disabilities, individuals living with AIDS under the HOPWA Program, the Housing Opportunities for Persons with AIDS Program, HOPWA. And we also have some additional vouchers for individuals who are homeless. Most of individuals also have a mental health disability.

Jack Humburg:

So we provide a service to individuals with mental illness including supported living, where we have individuals help them live independently in the community, whether they're living in our units or in a private landlord. We provide some the vocational services for youth in some of the targeted areas here in Pinellas county, helping them find jobs during the summer, for example, and beyond once they get out of school. We also provide a variety of vocational services to veterans. We have a couple of safe havens, which are homeless residential treatment facilities for individuals straight off the street, and we help them get stabilized. Those safe havens are what are considered low demand, meaning we don't require sobriety. We try to help folks get sober and get stable, but they're not required to remain abstinent in terms of drugs and alcohol in that program.

Jack Humburg:

So we're pretty busy and we're growing. I've got two projects under construction right now, and about to start construction on another 20 unit development here in St. Petersburg using primarily state money, not federal dollars, but the Florida Housing Finance Corporation funds a lot of our developments these days. And they also consider those dollars to trigger Section 504. Although they're not federal dollars, Florida legislature has mandated the same standards for new construction using state dollars.

Barry Whaley:

That's fantastic. Jack, as we wrap up today, do you have any final thoughts you want to share with our listeners about rights and responsibilities under Fair Housing?

Jack Humburg:

Well, I would just say that working in the field of ADA technical assistance and Fair Housing technical assistance, what I see is sometimes remarkable in the level of overt, direct, intentional discrimination in the housing world. Most businesses who are open to the public, inviting you to come in and enjoy their restaurant, their shop, understand that the ADA prohibits discrimination against individuals with disabilities, or at least they make an attempt to not discriminate.

Jack Humburg:

But in the housing world, we see landlords who think, "I own this building and I can set the rules, and I'm not going to rent to you because you have a mental illness. I'm not going to rent to you because you use a wheelchair. I'm not going to rent to you, or I'm not going to provide accommodations to you." And just blatantly discriminate. So it's remarkable that in this day and age, we've had the Fair Housing Act since 1968, applying to individuals with disabilities since 1988. And yet we still see blatant discrimination in the housing world. Sometimes depressing to deal with some of that over to discrimination against individuals with disabilities and other protected classes under the Fair Housing Act.

Jack Humburg:

So I think our work is not done. There's still lots of work to do in the Fair Housing world to help educate landlords, condo associations, homeowner associations, even lenders, bankers. I once had a case where I was helping a young man buy a condo. He was an individual with a developmental disability. Employed, had saved his money, was ready to buy a condominium, needed a loan from the bank, and the bank wanted to him to have a competency hearing before they would issue that loan. That's the kind of blatant discrimination you see. And of course you can't set different terms and conditions for mortgages for a person with a disability. That young man bought that condo after I pointed that out to the bankers. As I say, we still have a lot of work to do

Barry Whaley:

So, that does lead me to a question. If I feel that I have been the victim of housing discrimination, what do I do, Jack?

Jack Humburg:

First of all, the U.S. Department of Housing and Urban Development, HUD, enforces the Fair Housing Act. And I would encourage you to file a complaint with HUD. And their central offices is in Atlanta for our region. There may be state remedies as well. And in Florida, for example, we have a Human Rights Act. We have a commission on human relations and you can file a complaint at the local level through the state commission who has offices around the state who can proceed. And I typically advise callers from Florida to follow that route to file with your state housing assistance because they will investigate and take action quicker than HUD may. HUD obviously is busy and they're looking for impactful cases, which your case may not be in that category, but nevertheless, you need redress to your complaint. And so look to your state to see if you have state enforcement of fair housing laws, and that's probably the best route and quickest route to get relief.

Barry Whaley:

Good advice. Thanks Jack. So Jack, thanks for sharing your time. This valuable information about fair and accessible housing. Folks, our guest today has been Jack Humburg. He is the chief executive officer of Boley Centers in the Tampa bay area. And as a reminder listeners, you can access all ADA Live! episodes with Archive Audio, accessible transcripts, and resources on our website. That's adalive.org. You can listen to the ADA Live! SoundCloud channel at soundcloud.com/adalive. You can download ADA Live! to your favorite podcast app by searching for ADA Live! Listeners, if you have questions about the Americans with Disabilities Act or the Fair Housing Act, you can use our online form anytime at adalive.org or contact your regional ADA center at one, eight hundred, nine, four, nine, four, two, three, two. Those calls are always free and they're confidential.

Barry Whaley:

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Barry Whaley:

Also, as a reminder, we invite you to tune in to our companion podcast, Disability Rights Today. Disability Rights Today is your source for in-depth discussion on important court cases that have shaped the Americans with Disabilities Act. You can learn more at disabilityrightstoday.org see you next episode.

4 Wheel City: (rapping)

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