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6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
7  
8 IN AND FOR THE COUNTY OF MARICOPA

9 THE STATE OF ARIZONA *ex rel.* JAMES  
10 WALSH, Acting Attorney General,\* and THE  
11 CIVIL RIGHTS DIVISION OF THE ARIZONA  
12 DEPARTMENT OF LAW,

11 Plaintiff,

12 vs.

13 TOWN OF PAYSON, a municipal corporation of  
14 the State of Arizona.

15 Defendant.

No. CV2004-013335

COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF

(Other Civil)

18 Plaintiff, by and through its attorneys undersigned, alleges and states as follows:

19 INTRODUCTION

20  
21 The Town of Payson's zoning code does not allow group homes for recovering  
22 alcoholics and recovering drug addicts as permitted uses in any residential zones. This is an  
23 action under the Arizona Fair Housing Act, A.R.S. §§ 41-1491 to 1491.37, to remedy and  
24

25  
26  
27 \* Attorney General Goddard has recused himself from this matter. Accordingly, James Walsh, the Chief Deputy Attorney  
28 General, serves as the Acting Attorney General. See Rule 2.15(a), Superior Court Local Rules - Maricopa County.

1 provide appropriate damages and penalties for Defendant's unlawful housing practices based  
2 on disability.<sup>1</sup>

3 **JURISDICTION AND VENUE**

- 4  
5 1. This court has jurisdiction of this matter pursuant to A.R.S. § 41-1491.34(A).  
6 2. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

7 **PARTIES**

8  
9 3. Plaintiff Arizona Civil Rights Division of the Arizona Department of Law ("the  
10 Division") is an administrative agency of the State of Arizona established by A.R.S. § 41-1401  
11 to enforce the provisions of the Arizona Civil Rights Act ("ACRA") and the Arizona Fair  
12 Housing Act ("AFHA").

13  
14 4. Defendant Town of Payson is a municipal corporation of the State of Arizona.

15 5. Plaintiff brings this action on its own behalf and on behalf of Steps House, Inc.  
16 ("Steps House"), a nonprofit Arizona corporation, who has been discriminated against or is  
17 about to be discriminated against by Defendant on the basis of disability in violation of the  
18 AFHA.

19  
20 6. Steps House operates group homes for individuals with disabilities in Arizona.  
21 Steps House is an aggrieved person within the meaning of A.R.S. § 41-1491(1) and (9).  
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26 <sup>1</sup> Initially, the Arizona Fair Housing Act referred to "handicap" discrimination. Thereafter, all AFHA references to handicap  
27 were statutorily changed to "disability." See A.R.S. § 41-1491(5) (1991). The terms "disability" and "handicap" are used  
28 interchangeably throughout this complaint.

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**GENERAL ALLEGATIONS**

**Group Home Zoning**

7. The Federal Fair Housing Amendments Act, 42 U.S.C. §§ 3601- 3619 (1988) (“FHAA”) made it unlawful, among other things, to engage in housing discrimination based on a person’s disability or based upon a person, such as a group home, providing housing to persons with disabilities. Under the FHAA, it is unlawful to make housing unavailable because of disability, or to refuse to make a reasonable accommodation in rules, policies, practices, or services, if the accommodation may be necessary to afford a disabled person with equal opportunity to use and enjoy a dwelling.

8. The AFHA, adopted in 1991, is substantially equivalent to the FHAA, including the disability provisions.

9. Under A.R.S. § 41-1491(5) of the AFHA, “disability” means a mental or physical impairment that substantially limits at least one major life activity, a record of such an impairment, or being regarded as having such an impairment. Disability does not include current illegal use of or addiction to any drug or illegal or federally controlled substance.

10. Recovering alcoholics and recovering drug addicts are persons with disabilities within the meaning of the FHAA and the AFHA..

11. Prior to 1996, Defendant did not allow group homes for persons with disabilities as permitted uses in any of its zoning districts.



### **Bassett Lane Group Homes**

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2 18. On or about June 1996, Defendant approved R-1 single-family residential zoning  
3 for the Four Seasons Adult Care Home at 307 S. Bassett Lane in Payson, without requiring that  
4 group home to have a Title 36 license. The Four Seasons Adult Care Home did not serve  
5 recovering alcoholics or recovering drug addicts.  
6

7 19. On or about September 2000, Defendant investigated a neighbor's complaint  
8 about activities at 307 S. Bassett Lane. Defendant was informed by the property manager that  
9 the property was being used as a "sober house" for five or six recovering alcoholics, and was no  
10 longer being used by the Four Seasons Adult Care Home. After consulting with Defendant  
11 regarding applicable zoning requirements, the property manager advised Defendant that it  
12 decided to close the home and notify the residents to move out because it could not get state  
13 licensing.  
14

15  
16 20. On or about November 2000, Steps House rented the property located at 307 S.  
17 Bassett Lane and began operating its group home ("the Group Home") for recovering alcoholics  
18 and recovering drug addicts in an R-1 single-family residential zone ("R-1 zone") in Payson.  
19  
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### **Steps House**

21  
22 21. Steps House provides its residents with housing and referrals to behavioral health  
23 services, and requires that its residents attend 12-step program meetings off-site, work, do  
24 chores, remain clean and sober, and follow rules. Steps House does not provide direct patient  
25 evaluation, diagnosis, case management, care or treatment. Steps House is not required to be  
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1 licensed under the Arizona Department of Health Services by Title 36, Arizona Revised  
2 Statutes.

3 22. On or about November 30, 2000, Defendant informed Steps House that a group  
4 home needed a Title 36 license to operate in an R-1 zone. At that time, Defendant also  
5 informed Steps House that it could not operate in an R-1 zone because Defendant considered  
6 Steps House's Group Home to be a "halfway house," which use was not permitted use in an R-1  
7 zone.  
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9  
10 23. On or about December 4, 2000, Steps House was the only group home for  
11 recovering alcoholics or recovering drug addicts located in the Town of Payson. At that time,  
12 Steps House wrote to Defendant to clarify that it was operating a group recovery home for  
13 alcoholics and drug addicts. In that letter, Steps House provided legal authority, under the  
14 FHAA and other federal laws, for requiring local governments to make reasonable  
15 accommodations in zoning laws to allow group homes for recovering alcoholics and recovering  
16 drug addicts in residential zones. Steps House also offered to apply for a special use permit. In  
17 its letter, Steps House further advised Defendant that it was exempt from Title 36 licensure and  
18 provided legal authority for the exemption.  
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22 24. On or about January 23, 2001, Defendant sent a letter in response to Steps  
23 House's December 4, 2000 letter and ordered Steps House to immediately cease and desist  
24 operating a "halfway home" at 307 S. Bassett Lane. In its January 23, 2001 letter, Defendant  
25 informed Steps House that a group recovery home for alcoholics and addicts was considered a  
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1 “halfway home” under Defendant’s Zoning Code and, for that reason, could not operate in an  
2 R-1 zone. Defendant further advised that Steps House was not eligible for a special or  
3 conditional use permit to operate in an R-1 zone because halfway homes are not permitted uses  
4 in R-1 zones.  
5

6 25. On or about February 13, 2001, Steps House filed a timely administrative housing  
7 discrimination complaint with the Division against Defendant.  
8

9 26. The Division investigated Steps House’s administrative housing discrimination  
10 complaint pursuant to A.R.S. § 41-1491.22. Defendant decided not to proceed with enforcing  
11 its Zoning Code against Steps House pending resolution of Steps House’s administrative fair  
12 housing complaint.  
13

14 27. On or about February 25, 2003, the Division issued a finding, pursuant to A.R.S.  
15 § 41-1491.29 of the AFHA, that there was reasonable cause to believe that discrimination had  
16 occurred or was about to occur.  
17

18 28. On or about March 13, 2003, the Division and the Defendant entered into an  
19 Agreement (“the Tolling Agreement”) to toll the time for filing suit under the AFHA pending  
20 settlement negotiations. Pursuant to the Tolling Agreement, on or about June 11, 2004, the  
21 Division served written notice upon the Defendant that conciliation efforts were no longer  
22 meaningful and that the tolling period would end thirty days after service of the notice.  
23

24 29. Upon information and belief, Defendant has not recognized as permitted uses or  
25 approved zoning for any “halfway homes” or group homes for recovering alcoholics or  
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27

1 recovering drug addicts in residential zones in the Town of Payson.

2 **COUNT ONE**

3 **(Violation of the AFHA by Making Housing Unavailable to Persons with Disabilities)**

4 30. Plaintiff realleges and incorporates by reference the allegations contained in  
5 paragraphs 1 through 29 of this Complaint.

6 31. It is a violation of A.R.S. § 41-1491.19(A) of the AFHA for a person to  
7 discriminate in the sale or rental or otherwise make unavailable or deny a dwelling to any buyer  
8 or renter because of a disability of: (1) that buyer or renter; (2) a person residing in or intending  
9 to reside in that dwelling after it is sold, rented or made available; or (3) a person associated  
10 with that buyer or renter.  
11

12 32. Defendant adopted its Group Home Policy and Zoning Code with the intention to  
13 make housing unavailable to recovering alcoholics and recovering drug addicts living in group  
14 homes in residential zones of Payson, in violation of the AFHA. Defendant issued its January  
15 23, 2001 cease and desist order to Steps House, pursuant to the Group Home Policy and the  
16 Zoning Code, to make housing in an R-1 zone unavailable to Steps House based on the  
17 disabilities of persons residing at or intending to reside at Steps House's Group Home, in  
18 violation of the AFHA.  
19

20 33. Despite having previously approved zoning for another group home to operate at  
21 the same location without a Title 36 license, Defendant informed Steps House that it could not  
22 operate the Group Home at that location without a Title 36 license. By imposing the Title 36  
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license requirement upon Steps House, Defendant made housing in an R-1 zone unavailable to Steps House based upon the disability of the persons residing at or intending to reside at Steps House's Group Home, in violation of the AFHA.

34. By imposing its Title 36 Zoning Code requirement upon Steps House, who is exempt from that requirement, Defendant made housing unavailable based upon the disability of persons residing at or intending to reside at Steps House's Group Home in an R-1 single-family residential zone of Payson, in violation of the AFHA.

35. Steps House has been harmed as a result of Defendant's discriminatory conduct.

**COUNT TWO**  
**(Violation of the AFHA by Making Discriminatory Statements)**

36. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 35 of this Complaint.

37. It is a violation of A.R.S. § 41-1491.15 of the AFHA for a person to make, print, publish or cause to be made, printed or published any notice or statement with respect to the sale or rental of housing that indicates any preference, limitation or discrimination based on disability or an intention to make such a preference, limitation or discrimination.

38. In its Group Home Policy, Zoning Code, November 30, 2000 verbal statement to Steps House, and January 23, 2001 written cease and desist order based on the Group Home Policy and Zoning Code, Defendant made, printed and/or published statements with respect to group housing for recovering alcoholics and recovering addicts which indicated a preference,

1 limitation or discrimination based on disability or an intention to make such a preference,  
2 limitation or discrimination, in violation of the AFHA.

3 39. Defendant's Group Home Policy and Zoning Code are facially discriminatory  
4 against disabled recovering alcoholics and recovering drug addicts by classifying their group  
5 homes as "halfway homes" and making group housing for them unavailable as a permitted use  
6 in any residential zones of Payson, in violation of the AFHA.  
7

8 **COUNT THREE**

9 **(Violation of the AFHA by Refusal to Make Reasonable Accommodation)**

10 40. Plaintiff realleges and incorporates by reference the allegations contained in  
11 paragraphs 1 through 39 of this Complaint.  
12

13 41. Under A.R.S. § 41-1491.19(E)(2) of the AFHA, it is discriminatory to refuse to  
14 make a reasonable accommodation in rules, policies, practices or services if the accommodation  
15 may be necessary to afford a person with disabilities an equal opportunity to use and enjoy a  
16 dwelling.  
17

18 42. In its December 4, 2000 letter to Defendant, Steps House requested  
19 accommodations in Defendant's Zoning Code's Title 36 licensing and halfway home  
20 classification provisions. The requested accommodations were reasonable and necessary to  
21 enable Steps House to provide equal housing opportunity for disabled present and future  
22 recovering alcoholic and recovering drug addict residents of the Group Home to live in a group  
23 home in an R-1 zone of Payson. By refusing to grant reasonable accommodations to Steps  
24 home in an R-1 zone of Payson. By refusing to grant reasonable accommodations to Steps  
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1 House, Defendant discriminated against Steps House based on the disabilities of persons  
2 residing at or intending to reside at Steps House's Group Home, in violation of A.R.S. § 41-  
3 1491.19(E)(2) of the AFHA.

4  
5 **COUNT FOUR**

6 **(Violation of the Arizona Fair Housing Act by Pattern or Practice of Discrimination)**

7 43. Plaintiff realleges and incorporates by reference the allegations contained in  
8 paragraphs 1 through 42 of this Complaint.

9  
10 44. Defendant has engaged in a pattern or practice of resistance to the full enjoyment  
11 of rights granted under the AFHA by adopting and enforcing its Group Home Policy and  
12 Zoning Code against group homes for recovering alcoholics and recovering drug addicts  
13 desiring to locate in residential zones.

14  
15 45. Through its cease and desist order, Defendant denied Steps House rights granted  
16 under the AFHA. Defendant's denial of rights to Steps House raises an issue of general public  
17 importance.

18  
19 46. Defendant is subject to a statutory civil penalty under A.R.S. § 41-1491.35(B)(3)  
20 of the AFHA in an amount up to \$50,000 for a first violation and \$100,000 for any subsequent  
21 violation.

22  
23 **WHEREFORE**, Plaintiff requests the following relief:

24 A. Enter judgment for the Division against Defendant for housing discrimination in  
25 violation of the AFHA;  
26

1 B. Award actual damages in an amount to be determined at trial to compensate  
2 Steps House for Defendant's unlawful conduct;

3 C. Impose a statutory civil penalty against Defendant under A.R.S. § 41-  
4 1491.35(B)(3) in an amount up to \$50,000 for a first violation and \$100,000 for any  
5 subsequent violation to vindicate the public interest due to Defendant's pattern or practice of  
6 resistance to full enjoyment of and denial of rights granted to persons with disabilities by the  
7 AFHA;  
8

9 D. Grant a permanent injunction enjoining Defendant, its employees and agents and  
10 all persons in concert and participation with them from engaging in any housing-related  
11 practice which discriminates on the basis of disability or interferes with the exercise of rights  
12 granted by the AFHA, including, but not limited to: (1) enforcing its Zoning Code against  
13 Steps House and other group homes for recovering alcoholics and recovering drug addicts to  
14 make housing unavailable to them in residential zones of Payson; (2) requiring Title 36  
15 licenses from group homes for persons with disabilities where the group homes are exempt  
16 from such licensing; (3) enforcing occupancy and other Zoning Code restrictions against group  
17 homes for persons with disabilities without making reasonable accommodations, as required by  
18 the AFHA; and (4) retaliating against Steps House for filing a fair housing complaint against  
19 Defendant.  
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22 E. Declare null and void those portions of Defendant's Zoning Code which: (1)  
23 require Title 36 licenses from group homes for persons with disabilities when the group homes  
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1 do not provide services for which Title 36 licenses are required; and (2) exclude group homes  
2 for recovering alcoholics and recovering drug addicts from operating in residential zones.

3 F. Order Defendant to institute and carry out fair housing policies and zoning  
4 enforcement procedures to provide equal housing opportunities for persons with disabilities,  
5 including providing reasonable accommodations for persons with disabilities, as required by  
6 the AFHA;  
7

8 G. Order the Division to monitor Defendant's compliance with the AFHA, and  
9 order Defendant to pay the Division a reasonable amount for such monitoring;  
10

11 H. Award the Division its reasonable attorneys fees and costs of bringing this  
12 action; and  
13

14 I. Award such other and further relief as the Court deems just and proper in the  
15 public interest.  
16

17 DATED this 9<sup>th</sup> day of July, 2004.

18 JAMES WALSH, Acting Attorney General\*

19 By Sandra R. Kane

20 Sandra R. Kane  
21 Assistant Attorney General  
22 Civil Rights Division  
23 Attorneys for Plaintiff  
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