



SAFETY BREAK

Summer 2017

Many in the Houston Swimming Pool Management Industry have moved away from 10-minute adult swim and have implemented a ten-minute Safety Break where all swimmers will exit the water. The driving factor behind this shift over the last 2-3 years is based on Age Discrimination regulations within the Fair Housing Act. Adult Swim is now considered age discrimination and a violation of the Fair Housing Amendments Act of 1988. A-Beautiful Pools, Inc. has been intentional and mindful when deciding to make this operational shift, carefully watching what others in the industry are doing and the precedents set by recent court cases.

For Summer 2017, A-Beautiful Pools, Inc. has made the decision to enforce a ten-minute Safety Break at the end of each hour at the communities we manage. We have included information, cases and facts below regarding this decision. As always, A-Beautiful Pools, Inc. is happy to have a working relationship with the HOA, owners of the community pools, and we are happy to enter into any necessary discussions regarding this topic. If any of our communities would like to review this policy for their specific pool and operations, please seek the expertise of your Management Company, Attorney and Insurance Company.

Except for [senior community pools](#), associations cannot prohibit children from using swimming pools, establish adults-only pools, or establish adults-only times. In [Llanos v. Coehlo](#), a federal court found that the association's rules designating "family pools" and "adult areas" in the complex and prohibiting children from playing in and around adult areas of the complex were discriminatory and violated the Fair Housing Act.

A similar decision was reached by a federal court in the [unpublished](#) case of [Landesman v. Keys Condominiums](#). The association's reason for restricting children from the main pool was that adults enjoyed using the pool for lap swimming and they preferred the relative tranquility of a swimming pool not filled with active, noisy children. Although sympathetic, the court ruled against the association.

The court is not unsympathetic to the concerns of the adult residents who want to be able to enjoy the pool in peace, but finds that plaintiffs have nonetheless established a [prima facie](#) case of discrimination and that The Keys Association has not articulated a legitimate justification for excluding children from the main pool. . . . If this were a case of a homeowners association allowing everyone to use the main pool at all available hours in the summer, with the exception of women, or persons born in Iraq or China, or members of the Episcopal Church, such restrictions would be equally unlawful as the restrictions on access by children. . . . Any problems The Keys Association believes are caused by noise or activity of certain children should be taken up with the parents or guardians of those children.

Some additional cases that address discrimination against children include the following:

In the Matter of the DFEH v. Hacienda de Camarillo Apartments, a 1988, FEHC decision. FEHC ordered the apartment complex (with three sections--families, adults and seniors) to cease and desist its age discrimination restrictions (children could not visit the "senior" pool) and to post notices against age discrimination.

O'Connor v. Village Green (1983) 33 Cal.3d 790. The California Supreme Court held that a provision in CC&Rs limiting residency to persons over the age of 18 was invalid.

Marina Point, Ltd. v. Wolfson (1982) 30 Cal.3d 721. The California Supreme Court held that a landlord's exclusion of all families with minor children as tenants from an apartment complex was impermissible under the Unruh Act.

In the Matter of the Accusation of the DFHE v. Hans Sheik, a 1993, FEHC decision. FEHC ordered landlord to cease and desist discrimination in not renting a house to a family with three minor children.

In HUD v. Paradise Gardens HOA, (1992 WL 406531), the association prohibited child under the age of 5 from using the pool and restricted children ages 5 to 16 to using the pool from 11 a.m. to 2 p.m. The rules were found to discriminate against families with children. The HOA was fined \$7,000.

In Leonard v. Seaboard Arbor Management Services, Inc. (HUD ALJ 04-91-0931), The judge required the association to change its rule prohibiting all babies and children not fully potty trained from entering or being carried into the pool, to the following: "Any person who is incontinent or not fully potty trained must wear appropriate waterproof clothing when entering or being carried into the pool."