

# FAHROgram

FLORIDA ASSOCIATION OF HOUSING AND REDEVELOPMENT OFFICIALS

January/February 2015

## President's Message

### New Year's Resolutions

They have almost become cliché. Each year at the turn of the calendar, we re-commit ourselves to those responsibilities or goals that we have allowed to slip. We all joke as to how quickly our determination evaporates ... just like last year and the year before.

The reason we fail to keep our New Year's resolutions is because making changes is not something that can be influenced by the rotation of the planets. True change requires an internal commitment to be agents of change. In the difficult environment we face as PHAs, we must take this

opportunity now, more so than ever before.

At FAHRO, we have made that commitment with undertaking the process of changing Chapter 421 to provide us additional flexibility and opportunity to serve our clients. We are committed to that effort and will keep you apprised of our progress.

In the meantime, make a commitment to yourself to become the change that you want to be.



Maria A. Burger

## Calendar

March 15-18, 2015  
Washington, D.C.  
**NAHRO Legislative Conference**

May 3-6, 2015  
San Francisco, Calif.  
**PHADA Annual Convention & Exhibition**

May 13-14, 2015  
Daytona Beach, Fla.  
**FAHRO Executive Directors' Forum**  
The Shores Resort & Spa

June 14-17, 2015  
Louisville, Ky.  
**SERC Annual Conference**

July 30-August 1, 2015  
Austin, Tex.  
**NAHRO Summer Conference**

August 11-13, 2015  
Orlando, Fla.  
**FAHRO Annual Convention & Trade Show**  
Disney's Yacht Club Resort

August 30-September 2, 2015  
Orlando, Fla.  
**FHC Conference**

September 15-16, 2015  
Washington, D.C.  
**PHADA Legislative Forum**

October 15-17, 2015  
Los Angeles, Calif.  
**NAHRO National Conference**

November 8-10, 2015  
Jacksonville, Fla.  
**SERC Fall Workshop**

## State Legislative Affairs

### 2015 Session Promises to Be a Busy One for Housing

by Oscar Anderson, FAHRO State Affairs Consultant

And they're off!

The Legislature has started its committee meeting process leading up to the beginning of session on March 3. As everyone knows, FAHRO's number one priority this session will be our bill to create a framework for voluntary consolidation of PHAs and to authorize PHAs to provide access to essential commercial goods and services to tenants. Look for updates from the State Affairs Committee as we get bill sponsors and bill numbers, and be ready to take action when we ask for your help with your local legislators.

Beyond FAHRO's bill, the Legislature has a full plate going into the 2015 session. Perennial issues like tax cuts, Medicaid ex-

pansion and pension reform seem to be ready for another round of legislative battles. For those of us walking the halls of the Capitol, it will be interesting to see what other issues the new presiding officers focus on as they relate to gaming, medical marijuana expansion and things like the presidential primary date.

The main issue for FAHRO outside of our legislation will be the implementation



Oscar Anderson

See **STATE LEGISLATIVE AFFAIRS** on page 3



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## Member Feedback

Do you need help with a project or issue and want to see if any of our readers have the answer? Has a colleague done something wonderful that deserves an attaboy or attagirl? Or are you just frustrated and want to vent? Here is your chance to (anonymously if you wish) say thanks, ask for assistance, vent your frustrations, express your opinion or let us know how you feel.

- Becky-Sue Mercer and the Arcadia Housing Authority Board of Commissioners would like to commend Larry Shoeman of the Avon Park Housing Authority for his guidance and support.
- Nov. 1, 2014, was a red-letter day for the Broward County Housing Authority (BCHA). After months of ticking all the boxes, the conversion of BCHA's remaining public housing inventory is complete. Last April, the authority converted 200 public housing units to Project Based Rental Assistance through RAD (Rental Assistance Demonstration). The newest conversion of 176 units at several sites means that BCHA no longer has any public housing units.



*A BCHA conversion property*

If you would like to contribute to Sounding Off, please email your comments to Susan Trainor, FAHROgram editor, *editor*.  
trainor@gmail.com. 🌿

## STATE LEGISLATIVE AFFAIRS continued from page 1

of Amendment 1. Back in November, the voters of Florida overwhelmingly passed a constitutional amendment that dedicated a portion of documentary stamp proceeds for land and water purchases. According to estimates last fall, Amendment 1 would direct upward of \$650 million for land and water purchases, increasing to \$1.3 billion by 2034. Both House and Senate leadership have indicated that this funding may jeopardize other documentary stamp programs such as fund-

ing for affordable housing through SHIP (State Housing Initiatives Partnership) and SAIL (State Apartment Incentive Loan). The FAHRO State Affairs Committee is working with the Sadowski Coalition to ensure affordable housing dollars are not impacted by the implementation of Amendment 1.

As always, it promises to be a busy legislative session. Please keep an eye out for updates from the State Affairs Committee. 🌿

### Deputy Director: Ocala Housing Authority

The Ocala Housing Authority (OHA) is seeking a deputy director to provide professional assistance to the CEO to oversee its operations. The position provides policy direction to senior management; monitors and evaluates the activities and services of all agency departments; and serves as acting CEO in the absence of the CEO. Prerequisites include a bachelor's degree from an accredited four-year college or university in business administration, public administration, finance, accounting, planning or related field. An MBA or comparable master's degree is highly preferred. Requires a minimum of 10 years of experience in the management or administration of public housing, other subsidized housing programs or a housing-related nonprofit/government organization, or equivalent HUD experience at a senior level of responsibility. Send cover letter, resume and four verifiable employment/business references to:

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# Family Medical Leave Act: What It Is and What It Is Not

by *Tabitha S. Etlinger, Esq.*



*Tabitha Etlinger*

The Family Medical Leave Act (FMLA) is a federal law protecting certain rights of employees who face family circumstances requiring their temporary absence from the workplace. Many employees are aware of FMLA generally, but there is a great deal of misconception about exactly what rights are protected under FMLA and when those protections come into play. It is important to understand exactly what is, and what

is not, protected under FMLA to avoid costly litigation and to ensure compliance with FMLA requirements.

FMLA provides that an eligible employee is entitled to up to 12 weeks per year of leave for the birth of a child, placement of an adoptive or foster child with the employee, serious illness of the employee, serious illness of an immediate family member or exigent circumstances arising from an immediate family member's active duty in the armed forces. The amount of leave can be extended up to 26 weeks for certain circumstances requiring an employee to care for a family member who is a member of the armed services. An employee is generally required to give the employer 30 days' notice prior to using FMLA leave or, if the employee cannot reasonably anticipate the circumstances, as much notice as is reasonably possible. Upon return from FMLA leave,

an employee is generally entitled to be restored to the employee's original position or to a position with similar pay, benefits and terms of employment.

The concepts seem relatively simple, but the application to real-world situations can be complex. FMLA was designed to strike a balance between the burden on employees of maintaining a family life without sacrificing job security and the burden on employers of maintaining a business in the face of employee absences. This balancing act becomes apparent in some of the FMLA limitations described below.

## Scope of Coverage

FMLA is limited to the employer-employee relationship and, within that classification, only applies to a limited scope of employers and employees. FMLA does not apply to independent contractors. While there are certainly clear-cut cases of employee versus independent contractor, the distinction between these classifications can be complex, and simply labeling a worker as one or the other is not determinative for FMLA purposes. Even in clear-cut cases of an employer-employee relationship, FMLA does not always apply. For instance, FMLA generally only applies

**See FAMILY MEDICAL LEAVE ACT on page 5**

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to employers who have at least 50 regular employees. Also, among covered employers, leave under FMLA is generally only available to employees who have completed at least one year's employment with a minimum of 1,250 hours. Disputes often arise as to whether FMLA applies to a particular employee.

### **Paid Leave**

For many employees, the ability to take leave from work for family circumstances is limited by the economic reality that they cannot afford to be without a paycheck. FMLA does not provide protection to employees who face this economic limitation. Employees are entitled to use any paid leave they otherwise have during FMLA leave, but FMLA does not impose any requirements on employers to pay employees during FMLA leave. Employees do receive some protection under FMLA regarding benefits. During an employee's FMLA leave, the employer is required to maintain certain benefits, including group health insurance, and to pay any portion of those benefits that the employer normally would cover. Under certain circumstances, an employer may be entitled to reimbursement of the cost of such benefits during an employee's FMLA leave if the employee does not return to work.


### **Interaction With Non-FMLA Leave and Other Laws**

FMLA is intended to set a minimum standard for employee leave, and not to supplement leave that is otherwise provided. Employers are entitled to require that employees exhaust paid and/or unpaid leave prior to or contemporaneously with FMLA

leave. For instance, employers that provide two weeks' paid leave are entitled to require that their employees use this leave concurrently with the first two weeks of any FMLA leave. Federal law mandates that employers make certain disclosures to employees regarding their rights under FMLA, both before and after a request to take FMLA qualifying leave. Employers should notify employees simultaneously if there is any requirement to take paid or unpaid leave concurrently with FMLA leave.

If FMLA leave and non-FMLA leave have been exhausted, but the employee is still not able to return to work, the employee may be entitled to take advantage of protections provided by other laws. For instance, pursuant to the Americans with Disabilities Act (ADA), an employer is required to provide a reasonable accommodation upon the request of a disabled employee. Although the scope and application of the ADA are different from that of FMLA, under some circumstances, an employer could be required under the ADA to allow additional leave or alternative working hours to accommodate an employee's inability to return to full-time regular work.

FMLA is a complex law and could easily become the cause of litigation between a public housing authority and its employees. The best way to avoid such disputes is to consult with qualified legal counsel to review employee handbooks, update company guidelines and provide FMLA training and guidance.

*Tabitha S. Etlinger, Esq., is an associate at Saxon, Gilmore, Carraway & Gibbons P.A.* 

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# Two New Affordable Housing Communities Open in Fort Myers

The revitalization of two former public housing properties that now provide 212 affordable housing units have been completed months ahead of schedule and are giving low-income families in Fort Myers a new lease on life.

The development sites for Landings at East Pointe (formerly Sabal Palm Apartments) and East Pointe Place (formerly Palmetto Court) were existing complexes owned by the Housing Authority of the City of Fort Myers (HACFM).

The revitalized Landings at East Pointe consists of 126 units, and the new East Pointe Place offers 86 units, both with an effective mix of floor plans and bedroom sizes. Previous units at East Pointe Place were demolished in preparation for the new buildings to be constructed. Both developments were expected to be completed and fully leased by mid-2015, but thanks to the diligent effort of the development, construction and property management team, construction and lease-up came in months ahead of schedule.

The combined \$38.3 million investment was made possible through a public/private partnership between Pinnacle Housing Group LLC and Southwest Florida Affordable Housing Choice Foundation Inc., a 501(C)(3) nonprofit created by HACFM. Florida Power & Light Company (FPL) was also a



*HACFM recently completed revitalization of two properties to provide safe and affordable housing for 212 low-income families, with 126 units at Landings of East Pointe (pictured) and 86 units at East Pointe Place.*

community partner, granting nearly \$800,000 in solar rebates for both projects.

Through this public/private partnership, HACFM and Pinnacle secured low income housing tax credits (LIHTCs) from the Florida Housing Finance Corporation. The partnership then

**See NEW HOUSING COMMUNITIES on page 7**

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# **BCHA Housing Counseling Leads to Homeownership**

The First Time Homebuyers Workshop at Broward County Housing Authority (BCHA) is held monthly to help prospective homebuyers understand the home purchase process and to determine their readiness for homeownership. For many who attend the class, it also leads to fulfillment of a dream.

A Housing Choice Voucher (HCV) participant who had received housing assistance since 1995 recently learned about the workshop from her daughter. She was encouraged to attend the HUD-approved Housing Counseling class and later scheduled an appointment for an individual counseling session. After completing counseling and receiving a certificate, she continued to work with housing counselor Phyllis Brown to get pre-approved for a mortgage.

Although it was difficult to locate a home with a purchase price she could afford, persistence paid off. A local real estate agent found a home that was acquired and rehabbed through the Neighborhood Stabilization Program. Due to a relatively low

pre-approved mortgage amount, the purchase price was still not affordable, but assistance from the municipality brought it within the family's range. With only a \$61,000 mortgage, the family was able to purchase a home appraised at \$130,000.

With a monthly PITI mortgage payment that comes in lower than the family's previous portion of the HCV contract rent, the need to rely on housing assistance was eliminated and the family's total housing costs were actually reduced. The Housing Counseling Program helped this first-time homebuyer succeed in purchasing a home, building an asset and adding to the stability of both a neighborhood and a family.

BCHA has successfully administered the Comprehensive Housing Counseling Program since 1987. The program receives funding from the U.S. Department of Housing and Urban Development and the Broward County Housing Finance and Community Development Division. 🌿

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## **NEW HOUSING COMMUNITIES continued from page 6**

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utilized the private debt and equity markets for the syndication of LIHTCs, which were purchased by Wells Fargo Bank N.A. Most important, HACFM secured the long-term commitment of the U.S. Department of Housing and Urban Development to provide continued rental assistance for no less than 20 years.

Both East Pointe Place and the Landings at East Pointe have received LEED® Platinum certification, the highest LEED® rating. LEED®-certified buildings save money and resources and have a positive impact on the health of occupants while promoting renewable, clean energy. 🌿

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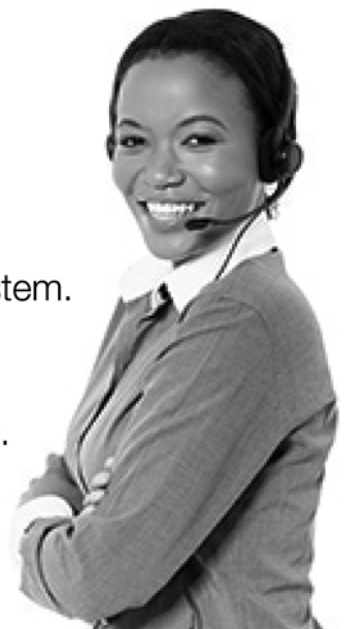
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## Killing Me Softly: Why Litigation is Killing Job References and Hurting the Workplace *Brought to you by FPHASIF!*

In 2009, the Equal Employment Opportunity Commission (EEOC) filed a retaliation lawsuit against a real estate development and management organization. The EEOC charged that the employer retaliated against a former employee for filing a sexual harassment claim.<sup>1</sup>

According to the EEOC, after the employer and the employee settled the sexual harassment complaint, the employee voluntarily resigned her employment. When she applied for a job with another employer, she claimed that her former employer provided a negative reference and recommended against hiring her as retaliation for her sexual harassment complaint.

The EEOC sought monetary damages, including compensatory and punitive damages for the alleged retaliation victim.

### Commentary and Checklist

Federal statutes that prohibit discrimination based on race, color, sex, religion, national origin, age and disability, as well as unequal pay for men and women performing substantially equal work, also prohibit retaliation against individuals who oppose unlawful discrimination or participate in an employment discrimination proceeding.

Retaliation claims can be combined with discrimination claims or can stand alone. An individual who has made a good faith complaint of discrimination or has participated in an investigation of such a complaint can successfully pursue a charge of retaliation even if the original claim of discrimination remains unproven.

In 2013, for example, the EEOC received 38,539 charges of retaliation discrimination based on all statutes enforced by the commission.

This case presents one of the many reasons why employers refrain from providing job references.

We do not know the facts, except what the EEOC alleged. Obviously if the former employer told the prospective employer not to hire the woman because she filed a lawsuit, then most people would agree that it was an act of retaliation.

But what if the former employer did not mention the lawsuit, but commented on legitimate performance issues related to the former employee? The fact is that any negative comments by the employer about the employee, even if the comments were factual, would be deemed retaliation by the employee at least, and most likely by the EEOC as well.

This case illustrates why more prospective employers do not require positive job references or even call job references. They know that the information they receive, if any, will be guarded, like providing dates of employment only.

Employers have an obligation to their shareholders and other employees to hire the best available personnel. If references are not allowed to discuss a past employee's work performance, it undermines the ability of employers to hire the right people and increases exposure for other forms of wrongdoing or shareholder liability.

In situations where the employer works with children, the elderly or other vulnerable groups or manages money, job references are a must to determine if the prospect is safe and trustworthy. Employers that hire without discovering whether prospective employees are safe are targeted for negligent hiring cases.

So, what can employers do? The first thing is to make certain that your state provides qualified immunity to employers that provide a good faith reference of past employees. Fortunately for employers in Florida, F.S. Statute 468.095 does offer this immunity. Under this law, so long as the employer makes the reference in good faith, the employer can avoid defamation and slander lawsuits.

Without such laws, employers should consider the following:

- ✓ Hire only prospects that can provide one or two positive work references
- ✓ Hire only prospects that can provide one or two positive personal references
- ✓ Research the social pages of prospects
- ✓ Use other forms of background checks when warranted
- ✓ Perform extensive interviews
- ✓ During interviews ask prospects why their former employer will not provide a reference, if this is the case
- ✓ Read carefully the prospect's application and resume to determine if the prospect is providing correct information
- ✓ Speak with your local attorney about other legal hiring techniques

Republished from [mycommunityworkplace.org](http://mycommunityworkplace.org), 2013 statistics and Florida Statute updates provided by FPHASIF.

<sup>1</sup> "EEOC Sues Greystar Holdings/Greystar Real Estate Partners for Retaliation," [www.eeoc.gov](http://www.eeoc.gov) (Oct. 6, 2009).



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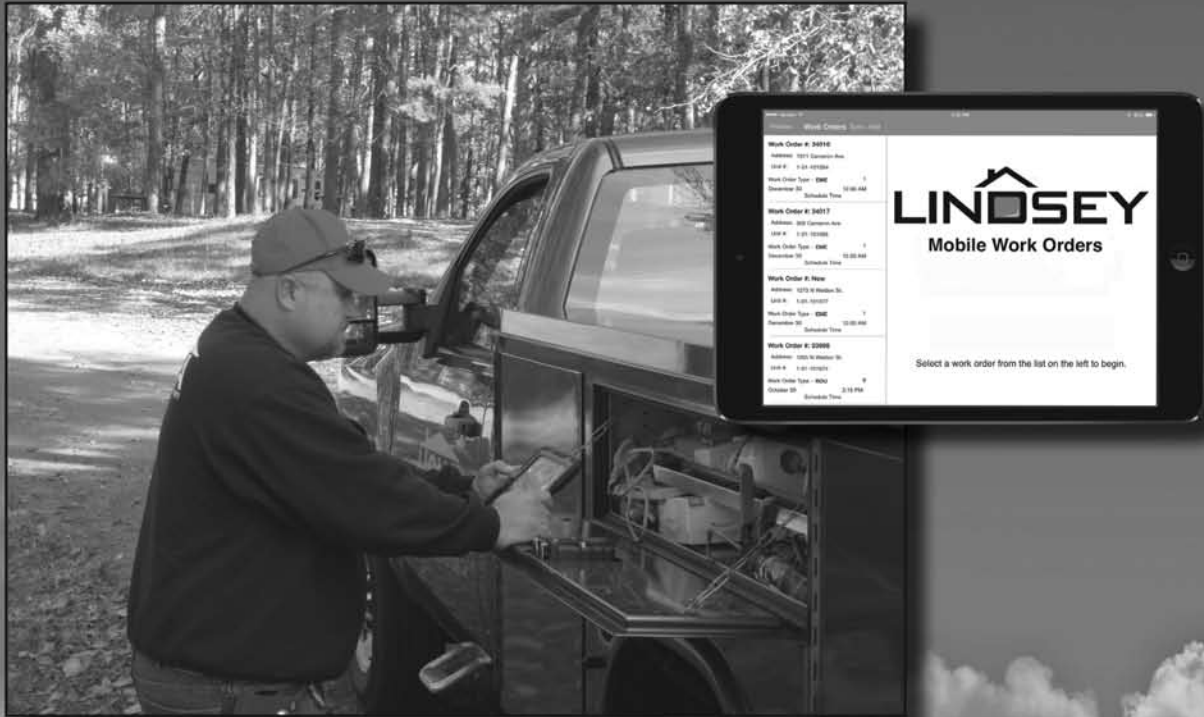


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