

Fair Housing Act Enforcement



Participant Manual



(888) 341-7781 (V/TTY) - Technical Guidance
www.FairHousingFIRST.org

2005-2006



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U.S. Dept. of Housing and Urban Development
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Participant Manual

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Using the Participant Manual

Manual Layout and Content

As a participant in the course, the Participant Manual serves as your focal point. It follows the sequence of the class activities and discussion topics. It includes:

- All slides presented by the instructor
- Space for you to take notes
- Key points not contained on slides
- Detailed instructions for exercises
- Resources to supplement the curriculum

Symbols Used

The following symbols are used to indicate various features of the Participant Workbook.



Indicates where specific legal cases related to the topic are presented.



Welcome to Fair Housing Accessibility FIRST, a training and technical guidance program created by the U.S. Department of Housing and Urban Development (HUD).

This session is an hour and a half in length.

Fair Housing Accessibility

FIRST

- ☐ Offer training and technical guidance on accessibility requirements of the Fair Housing Act
- ☐ Increase the supply of accessible multifamily housing units nationwide

Notes:

Fair Housing Accessibility **FIRST**



Gathered opinions and ideas from over 850 stakeholders

Stakeholder Groups

- Builders
- Disability rights advocates
- Government officials
- Trade associations
- Property managers
- Media
- Code officials
- Enforcement agencies

Notes:

Fair Housing Accessibility **FIRST**

- ☐ Comprehensive training curriculum
- ☐ Technical guidance via a website and toll free hotline
 - 1-888-341-7781 v/TTY
 - www.FairHousingFIRST.org

Notes:

Fair Housing Act Enforcement Introduction

During this training session, we will discuss:

- Overview of the Fair Housing Act
- Complaints about Fair Housing Act Violations
- Fair Housing Act Enforcement
- Enforcement of Related Laws
- Typical Claims and Common Defenses
- Investigating Fair Housing Act Violations
- Settlements and Remedies
- Resources

Notes:

Fair Housing Act Enforcement Introduction

At the end of the session, you will be able to:

- Identify the seven design and construction requirements of the Fair Housing Act
- Identify the general prohibitions against discrimination based on disability in the Fair Housing Act
- Identify who can file Fair Housing Act complaints and the timeline for submitting complaints
- Identify who is liable for Fair Housing Act violations

Notes:

Fair Housing Act Enforcement Introduction

At the end of the session, you will be able to:

- Describe the federal, state, and/or private enforcement processes and actions for the Fair Housing Act and other accessibility laws
- Discuss the typical defenses for Fair Housing Act violations and why these defenses may not be successful
- Cite examples of investigation methods and techniques

Notes:

Fair Housing Act Enforcement Introduction

At the end of the session, you will be able to:

- Identify appropriate remedies for Fair Housing Act violations
- List common items found in settlements of Fair Housing Act claims
- Discuss relevant cases

Notes:

Name four personal learning goals for this session.

Goals should be:

Specific
Measurable
Achievable
Relevant
Timely

Example: I will learn two ways the government enforces the accessibility requirements of the Fair Housing Act.

Fair Housing Act Enforcement Introduction

- ☐ Small group exercises will be conducted to reinforce key concepts you have learned
- ☐ You are encouraged to ask questions throughout the training session
- ☐ A questionnaire will be distributed to obtain your feedback on training content, delivery, and materials



Notes:

Who is in your small group?

What are their occupations?

	Fair Housing Act Enforcement Agenda
	<ul style="list-style-type: none">• Overview of the Fair Housing Act• Complaints About Fair Housing Act Violations• Fair Housing Act Enforcement• Enforcement of Related Laws• Typical Claims and Common Defenses• Investigating Fair Housing Act Violations• Settlements and Remedies• Resources

Notes:

History of the Fair Housing Act



Fair Housing Act was passed in **1968**

Fair Housing Amendments Act, with new coverage of disability, was enacted in **1988**

Enforced by:



- The Department of Housing and Urban Development
- The Department of Justice
- State and local fair housing enforcement agencies
- Private lawsuits in federal and state courts



Notes:

Enforcement of Requirements



Enforcement of Requirements

Not surprisingly, when illegal discrimination occurs, it is rare that the person or entity doing the discriminating announces that discrimination is the reason why an adverse action is taken.

Overt discrimination, where the intent to discriminate ***"because of"*** an illegal reason is clear, still exists, but it is less common than it used to be.

Under the law, even people who do not mean to discriminate are responsible for discrimination. Even if the person intended something good to happen, they can still be found to have acted illegally.

When Congress overwhelmingly passed the amendments to the Fair Housing Act, it acted decisively to protect the rights of people with disabilities. Congress rejected judging people with disabilities because of myth and stereotype. In addition to the federal disability laws, there are also state and local laws which are equivalent to the Fair Housing Act and which contain rights and remedies that are quite similar to those in the federal Fair Housing Act.

What Constitutes Discrimination

A person using a wheelchair is just as effectively excluded from the opportunity to live in a particular dwelling by the lack of access into a unit and by too narrow doorways as a posted sign saying "No Handicapped People Allowed."
-Report from Congress



What Constitutes Discrimination

Congress recognized two important facts:

1. *Treatment should be fair and not based on disability.*
2. *People with disabilities, uniquely, may require more than fair treatment, they may require special affirmative treatment, in order to be treated fairly.* (This concept can be described as not only requiring that the playing field be level for people with disabilities, but that they be able to get to the playing field to be able to compete).

Definition of Disability

- ☐ A physical or mental impairment that substantially limits one or more of life's daily activities—like walking, driving, breathing
- ☐ Having a record of such an impairment, even if it is not currently an impairment
- ☐ Being perceived as having such an impairment

Definition of Disability

The Fair Housing Act defines “handicap” (we will use the term “disability”) as:

- A physical or mental impairment that substantially limits one or more of life's daily activities – like walking, driving, breathing,
- Having a record of such an impairment, even if it is not currently an impairment, and
- Being perceived as having such an impairment.

When we deal with discrimination because of disability, illegal discrimination can occur when a disability is a factor in how people are treated. It can also occur when there is a denial of additional rights that are specific to discrimination based on disability.

In this training, we are focusing on disabilities that require accessibility, but any form of disability that meets this definition is covered by the Fair Housing Act.

Definition of Disability (continued)

All persons have the right to engage in all housing-related transactions without adverse treatment because of disability. This includes:

- Treatment of a person because of his or her disability if he or she is a buyer or a renter of housing,
- Treatment of a person because of the disability of a person associated with that person, and
- Treatment of a person because of the disability of a person who will live in a unit after it is sold or rented.

Examples of disability discrimination include:

- A person using a cane who is refused a second floor apartment because of the landlord's fears that the person will be hurt using the steps if the elevator fails,
- A resident is discriminated against because she has a boyfriend who is in a wheelchair and who will be visiting her,
- A resident is evicted because she is diagnosed with cancer,
- A landlord requires only disabled residents to carry additional liability insurance, and
- A landlord rejects a gay man because the landlord assumes that the applicant has AIDS (note that this is NOT discrimination based on sexual orientation which is not covered by federal law.)

And, as we focus on in this training, the Act defines the failure to design and construct housing that complies with its accessibility requirements as discrimination.

Units Covered by the Fair Housing Act

- ☐ The design and construction requirements apply to “covered multifamily dwellings” designed and constructed for first occupancy after **March 13, 1991**
- ☐ ***Covered Multifamily Dwellings Include:***
 - All dwelling units in buildings containing four or more units, with an elevator
 - All ground floor units in buildings containing four or more units, without an elevator

Notes:

Fair Housing Act – Seven Design and Construction Requirements

1. Accessible building entrance on an accessible route
2. Accessible and usable public and common use areas
3. Usable doors
4. Accessible routes into and through covered unit
5. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations
6. Reinforced walls in bathrooms for later installation of grab bars
7. Usable kitchens and bathrooms



Fair Housing Act – Seven Design and Construction Requirements

The Fair Housing Act's design and construction requirements are broken down into 7 basic requirements.

1. Accessible building entrance on an accessible route
2. Accessible and usable public and common use areas
3. Usable doors
4. Accessible routes into and through covered unit
5. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations
6. Reinforced walls in bathrooms for later installation of grab bars
7. Usable kitchens and bathrooms

The requirements provide for a minimal level of accessibility. Congress, when it passed these requirements, said that it intended that the accessibility provisions of the Fair Housing Act would facilitate the ability of persons with disabilities to enjoy full use of their homes without imposing unreasonable requirements on homebuilders, landlords and residents without disabilities. Congress stated that compliance with these basic requirements would eliminate many of the barriers that discriminate against persons with disabilities in their attempts to have equal housing opportunities.

**Fair Housing Act—Seven Design and Construction Requirements
(continued)**

The design and construction requirements were developed to provide access for people with different types of disabilities. Although some of the requirements focus on people who use wheelchairs, meeting the requirements will also meet the needs of many other people. People who can benefit from accessible features may include people with arthritis or sports injuries who have difficulty turning or gripping door hardware, people who use crutches, canes or walkers, people who because of age or illness have limited mobility or reach ranges, and even people who push strollers, carry groceries, or move furniture. People who have vision or hearing disabilities also benefit from a variety of provisions in the requirements.

Notes:

Fair Housing Act – Seven Design and Construction Requirements (continued)

1. The first is that all covered multifamily dwellings must have ***at least one building entrance on an accessible route*** unless it is impractical to do so because of the terrain or unusual characteristics of the site.
 - An accessible route means a continuous, unobstructed path connecting accessible elements and spaces within a building or site that can be negotiated by a person with a disability who uses a wheelchair, and that is also safe for and usable by people with other disabilities.
 - An accessible entrance is a building entrance connected by an accessible route to public transit stops, accessible parking and passenger loading zones, or public streets and sidewalks.
2. The second requirement is that ***covered housing must have accessible and usable public and common use areas***. Public and common use areas cover all parts of the housing outside individual units. They include, for example: building-wide fire alarms, parking lots, storage areas, indoor and outdoor recreational areas, lobbies, mailrooms and mailboxes, and laundry areas.
3. The third requirement is that all ***doors that allow passage into and within all premises must be wide enough to allow passage by persons using wheelchairs***.
4. The fourth requirement is that ***there must be an accessible route into and through each covered unit***.
5. The fifth requirement is that ***light switches, electrical outlets, thermostats and other environmental controls must be in accessible locations***.
6. The sixth requirement is ***reinforcements in bathroom walls so that grab bars can be added when needed***. The law does not require installation of grab bars in bathrooms.
7. The seventh requirement is that ***kitchens and bathrooms must be usable*** – that is, designed and constructed so an individual in a wheelchair can maneuver in the space provided.

Notes:

Other Fair Housing Act Parameters

- ☐ **In addition to the seven design and construction requirements, the Fair Housing Act prohibits discrimination:**
 - By failing or refusing to provide reasonable accommodations
 - By failing or refusing to permit reasonable structural modifications to existing properties
 - By treating a person differently and adversely because of disability
 - By coercing, intimidating, or retaliating against a person because of the exercise of protected rights

Notes:

Notes:

	Fair Housing Act Enforcement Agenda
	<ul style="list-style-type: none">• Overview of the Fair Housing Act• Complaints About Fair Housing Act Violations• Fair Housing Act Enforcement• Enforcement of Related Laws• Typical Claims and Common Defenses• Investigating Fair Housing Act Violations• Settlements and Remedies• Resources

Notes:

Who Can File Complaints?

- ☐ Any person who “claims to have been injured by a discriminatory housing practice” or
- ☐ Any person who “believes that such person will be injured by a discriminatory housing practice that is about to occur”

Notes:

Examples of Complainants

- Every member of a family of a person with a disability
- Current residents whose disability has worsened
- Group homes
- Disability rights advocates
- Membership groups
- Private fair housing groups
- Testers
- State and local agencies



Examples of Complainants

Members of the following groups, and others, will likely have standing to file complaints:

- Every member of a family if one member of the family is discriminated against in the search for apartments or houses because all who would have lived there have been injured by the discrimination,
- People who are looking for housing that will house a family member who is disabled,
- Current residents whose disability has worsened affecting their ability to live in their current housing,
- Group homes and others who will house people with disabilities,
- Disability rights advocates,
- Membership groups, when one or more of their members would have standing,
- Private fair housing groups and other advocacy organizations, when they have diverted resources and/or frustrated their mission by looking into the particular housing discrimination claimed,
- “Testers” who pose as homeseekers in order to gather evidence about whether or not discrimination has occurred,

Examples of Complainants (continued)

- State and local enforcement agencies,
- A woman who is looking for accessible housing for her mother who is in the hospital,
- A current resident living in a newly constructed condo who has had a stroke and needs wheelchair access for the first time,
- The local chapter of Americans Disabled in Action, which has several members who are having a hard time finding accessible affordable housing,
- Housing Opportunities Made Equal, a private fair housing group, whose mission is, in part, to provide counseling to persons with disabilities who are looking for accessible housing, and
- A state housing agency whose mission includes expanding the stock of accessible housing.

Notes:

Who Can Be Sued?

- Persons who are involved in the design or the construction of housing may be sued for a violation

"When a group of entities enters into the design and construction of a covered dwelling, all participants in the process as a whole are bound to follow the [law]."

Who Can Be Sued?

Representatives of the following groups can be named as respondents or defendants in fair housing cases because of their participation in a violation:

- Developers
- Builders
- Architects
- Engineers
- Landscape architects
- Corporate and business owners

Notes:

Who Can be Sued? (continued)

Another group of respondents or defendants who may be necessary parties to permit changes to remedy past discrimination include:

- Successor owners who purchase the property after it has been designed and constructed
- Homeowner associations
- Property management companies

No court has held an individual owner of a unit in a multifamily building, such as a condominium or cooperative, to be liable for a violation of the design and construction requirements, unless that owner has some other basis for liability—for example, if the owner was the builder or owner of the entire property.



Who Can Be Sued?

As one court said, "Congress intended to impose liability on more than just the developer or owner in light of the broad language of the statute...When a group of entities enters into the design and construction of a covered dwelling, all participants in the process as a whole are bound to follow the FHAA. To hold otherwise would defeat the purpose of the FHAA to create available housing for handicapped individuals and allow wrongful participants in the design and construction process to remain unaccountable. In essence any entity who contributes to a violation of the FHAA would be liable."

Baltimore Neighborhoods Inc. v. Rommel Builders, 3 F. Supp. 2nd 661 (D.MD 1998).

When Must Complaints Be Filed and Where Are They Filed?

180 Days	State or local law complaint or lawsuit
1 Year	Administrative Complaint with HUD
2 Years	Private lawsuit in federal or state court
No Limit	DOJ pattern and practice lawsuit

Notes:

Refer to the Matrix of Accessibility Laws.

When Must Complaints Be Filed?

Failure to design and construct accessible housing may be considered a

“Continuing Violation”

When Must Complaints Be Filed? (continued)

Description of Continuing Violations

Under the Fair Housing Act, liability when a property is not in compliance may be on-going until the property is retrofitted for compliance. A few courts have said that a failure to design and construct housing in compliance with the Fair Housing Act is a violation that continues and one lower court has disagreed with this approach. A continuing violation can be based on either a series of related discriminatory acts or an on-going discriminatory policy or practice.

In a case where there is a continuing violation, a complaint or a lawsuit must be filed within the applicable time frame from the **last** date on which there was a violation.

- See 24 CFR 103.40. Cases applying the continuing violation theory include Eastern Paralyzed Veterans v. Lazarus, 133 F. Supp. 2nd 203 (ED NY 2001), Baltimore Neighborhoods Inc. v. Rommel Builders, 40 F. Supp. 2d 700 (ND MD 1999), Montana Fair Housing v. American Capital Development, 81 F. Supp. 1057 (D MT, 1999), Contra, Moseke v. Miller & Smith, 2002 Dist. Lexis 9168 (D ED VA 2002).

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Notes:

HUD's Responsibilities

- Step 1** Assist in Drafting Complaint
- Step 2** Provide Written Notice to Respondent
- Step 3** Notify Respondent of Right to File Answer
- Step 4** Conduct Investigation
- Step 5** Attempt Resolution By Conciliation
- Step 6** Identify Additional Injured Persons
- Step 7** Make Determination

Notes:

HUD's Responsibilities

If a complaint is brought to HUD's attention, staff of the Office of Fair Housing and Equal Opportunity will assist persons who claim to be injured by the situation to determine whether or not the claim falls under the protection of the Fair Housing Act.

Step 1- HUD will assist in drafting a complaint, which is signed by the complainant(s).

Step 2- HUD will give written notice to those named in the complaint within 10 days after the complaint is filed.

Step 3- HUD will notify the persons against whom the complaint is filed of their opportunity to answer the complaint.

Step 4- HUD staff will conduct an investigation of the complaint. The investigation may include reviews of building permits and plans, on-site reviews—sometimes by an expert architect or accessibility expert— and interviews of key persons, like landlords, owners, residents and prospective purchasers.

Step 5- HUD is required by statute to attempt to resolve the complaint by "conciliation" after the complaint has been filed – often the parties are offered the opportunity to engage in negotiations to settle the case several times during the complaint process.

Step 6- HUD can be expected to attempt to identify all persons who may have been injured by the discrimination, as well as identify all persons who may be held responsible for the violation. If HUD finds, however, that someone named in the complaint is not responsible for the violation, HUD may dismiss the complaint against that particular party. For example, HUD may find that the architect who designed the building designed it to be accessible, but the property was still built to be inaccessible. HUD may – but need not – ask the complainant to amend the complaint if information discovered during the investigation changes the nature of the complaint or the responsible parties.

Step 7- HUD makes a determination. At the end of the investigation, if the case is not settled, HUD normally makes a determination on the case; it may determine that the facts or the law do not support the case and make a finding that there is no reasonable cause to find that the Act has been violated. If HUD finds that the facts and the law do support the case, it will issue a determination that there is reasonable cause to believe that the Act has been violated, and issue a charge.

The time frame for investigations may vary from several months to over a year. A similar process is followed with complaints filed with state and local agencies.

Federal Enforcement



Federal Enforcement

If HUD issues a charge, the case is brought in the name of the U.S. government or the Secretary of the U.S. Department of Housing and Urban Development. Any party may choose to have the case brought in federal district court by the U.S. Department of Justice (DOJ). These cases are litigated following the usual rules for federal lawsuits, including discovery, the availability of a jury trial, and the right of an appeal to the Court of Appeals. If no party makes an election, a HUD administrative law judge, on an expedited time schedule but with discovery rights, hears the case. Following a decision by an administrative law judge, the Secretary of HUD may affirm, modify, or set aside the decision or send the decision back to the ALJ for further action; the decision of the Secretary can be appealed to the federal Court of Appeals.

DOJ also has, and has exercised in a number of cases, the authority to bring a design and construction case directly in federal court under its authority to bring cases involving a "pattern or practice" of discrimination. These cases may be brought based on a complaint investigated directly by DOJ, on a case referred to it by a federal, state or local agency, including HUD, on evidence gathered through a "testing" program operated by DOJ, or based on information from any other source. More about "testing" will be discussed in a few minutes.

State and Local Agency Enforcement



Notes:

State and Local Agency Enforcement

There are similar enforcement processes in many states and localities. Where a state or local fair housing law contains provisions “substantially equivalent” to those in the federal Fair Housing Act, state or local enforcement may occur on design and construction cases.

In those situations, if the complaint is first filed with HUD, HUD refers it to the state or local agency, and that agency conducts an administrative investigation of the complaint, attempts to settle the case, and issues a determination. In addition, the agency investigates complaints that are filed directly with the agency. Generally, HUD accepts resolution of a complaint by a state or local enforcement agency that is substantially equivalent, and the enforcement process and remedies will be similar to those in complaints handled by HUD itself.

If the agency finds that its law has been violated, state Attorneys General, agency attorneys or county attorneys may bring cases in state court.

In a few cases, complaints may be filed with state or local enforcement agencies that do not enforce laws that are equivalent to the Fair Housing Act. In those situations, although the case may be investigated and resolved in some fashion, compliance with the Fair Housing Act requirements is not assured. Those named in such complaints should take care to assure that the actions taken to resolve these complaints also would correct any potential Fair Housing Act violations.

Design and construction cases may also be brought by individuals or organizations directly in federal or state court without any requirement to go to an administrative enforcement agency first. A number of private lawsuits have been brought around the country challenging design and construction violations.

Enforcement Through Private Lawsuits



Private Lawsuit Enforcement

Design and construction cases may also be brought by individuals or organizations directly in federal or state court without any requirement to go to an administrative enforcement agency first. A number of private lawsuits have been brought around the country challenging design and construction violations.

Notes:

Injunctive Relief



Injunctive Relief

One of the most decisive remedies available under the Fair Housing Act and most state and local laws is the use of authority to seek an injunction to seek correction of design and construction violations. In almost all design and construction cases, an injunction is sought to correct violations.

DOJ, a state or local government attorney or even private lawyers may also seek a temporary restraining order in design and construction cases. This may occur even while an investigation is going on. An early request for an injunction may ask the court for an order stopping construction while an investigation continues, or while corrections are made to the construction of the property. Although this extraordinary remedy has not been used very often in design and construction cases, it could be used to seek immediate relief to avoid the completion of a building that fails to comply with the law.

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Notes:

Related Laws

- Architectural Barriers Act
- Section 504 of the Rehabilitation Act
- Americans With Disabilities Act



Notes:

Refer to the Matrix of Accessibility Laws.

Architectural Barriers Act

- Applies to buildings
 - constructed by, or on behalf of, the federal government
 - buildings financed by a federal grant or loan
 - buildings leased by the federal government
- Federal Agency or U.S. Access Board
- Complaints must be filed within 180 days



Notes:

Americans With Disabilities Act – Title II and Title III

- Title II-File administrative complaints with federal agencies, including HUD, within 180 days
- Title III-File a complaint with the Department of Justice or file a private lawsuit



Notes:

Section 504 of the Rehabilitation Act

- File an administrative complaint with the federal funding agency within **180 days**
- File a private lawsuit



Notes:

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Notes:

Typical Claims

- Entrances with 5 inch step up
- Sidewalks with steep slopes
- Entrances with doorknobs that require twisting or gripping
- No accessible parking spaces
- Inaccessible mailboxes & trash enclosure

Typical Claims

All of the cases brought under the Fair Housing Act have involved claims of multiple, basic violations of the design and construction requirements. Very few of the cases have involved debates over the interpretation of design and construction provisions.

Notes:

Typical Claims

- Interior doors not wide enough
- Outlets located at wrong heights
- Bathroom walls lack grab bar reinforcement
- Bathroom entrances lack clear turn spaces
- The toilet, shower, and lavatory lack clear floor space

Notes:



Case Example: Violations

This is an example of a design and construction case brought in a private lawsuit:

- Insufficiently wide doorways into every ground floor unit in 9 buildings
- A step into every ground floor unit in 9 buildings and a step down to every balcony in 10 buildings
- Insufficient maneuvering room on the latch side of doors
- Twist doorknobs on exterior doors on ground floor units in 10 buildings
- Insufficient clearance in bathrooms in ground floor units in 10 buildings
- Lack of accessible parking
- Lack of an accessible route between parking and 10 buildings
- An ADA claim that the location of the model unit that served as a sales office on the second floor violated Title III of the ADA

Baltimore Neighborhoods, Inc. v. LOB Inc. et al, 92 F. Supp. 2nd 456 (D. MD 2000).

Common Defenses

- I didn't know
- It's not *my* fault
- The law doesn't apply
- They can't sue me
- The guidelines are confusing
- No applicants with disabilities
- The unit is still usable



Common Defenses

Builders, developers, and others who defend design and construction cases have raised a number of defenses. In the enforcement process, these defenses have been rejected.

Notes:

“I Didn’t Know”



“I Didn’t Know”

Federal and administrative law judges have directly held in design and construction cases that everyone is presumed to know the law and “ignorance of the law is no defense.”

Notes:

“It’s Not My Fault”



“It’s Not My Fault”

Some respondents have claimed that the particular design and construction violations in a case were not caused or created by them. The results of this argument will vary case by case. In some cases, a builder who only had involvement with the buildings and not with the public or common areas may only be liable for the buildings, for example. An architect who only drew plans, if those plans were compliant with the Fair Housing Act, may not be liable for units that were altered during the construction process to differ from the plans, assuming the architect had no involvement with the construction as the alterations were made.

However, courts generally have allowed lawsuits against subsequent owners of a non-compliant development, even though they did not participate in its design or construction, because the owners must be involved in the corrective action needed when liability is found against those who did design and construct the property.

“The Law Doesn’t Apply”



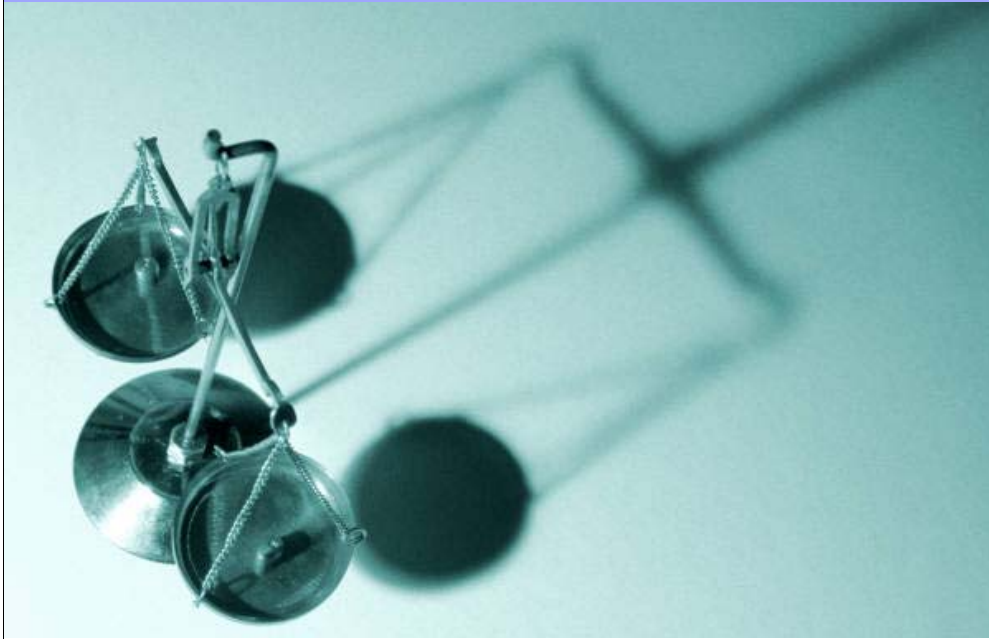
“The Law Doesn’t Apply”

An effective defense is a proven claim that the property was designed and constructed for first occupancy before the effective date of the law, March 13, 1991, because the law does not apply.

Another effective defense could be to show that an entire property or individual units are exempt from the Fair Housing Act’s coverage because they are multi-story townhouses without elevators, which are exempt, or that the property consists solely of buildings that contain fewer than four units. Neither of these types of properties are covered by the law.

Notes:

“They Can’t Sue Me”



“They Can’t Sue Me”

As discussed earlier, the people who have brought the lawsuit must be injured by a violation of the law, and must have “standing.”

Notes:

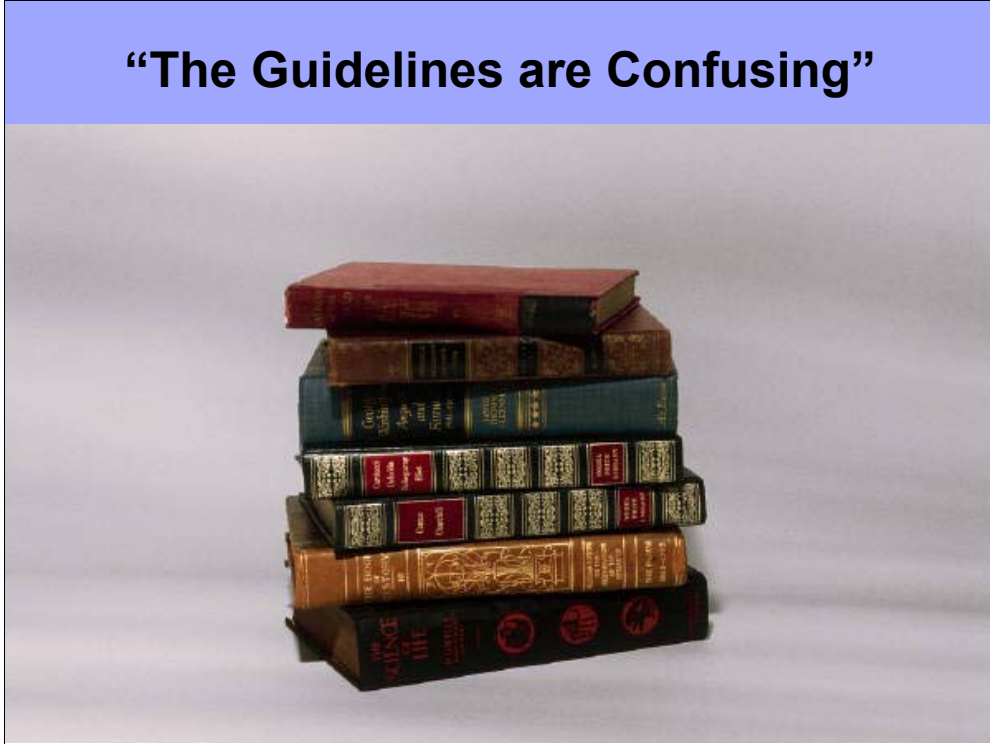


They Can't Sue Me

In only a very few cases has a claim that the party suing lacks standing been successful, and those cases involved membership organizations. For example, in a case brought by a paralyzed veterans organization and a private fair housing group, the court found that the paralyzed veterans group did not have standing because it did not show that any single member of the organization was injured by the design and construction violation. However, the private fair housing group was found to have standing because they had diverted resources and had their mission frustrated by the design and construction violations.

Eastern Paralyzed Veterans Association and Long Island Fair Housing Services, Inc. v. Lazarus-Berman, 133 F. Supp 2nd 203 (E.D. NY 2001).

“The Guidelines are Confusing”



“The Guidelines are Confusing”

In a few cases, defendants have argued that the Fair Housing Act or its standards are vague and confusing. These arguments have not been successful.

Notes:

“No Applicants with Disabilities”



“No Applicants with Disabilities”

Some have argued that because there have been no applicants with disabilities, there is no need for accessible housing. However, the purpose of the law’s design and construction requirements is to provide increased housing opportunities, not only for people with disabilities, but also for others who can benefit from accessible housing—including visitors. Additionally, it is less likely that people with disabilities will apply for housing that is inaccessible. As America ages and more people can benefit from accessible housing, demand for accessible housing that is usable by everyone is likely to increase.

And at least one court has said that the Act’s use of the phrase “adaptive design” does not mean that a builder or developer only has to offer access if it is requested.

Baltimore Neighborhoods, Inc. v. Rommel Builders, 40 F. Supp 2nd 700 (D. MD. 1999).

“It’s Not Really A Violation”



“It’s Not Really A Violation”

A few defendants also have raised the claim that even though one or more of the access standards were not met, the unit is still usable by a person with a disability. Although no court has ruled directly on this issue, this defense is not expected to be successful, unless the design offers at least as much access for people with different types of disabilities as would be required by Fair Housing Act standards.

Notes:

	Fair Housing Act Enforcement Agenda
	<ul style="list-style-type: none">• Overview of the Fair Housing Act• Complaints About Fair Housing Act Violations• Fair Housing Act Enforcement• Enforcement of Related Laws• Typical Claims and Common Defenses• Investigating Fair Housing Act Violations• Settlements and Remedies• Resources

Notes:

Testing Gathers Evidence



Testing Gathers Evidence

A common way that investigations occur in design and construction cases is through testing. “Testing” in fair housing cases is a process, upheld by many courts including the U.S. Supreme Court, of gathering evidence about whether or not discrimination has occurred. Testers are persons who, without an intent to rent or purchase a house or apartment, pose as renters or purchasers for the purpose of collecting evidence. That evidence may then be used as the basis for a complaint that the Fair Housing Act, or other laws, have been violated.

Testers may be used by the Department of Justice, private fair housing groups, disability advocacy groups and enforcement agencies. They are trained to be objective observers of the events and circumstances they are exposed to and they may look and act like typical clients.

Testing Has Been Approved By Many Courts



Notes:



Testing Has Been Approved By Many Courts

As one court said more than 25 years ago:

"The evidence resulting from the experience of testers is admissible to show discriminatory conduct on the part of defendants. The Fair Housing Act of 1968 was intended to make unlawful simpleminded, as well as sophisticated and subtle modes of discrimination. It is the rare case today where the defendant either admits his illegal conduct or where he sufficiently publicizes it so as to make testers unnecessary. For this reason, evidence gathered by testers may be the only competent evidence available to prove that the defendant has engaged in unlawful conduct."

Zuch v. Hussey, 394 F. Supp. 1028 (E.D. MI 1975).

Investigations May Include Inspections

- **Investigators or access design experts may visit the property as part of an investigation**
- **They may:**
 - Take measurements or photos
 - Interview witnesses, participants in the design and construction process, or tenants
 - Review all aspects of the property

Notes:

Experts Who Aren't



Experts Who Aren't

Many litigators and agencies also use experts to conduct a review and analysis of the plans and physical construction of the property in question.

These experts can be used to support an investigation or to defend a complaint. Most experts in this area are architects or other design professionals, or experts in disability rights laws with extensive experience in Fair Housing Act compliance issues. Builders, developers, and others may also engage in self-evaluations, and design and construction issues may also be identified in due diligence reviews, causing additional inspections by design professionals.

Experts in this area should be carefully chosen. Familiarity with the ADA or Section 504 does not assure knowledge of the Fair Housing Act design requirements, and there is a high degree of ignorance and misunderstanding about the existence and requirements of the Fair Housing Act. Experts who speak only of the ADA or Section 504 when discussing housing are not likely to be familiar with the Fair Housing Act.

	Fair Housing Act Enforcement Agenda
	<ul style="list-style-type: none">• Overview of the Fair Housing Act• Complaints About Fair Housing Act Violations• Fair Housing Act Enforcement• Enforcement of Related Laws• Typical Claims and Common Defenses• Investigating Fair Housing Act Violations• Settlements and Remedies• Resources

Notes:

Cases Are Often Settled

- ☐ HUD is required to attempt to settle an administrative complaint through a “conciliation agreement”
- ☐ Federal and state court lawsuits are frequently settled through “consent decrees”

Notes:

Cases Are Often Settled

Settlement of design and construction cases is commonly used to resolve disputes. Most design and construction cases are settled rather than going to trial.

In the HUD administrative process, and in most state and local enforcement agency processes, efforts to resolve the case must be made. The Fair Housing Act, for example, says that HUD “shall, to the extent feasible, engage in conciliation” of a complaint. Conciliation is a process of conference, negotiation, and resolution of complaints. While HUD is obligated to try to settle any complaint, the parties need not agree to negotiate or to settle. In that sense it is a voluntary process.

HUD’s regulations say that “HUD will attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person and take such action as will assure the elimination of discriminatory housing practices or the prevention of their occurrence in the future.” 24 CFR 103.300(b). HUD can stop conciliation efforts when the parties do not make good faith efforts to settle the case or where it finds that voluntary agreement is not likely to result. Discussion of issues during conciliation, and even admissions of violations, cannot be admitted into evidence later, to encourage candid and open negotiations.

Settlements are also reached in cases brought by the Department of Justice and by private lawsuit. However, settlements in federal and state court cases are generally referred to as consent decrees.

Notes:

Settlements Are Written, Enforceable Agreements

- Settlements provide a way to resolve all outstanding issues without litigation



Notes:

Remedies In Design and Construction Cases

- Relief for the complainant or aggrieved person
- Retrofitting
- Money in the form of compensatory damages
- Attorney fees
- Access to a dwelling or to a comparable dwelling
- Elimination of discriminatory practices
- Civil Penalties

Notes:

Remedies Include Paying Damages and Paying for Corrective Action

- ☐ Fair Housing Act allows awards of damages
- ☐ Judge can order a civil penalty
- ☐ Federal court may award punitive damages

Notes:

Remedies Include Paying Damages And Paying For Corrective Action

The Fair Housing Act has allowed the award of damages for violations for many years. It authorizes compensatory damages, both for out of pocket expenses and for the emotional distress caused by discrimination.

In addition, if a fair housing case goes to hearing, a HUD Administrative Law Judge (ALJ) can order the wrongdoers to pay a civil penalty for each separate and distinct violation of the law. The first design and construction case decided by a HUD ALJ ordered a civil penalty of \$3,000. Civil penalties could be awarded for each non-compliant unit, for each non-compliant building, or for each separate violation of a standard.

In a federal court lawsuit, a court may also award punitive damages based on a Fair Housing Act violation against one or more wrongdoers. Such damages could be based on evidence that one or more defendants acted maliciously or with reckless indifference that their actions might violate a federal statute of which they were aware. The purpose of punitive damages is to deter future wrongdoing and to punish past wrongdoing.

There may be other remedies or sanctions under other laws, including termination or suspension of federal funding if a government agency finds a violation of the Act that is not corrected, and under tax credit law recapture of tax credits.

Notes:

Case Example #1: Remedies

- Pay \$280,000 into a modification fund
- Provide a \$1,000 incentive to current owners if they agree to retrofitting
- Pay a total of \$70,000 to eight households of current residents who were harmed by non-compliance
- Train all new and current employees for four and a half years
- Give public notice of its non-discrimination policy
- Notify five organizations when it constructs new accessible housing
- Report to the government its progress

Notes:



Case Example #1: Remedies

In a case settled by the Department of Justice following a HUD investigation, a developer, engineering firm, and builder agreed:

- To pay \$280,000 into a fund to modify common areas and ground floor units at the request of current owners, at no expense to them
- To provide a \$1000 incentive to current owners if they agree to retrofitting, plus relocation expenses if caused by the retrofitting
- To pay a total of \$70,000 to eight households of current residents who were harmed by non-compliance
- To train all new and current employees for four and a half years
- To give public notice of its non-discrimination policy
- To notify five organizations when it constructs new accessible housing
- To report to the government its progress in modifying the property

U.S. V. Raintree Associates, Ltd. Partnership, et al. settlement announced February 27, 2002.

Case Example #2: Remedies

- Pay \$25,250 to compensate a resident with disabilities who lived in an inaccessible unit
- Pay \$20,990 to retrofit one inaccessible unit and the public and common use areas
- Pay \$5000 in punitive damages
- Pay these damages even though he no longer owned the buildings

Notes:



Case Example #2: Remedies

In a case that was filed in federal court and decided by a federal judge, the court ordered:

- The owner/builder to pay \$25,250 in compensatory damages to a resident who lived in an inaccessible unit from 1992 to 2000;
- The owner/builder to pay the cost of retrofitting the complainant's unit and the public and common-use areas even though he no longer owned the building;
- The owner/builder to pay \$20,990 for retrofitting costs for one unit and for public and common-use areas; and
- The owner/builder to pay \$5,000 in punitive damages.

Balachowski v. Boidy, 2000 U.S. Dis., Lexis 13882 (N.D. IL 2000)

Exercise – What are the Appropriate Remedies?

Exercise Objective: To test your understanding of basic Fair Housing Act remedial concepts by evaluating specific situations arising in design and construction cases and identifying what the remedy could be and to whom the remedy should be provided.

Exercise Assignment:

Please read the following scenario and follow the instructions at the end.

Charlie Pratt uses an electric wheelchair. He and his wife Karen were looking for a three-bedroom apartment with a rental range of \$800-\$850 a month. Together they visited the brand new Cumberland Falls Apartments, which was advertising three-bedroom units renting for \$825. The location is only five minutes from Charlie's office and very convenient to shopping and other amenities.

As they drove into the property, they noticed that all of the apartments are ground floor garden apartments located in buildings with six units in each building.

They found the following problems at the complex. (The design and construction requirements from the Act, if applicable, are in parentheses)

Each apartment had two steps up to its entrance. (Accessible entrance on an accessible route is required)

There was a four inch rise at the exterior threshold to the apartment. (1/2" between the finish floor and the exterior landing required)

The front doorway was 30" wide. (32" required)

The exterior doorknob has a grip/twist knob. (lever hardware required on exterior side of the door)

Karen went into the apartment and found that the bathroom doors were 29" wide (nominal 32" required), that both bathrooms lacked adequate maneuvering space (30" x 48" required), that the living room and bedroom light switches were 58" above the floor (15"- 48" height required), that all of the electrical outlets were 12" above the floor (15" required), and there was a drop of 4" from the finished floor level to the wooden deck in the back (maximum 3/4" drop required). In addition, the kitchen had only a 36" x 36" clear floor space in front of the range (36" x 48" clear floor space required). There was no handicapped parking for residents, although parking was provided. (at least 2% of parking spaces provided for residents must be accessible)

Exercise – What are the Appropriate Remedies?

Exercise Assignment (continued)

After Charlie and Karen filed a complaint with HUD about the design and construction violations, they continued looking for an apartment. They ended up in a three-bedroom rental unit about 14 miles further away from Charlie's job, which rents for \$900 a month.

An investigation revealed that all 84 units at Cumberland Falls are covered multi-story dwellings. Every unit is constructed using the same floor plan. A phase II of Cumberland Falls with another 84 units is planned for three years in the future. The builder and developer have another project, similar in size and rental ranges, in development about two miles from Cumberland Falls with ground breaking scheduled two months from now.

The builder, owner, developer, and architect all claim that they were unaware of the application of the design and construction requirements of the Fair Housing Act. They have convincing evidence that the kitchen and one of the bathrooms cannot be successfully retrofitted to the requirements of the Act using any standard. They admit that neither bathroom has reinforcements for grab bars.

Each small group should discuss the following elements for an agreement to resolve the complaint and determine their recommendation for a resolution:

- Retrofitting or other corrective actions for Cumberland Falls
- Requirements for the planned construction by the developer and builder
- Other remedies to increase Fair Housing Act compliance (training, monitoring, etc.)
- Damages for Charlie and Karen

Exercise – What are the Appropriate Remedies?

Exercise Recommendations

	Fair Housing Act Enforcement Agenda
	<ul style="list-style-type: none">• Overview of the Fair Housing Act• Complaints About Fair Housing Act Violations• Fair Housing Act Enforcement• Enforcement of Related Laws• Typical Claims and Common Defenses• Investigating Fair Housing Act Violations• Settlements and Remedies• Resources

Notes:

Fair Housing Accessibility **FIRST**

Fair Housing Accessibility **FIRST**
Information Line
1-888-341-7781 v/TTY



Fair Housing Accessibility **FIRST**
Website
www.FairHousingFIRST.org



Notes:



Comprehensive Training Curriculum

Course Title	Time (hours)
Fair Housing Act Accessibility Requirements Overview	1 (Short) or 4 (Long)
Design and Construction Requirements of the Fair Housing Act: Technical Overview	3
Disability Rights Laws	1.5
Fair Housing Act Enforcement	1.5
Strategies for Compliant Kitchens	1.5
Strategies for Compliant Bathrooms	1.5
Accessible Routes	1.5
Accessible Public and Common Use Areas	1.5
Common Design and Construction Violations and Solutions	1.5
Making Housing Accessible Through Accommodations and Modifications	1.5

www.FairHousingFIRST.org
(888) 341-7781

Fair Housing Act and Related Standards

Standard	Where to Obtain
Fair Housing Act as Amended (Title VIII of the Civil Rights Act)	www.FairHousingFIRST.org (888) 341-7781 (V/TTY)
Fair Housing Act Guidelines*	www.FairHousingFIRST.org (888) 341-7781 (V/TTY)
Fair Housing Act Design Manual*	Disseminated at training www.huduser.org (800) 245-2691 TDD: (800) 483-2209
International Building Code*	www.intlcode.org (703) 931-4533
ANSI A117.1 (1986)*	www.intlcode.org (703) 931-4533
CABO/ANSI A117.1 (1992)*	www.bocai.org (800) 214-4321
ICC/ANSI A117.1 (1998)*	www.intlcode.org (703) 931-4533
Code Requirements for Housing Accessibility 2000 (CRHA)*	www.bocai.org (800) 214-4321
Section 504 of the Rehabilitation Act	www.hudclips.org (301) 519-5395
Uniform Federal Accessibility Standards	www.access-board.gov (800) 872-2253, TTY: (800) 872-2253
Architectural Barriers Act of 1968	www.access-board.gov (800) 872-2253, TTY: (800) 872-2253
Americans with Disabilities Act of 1991, Title II and Title III	www.access-board.gov (800) 872-2253, TTY: (800) 872-2253
ADA Accessibility Guidelines	www.access-board.gov (800) 872-2253, TTY: (800) 872-2253

**Denotes HUD Safe Harbor*

Publications

Listed in alphabetical order with the following designations based on topic.

C – Code; D – Design; L – Legal; DA – Disability Advocacy

Type	Resource Name	Description	Where to Obtain
D	Accessible Cabinetry	Describes state-of-the-art cabinetry designed to facilitate use by people with disabilities.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)
D	Accessible Environments: Toward Universal Design	Overview of the concept of universal design in everyday environments. Contains design illustrations and history of the disability rights movement.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)
D	Accessible Plumbing	Describes state-of-the-art in accessible plumbing fixtures and accessories.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)
D	Accessible Stock House Plans Catalog	Contains floor plans and perspectives for six accessible homes.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)
D	A Consumer's Guide to Home Adaptation	Includes worksheets for evaluating needs in the home, illustrated construction plans for grab bars, ramps, and other accessible elements, and resource listings for products.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)
C	HUD Review of Model Building Codes Final Report		www.hud.gov/offices/fheo/disabilities/modelcodes/
DA	New Mobility Magazine		www.newmobility.com
L	The New Fair Multifamily Housing: A Design Primer to Assist in Understanding the Accessibility Guidelines of the FHAct	Provides a basic understanding of the accessibility requirements of the FHAct. Also includes illustrated solutions and examples from existing projects.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)
L	Rights and Responsibilities of Tenants and Landlords under the Fair Housing Amendments Act	Outlines the rights and responsibilities of tenants with disabilities and landlords under the FHAct.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)
D	Tenant's Guide to Apartment Modifications: An Idea Source Pamphlet to Simple, Low-cost Modifications to Increase Accessibility in Apartments	Presents illustrated ideas for low-cost modification that are commonly made to rental dwellings.	www.design.ncsu.edu/cud/ (800) 647-6777 (voice or TTY)

Websites and Organizations

Listed in alphabetical order with the following designations based on topic.

C – Code; D – Design; DA – Disability Advocacy; G – Government; L – Legal; T – Trade ; O – Other

Type	Organization	URL
O	American Association of Retired Persons	www.aarp.org
DA	American Association of People with Disabilities	www.aapd.org
G	Access Board	www.access-board.gov
C	Adaptive Environments	www.adaptenv.org
DA	American Association of People with Disabilities	www.aapd-dc.org
T	American Bankers Association	www.aba.com
T	American Bar Association	www.abanet.org
DA	American Disabled for Attendant Programs Today	www.adapt.org
T	American Institute of Architects	www.aia.org
DA	American Seniors Housing Association	www.seniorshousing.org
T	American Society of Civil Engineers	www.asce.org
T	American Society of Interior Designers	www.asid.org
L	Bazelon Center for Mental Health Law	www.bazelon.org
D	Bob Vila	www.bobvila.com - special features
D	Center for Inclusive Design and Environmental Access	www.ap.buffalo.edu
D	Center for Universal Design	www.design.ncsu.edu/cud/index.html
G	Centers for Medicare and Medicaid Services	www.cms.gov
DA	Consortium for Citizens with Disabilities	www.c-c-d.org
D,L	Cornucopia of Disability Information (CODI)	www.codi.buffalo.edu
G	Department of Agriculture	www.usda.gov
G	Department of Justice	www.usdoj.gov
G	Department of Treasury	www.treasury.gov
DA	Disability Rights Action Coalition for Housing	www.libertyresources.org/housing/nac.html
DA	Eastern Paralyzed Veterans Association	www.epva.org
T	Institute for Real Estate Management	www.irem.org
C	International Code Council	www.intlcode.org
L	The John Marshall Law School Fair Housing Legal Support Center	http://law170.jmls.edu/
D	NAHB Research Center	www.nahbrc.org
T	National Affordable Housing Mgmt. Assoc.	www.nahma.org
T	National Apartment Association	www.naahq.org
T	National Association of Home Builders	www.nahb.org
T	National Association of Realtors	www.nar.realtor.com
T, D	National Association of the Remodeling Industries	www.nari.org
G	National Council on Disability	www.ncd.gov
C	National Conference of States on Building Codes and Standards (NCSBCS)	www.ncsbc.org
DA, L	National Fair Housing Advocate Online	www.fairhousing.com
DA	National Fair Housing Alliance	www.nationalfairhousing.org
D	National Kitchen and Bath Association	www.nkba.org
T	National Low Income Housing Coalition	www.nlihc.org
T	National Multi Housing Council	www.nmhc.org
DA	National Organization on Disability	www.nod.org
D, DA	National Resource Center on Supportive Housing and Home Modification	www.homemods.org
DA	Paralyzed Veterans of America	www.pva.org
D	Technical Assistance Collaborative	www.toolbase.org
DA	Wemedia	www.wemedia.com
DA	World Institute on Disability	www.wid.org

SUMMARY OF ACCESSIBILITY LAWS

LAW	TYPES OF ACTIONS COVERED	WHAT UNITS MUST BE ACCESSIBLE?	ACCESS STANDARD	ENFORCEMENT PROCESS
<p>The Fair Housing Act as amended (Title VIII of the 1968 Civil Rights Act)</p> <p>42 U.S.C. 3601 et seq. http://www.fairhousing.com/legal_research/fha/index.htm</p>	<p>"Covered Multifamily Dwellings", both for rental and for sales, designed and constructed for first occupancy after March 13, 1991 must be designed and constructed to be accessible to and usable by people with disabilities (42 U.S.C. 3604 (f)(3) (C) and 3604 (f)(7), 24 CFR 100.205)</p> <p>http://www.fairhousing.com/legal_research/fha/index.htm</p>	<p>Ground floor dwellings in buildings with four or more units</p> <p>All units in buildings served by an elevator</p> <p>Does not apply to multistory townhouses</p>	<p>Seven "safe harbors":</p> <ol style="list-style-type: none"> 1. The 1998 version of the Fair Housing Act Design Manual 2. HUD's March 6, 1991 Fair Housing Accessibility Guidelines (the Guidelines), and the June 28, 1994 Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines <p>http://www.hud.gov/library/books/helf09/fhefhag.cfm</p>	<p>Administrative complaints filed with the Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity (FHEO) in Washington, D.C. or one of 10 FHEO HUB offices. One year statute of limitation</p> <p>Administrative complaints filed with a state or local fair housing enforcement agency, or "FHAP". Six month or longer statute of limitations.</p> <p>"Pattern and practice" complaints litigated by the United States Department of Justice and/or by United States Attorneys. No statute of limitations. Lawsuits filed by private parties in federal or state court. Generally two year statute of limitation</p>

SUMMARY OF ACCESSIBILITY LAWS

LAW	TYPES OF ACTIONS COVERED	WHAT UNITS MUST BE ACCESSIBLE?	ACCESS STANDARD	ENFORCEMENT PROCESS
	<p>The Act contains 7 requirements:</p> <ol style="list-style-type: none"> 1. A building entrance on an accessible route; 2. Public and common use areas that are readily accessible to and usable by persons with disabilities; 3. All the doors designed to allow passage in and within all premises are sufficiently wide to allow passage by persons using wheelchairs; 4. All premises within covered multifamily dwellings must contain an accessible route into and through the unit; 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations; 6. Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, shower, stall, and shower seat; 7. Usable kitchens and bathrooms so a person using a wheelchair can maneuver around the space. 	<p>Does not apply to rehabilitation of units</p> <p>Does apply if four or more units are added to an existing building</p>	<p>3. ANSI A117.1-1986, used in conjunction with the Act and HUD's regulations, and the Guidelines</p> <p>4. CABO/ANSI A117.1-1992, used in conjunction with the Act, HUD's regulations, and the Guidelines</p> <p>5. ICC/ANSI A117.1-1998, used in conjunction with the Act, HUD's regulations, and the Guidelines</p> <p>6. <i>Code Requirements for Housing Accessibility 2000</i> (CRHA), approved and published by the International Code Council (ICC), October 2000</p> <p>7. <i>International Building Code 2000</i> (IBC) as amended by the IBC <i>2001 Supplement to the International Codes</i>.</p> <p>It is important to note that the ANSI A117.1 standard contains only technical criteria. Whereas the Fair Housing Act, the regulations and the Guidelines contain both scoping and technical criteria.</p>	

SUMMARY OF ACCESSIBILITY LAWS

LAW	TYPES OF ACTIONS COVERED	WHAT UNITS MUST BE ACCESSIBLE?	ACCESS STANDARD	ENFORCEMENT PROCESS
	<p>Also prohibited: A failure to make a reasonable accommodation in policies, rules, practices or services, where the accommodations may be needed to give a person with a disability the equal opportunity to use a dwelling (42 U.S.C 3604(f)((3)(B), 24 CFR 100.204)</p> <p>A refusal to permit, at the expense of a person with a disability, reasonable modifications of existing premises where the modifications may be necessary to give a person with a disability the equal opportunity to use a dwelling (42 U.S. C. 3604(f)(3)(A), 24 CFR 100.203)</p> <p>Coercion, intimidation, threatening or interference with any person in exercising or because of the exercise of, or the encouragement of someone else to exercise rights under the Act. (42 U.S.C. 3617)</p>		<p>Therefore, in using any of the ANSI standards it is necessary to also consult the Act, HUD's regulations, and the Guidelines for the scoping requirements.</p>	

SUMMARY OF ACCESSIBILITY LAWS

LAW	TYPES OF ACTIONS COVERED	WHAT UNITS MUST BE ACCESSIBLE?	ACCESS STANDARD	ENFORCEMENT PROCESS
Section 504 of the 1973 Rehabilitation Act (29 U.S.C. 794, 24 CFR Part 8) http://www.hudclips.org/		<p>New multifamily housing projects must be designed and constructed to be accessible to and usable by persons with disabilities.</p> <p>A minimum of 5% of the total dwelling units, or at least one unit whichever is greater, must be made accessible to persons with mobility impairments; an additional 2% of the units must be made accessible to persons with hearing or vision impairments. A recipient may request, or HUD may require, a higher percentage or number of accessible units based on an identified need for more accessible units (24 CFR 8.22. 24 CFR 8.23)</p> <p>Does apply to projects with 15 or more units that is altered and the cost of the alterations is 75% or more of the replacement cost of the completed facility (24 CFR 8.23(a))</p> <p>Does apply to other alterations to dwelling units and common areas, which must be made accessible to the greatest extent feasible; if the alterations amount to an alteration of the entire unit, the entire unit must be made accessible. (24 CFR 8.23(b))</p>	<p>Uniform Federal Accessibility Standards effective July 11, 1988 (24 CFR 8.32, 24 CFR 40, appendix A, 35 CFR 1190) http://www.access-board.gov/ufas/ufas-html/ufas.htm</p>	<p>Administratively enforced for recipients of funding from HUD by the Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Washington, D. C. or through one of 10 "HUB" offices.</p> <p>Six month statute of limitations may be enlarged by HUD decision. (24 CFR 8) Similar enforcement processes by other federal agencies directed at recipients of funding from those agencies. Findings of non-compliance may be enforced by the United States Department of Justice. Debarment proceedings may be initiated by HUD. (24 CFR 24). Administratively enforced by the United States Department of Agriculture for programs receiving USDA funding.</p> <p>http://www.usdoj.gov/crt/cor/byagency/usda504.htm</p>

SUMMARY OF ACCESSIBILITY LAWS

LAW	TYPES OF ACTIONS COVERED	WHAT UNITS MUST BE ACCESSIBLE?	ACCESS STANDARD	ENFORCEMENT PROCESS
<p>Architectural Barriers Act of 1968</p> <p>(42 U.S.C. 4151, 24 CFR 40 and 41)</p> <p>http://www.access-board.gov/about/ABA.htm</p>	<p>Residential structures constructed by or on behalf of the United States or buildings financed in whole or in part by a grant or loan from the United States and designed after December 22, 1971</p>	<p>Any residential structure that is intended by occupancy by people with disabilities or the elderly. 5% of the total or at least one unit in projects of 15 or more units applies to alterations</p> <p>Does apply to all elevator residential structures</p> <p>Does apply to any residential structure that contains 15 or more units</p> <p>Does apply to nonresidential structures appurtenant to a residential structure</p> <p>Does not apply to a privately owned residential structure</p> <p>Does not apply to a residential structure on a military reservation (but see UFAS 4.1.3(2) and (3))</p>	<p>Uniform Federal Accessibility Standards, effective December 22, 1971 (24 CFR 40, appendix A)</p>	<p>Administratively enforced by the Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity in Washington D.C. and its 10 "HUB" offices and by the Architectural and Transportation Compliance Board (ATBCB)</p> <p>Unresolved complaints are referred to the Architectural and Transportation Compliance Board (ATBCB) for processing consistent with 35 CFR 1190</p> <p>Enforced by private lawsuit in federal or state court</p>
<p>Americans with Disabilities Act of 1991, Title II (42 U.S.C. 201 et seq., 28 CFR 35)</p> <p>http://www.access-board.gov/about/ADA</p>	<p>The programs, activities and services of public entities, including state and local governments and their instrumentalities must be accessible.</p> <p>A public entity must ensure that people with disabilities have ready access to its programs and activities when viewed as a whole. Structural changes were to be completed by January 26, 1995. Effective January 26, 1992.</p>	<p>All new buildings constructed after January 26, 1992 must be accessible (28 CFR 35)</p> <p>http://www.usdoj.gov/crt/ada/reg2.html</p>	<p>Uniform Federal Accessibility Standards (UFAS) (35 CFR 1190)</p> <p>http://www.access-board.gov/ufas/ufas-html/ufas.htm</p> <p>OR</p> <p>Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities</p> <p>http://www.usdoj.gov/crt/ada/reg3a.html#Anchor-Appendix-52467</p>	<p>Administratively enforced by the United States Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, in Washington, D.C. or one of 10 HUB offices or by seven other federal agencies</p> <p>Complaints filed within 180 days.</p> <p>Enforced by private lawsuits in federal or state court.</p>

SUMMARY OF ACCESSIBILITY LAWS

LAW	TYPES OF ACTIONS COVERED	WHAT UNITS MUST BE ACCESSIBLE?	ACCESS STANDARD	ENFORCEMENT PROCESS
Americans with Disabilities Act of 1991, Title III (42 U.S.C. 12181, 28 CFR 36.201 et seq.)	<p>Public accommodations are covered, and must be designed, constructed and altered in accordance with accessibility standards. Places of public accommodation are facilities operated by private entities that fall into one of these categories:</p> <p>Hotel, motel or inn Restaurant or bar Motion picture house, theater, or stadium Auditorium or conventional center Bakery, grocery, or other store Laundromat, dry cleaner, beauty shop Terminal or depot Museum, library Park, zoo School Day care Gym, spa, golf course</p> <p>(28 CFR 36) http://www.usdoj.gov/crt/ada/reg3a.html</p> <p>Housing itself is not covered, but places of public accommodation, like day care center, rental offices, and other areas that serve the public are covered.</p> <p>All new construction after January 26, 1993 must be accessible</p>	<p>All new construction in places of public accommodation and commercial facilities must be accessible if they are designed and constructed for first occupancy after January 26, 1993.</p> <p>Barriers in existing buildings must be removed if it is "readily achievable" ("easily accomplishable and able to be carried out without much expense or difficulty")</p> <p>Alterations to existing buildings must be made in an accessible manner to the maximum extent feasible to the extent that the access requirements do not exceed 20% of the cost of the original alteration</p> <p>Programs are to be offered in the most integrated setting appropriate</p> <p>Intimidation, coercion or interference are prohibited</p> <p>Does not apply to a entire residence if a place of public accommodation is located in a private residence, but does apply to the elements of the accommodation that serve the public. (28 CFR 36)</p> <p>Does apply to sales and rental offices and other housing-related services and facilities that serve the public. http://www.usdoj.gov/crt/ada/reg2.html</p>	<p>ADA Standards for Accessible Design (28 CFR 36, Appendix A)</p> <p>http://www.usdoj.gov/crt/ada/</p>	<p>Complaints and compliance reviews may be conducted by the United States Department of Justice</p> <p>Enforced by the United States Department of Justice by lawsuits in federal court in cases involving an issue of general public importance or a pattern or practice of discrimination. Enforced by private lawsuits in federal or state court.</p>

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For a generally useful guide to a variety of disability rights laws, see http://www.usdoj.gov/crt/ada/cguide.htm#anchor62335 and http://www.access-board.gov/about/ADA%20				