21st Century
Fair Housing Issues

Emerging Issues Affecting Fair Housing in the New Millennia
## Table of Contents

Introduction: 21st Century Fair Housing Issues .......................................................... 1

Disability Rights Laws ........................................................................................................ 2

Fair Housing Act Accessibility Requirements Overview .................................................. 3

Module 1: Disability Rights Laws .................................................................................. 5

Module 2: Fair Housing Act Accessibility Requirements ................................................. 9

Class Exercise .................................................................................................................. 11

Common Violations of the Fair Housing Act .................................................................. 12

Module 3: The Patriot Act in light of the Federal Fair Housing Act ............................... 15

Guidance on the Fair Housing Law and the Patriot Act ................................................... 18

Appendix 1: Joint Statement ......................................................................................... 26

Appendix 2: Review of Fair Housing Accessibility Requirements ................................. 38

HUD Press Release ......................................................................................................... 41

Frequently Asked Questions ............................................................................................ 42

Appendix 3: HUD position paper on Rights & Responsibilities .................................... 59

Appendix 4: Fair Housing Basics Review ......................................................................... 62
Introduction: 21st Century Fair Housing Issues:

Emerging Issues Affecting Fair Housing in the New Millennia training program was developed by the Miami Valley Fair Housing Education Team as a response to local and national trends, issues and inquiries.

There are three components:

1. Disability Rights Laws
2. Fair Housing Act Accessibility Requirements Overview
3. The Patriot Act in light of the Federal Fair Housing Act for real estate and leasing professionals

Disability Rights Laws
The first module, pertaining to disabilities, uses information from King County Fair Housing in Seattle, Washington to elaborate on the way housing professionals can work with people with disabilities, service them consistently and protect one’s business from harmful litigation. The program also reviews all the major laws affecting disability rights.

Fair Housing Act Accessibility Requirements Overview
For the second module, the program uses information from HUD’s Fair Housing First Program which was developed by a team of architects and other Fair Housing Act accessibility experts to provide critical information on various Fair Housing Act accessibility related subject matters. The curriculum includes general information and a guide for how to access specific technical information regarding the design and construction requirements.

The Patriot Act in light of the Federal Fair Housing Act for real estate and leasing professionals
Last, the curriculum presents the Patriot Act. Both current application and pending compliance issues are discussed. MVFHC received permission from the National Multi Housing Council to use material it developed to advise housing professionals on reacting to terrorist warnings. Finally, the curriculum uses the Federal Registry and the wealth of commentary from real estate and title professionals found on the internet to illustrate the importance of the housing professional’s need to keep abreast of new, increased and pending regulation that might affect Fair Housing compliance.
Disability Rights Laws (50 minutes)
This module provides an overview of the major disability rights laws and their relationship to the Fair Housing Act. It imparts to participants critical information regarding the application of reasonable accommodation and modifications, as well as special issues involved in access requirements.

What is covered?
- Coverage of key laws addressing disability rights, including the Fair Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act.
- Relationship of other disability rights laws to the Fair Housing Act
- Who is covered under disability rights laws
- Reasonable accommodation and modifications
- HUD/Justice Dept. Joint Statement May 17, 2004
- Resources to aid compliance with detailed appendices

Who should attend?
- Anyone with an interest in the disability rights laws
- Real Estate Agents/Brokers; Leasing Agents; Attorneys
- Developers and Builders
- Disability and Housing Advocates
- Enforcement Officials, Property Owners and Managers

How Will You Benefit? You will:
- Gain an understanding of the key laws that protect people with disabilities and who is covered by those laws
- Expand your knowledge of the standard or standards for accessibility that have been adopted for each law
- Develop an awareness of the concepts of reasonable accommodations and reasonable modifications and their relationship to accessibility
- Maximize your understanding of the application of multiple standards to the same property
- Obtain resources to aid you in compliance
Fair Housing Act Accessibility Requirements Overview (90 minutes)

This module provides an overview of the accessibility requirements of the Fair Housing Act, including a detailed look at the seven technical requirements. It supplies thee participants with key information and resources needed to successfully understand and comply with the accessibility requirements of the Fair Housing Act.

What is covered?

- Fair Housing Act scoping and coverage
- Seven design and construction technical requirements
- Class exercise demonstrating examples of usage of seven requirements
- Examples of common violations to avoid
- Resources to aid in compliance with detailed appendices

Who should attend?

✓ Anyone with an interest in the accessibility requirements of the Fair Housing Act
✓ Real Estate Agents/Brokers; Leasing Agents; Attorneys
✓ Architects and Designers
✓ Civil Engineers and Landscape Architects
✓ Contractors
✓ Developers and Builders
✓ Disability and Housing Advocates
✓ Enforcement Officials
✓ Housing Consumers
✓ Property Owners and Managers

How Will You Benefit? You will:

- **Increase** your understanding of the Fair Housing Act and its accessibility requirements
- **Enhance** your knowledge of related disability rights laws, such as the Americans with Disabilities Act
- **Gain** specific knowledge of the seven design and construction requirements
- **Learn** strategies for compliance
- **Obtain** resources to aid you in compliance
Privacy and Laws in the Age of Terrorism (25 minutes)

This module provides an overview of the major requirements of the Patriot Act that affect residential housing in the United States.

What is covered?

- The Patriot Act - definition
- Detail of the specific sections affecting residential housing in the USA
- Key federal entities involved in the Patriot Act
- Scope of CIP (Customer Identification Program) and compliance with OPAC (Office of Foreign Asset Control) with suggestions for real estate and leasing professionals
- Resources to aid in compliance with detailed appendices

Who Should Attend?

- Anyone with an interest in the civil rights laws
- Real Estate Agents/Brokers; Leasing Agents; Attorneys
- Developers and Builders
- Disability and Housing Advocates
- Enforcement Officials
- Property Owners and Managers

How Will You Benefit? You will:

- **Gain** an understanding of the key laws that protect people and the community at large in the age of terrorism
- **Expand** your knowledge of the adopted regulations in the Patriot Act and pending regulations
- **Develop** an awareness of the importance of having anti-money laundering regulations
- **Maximize** your understanding of the application of the sections of The Patriot Act applicable to the day to day operations of meeting and servicing customers of real estate and homes for lease or rent.
- **Obtain** resources to aid you in compliance
Module 1: Disability Rights Laws

In General

Federal fair housing laws were amended in 1988 to add protection for persons with disabilities. Congress passed another non-discrimination law called the American with Disabilities Act (ADA) in 1990. Both these laws, as well as state civil rights laws, can apply to public and private housing providers.

In general, fair housing law covers "dwellings" (housing) and the ADA covers commercial enterprises. Fair housing laws apply to rental units and residential real estate, and the ADA to rental offices or services that may be provided in addition to basic housing.

Programs funded with federal or state money are likely to require increased access. Programs funded with federal dollars fall under the requirements of Section 504 of The Rehabilitation Act of 1973. This law says that all federally funded programs which include one or more of the following: housing, activities (like senior outings) and services (like counseling), be accessible to people with disabilities in an integrated setting.

Who is protected against discrimination based on disability?

Discrimination under these laws is broadly defined to include any physical or mental condition that creates a substantial "major life impairment" such as difficulty seeing, walking, thinking, and so forth. It covers the actual home seeker, a family member, or a guest. It covers actual impairments, a history of disability, or a mistaken belief that a person is disabled. Remember, however, that the law only applies when the illegal act is taken because of the disability.

Direct discrimination is forbidden

Outright discrimination because a person has a disability is illegal just as it is for other legally protected classes. An example of outright discrimination would be refusal to rent a house to a person because that person has a chronic illness. Regulations do not allow the housing provider to make inquiries about a disability except in very narrow circumstances, such as when a disability is a qualification for a housing program.

"Access" requirement under Fair Housing

The idea of fair housing is to equalize housing opportunity. Only in the case of disability does the law require the provider to take affirmative steps to increase access. These three fair housing requirements do not apply in the case of other protected classes. The three requirements are:

1. Accessible common areas and "readily adaptable" ground floor dwelling units in most newly constructed multi-family apartment buildings. The act also requires accessible exterior routes into the building and ground floor units.

2. Structural modification to increase accessibility. Housing providers must allow the tenant to make reasonable structural changes, at the tenant's expense, so the tenant has full use and enjoyment of the dwelling unit. The use of any public funds in development or financing of the housing being offered may obligate the landlord to pay for these modifications. If you need guidance on a specific housing development, you should contact the Fair Housing Center.
market rate units the financial obligation rests with the client or prospective client. The accommodations also must be “readily achievable”. Ramping a seven inch step is usually achievable while adding an elevator to a two story 4 unit building is usually not easily achievable.

3. Reasonable accommodations in rules, policies, procedures, and practices. This legal obligation applies most often in the rental arena. The housing provider must make reasonable adjustments in rules when necessary both because of a disability and to acquire or maintain the tenancy. One of the most common accommodations is to pet policies. If someone needs a service or companion animal, managers, tenants, and complex staff should regard this tool in the same light one views a wheelchair or walker. As a result, in all situations, extra charges for service or companion animals are forbidden. For example, as an accommodation, a housing provider can make a phone call to remind a tenant with memory problems to pay rent on the first of each month.

Other Facts

4. A housing provider may condition permission for the modification based on the tenant agreeing to restore the unit to its original condition when the tenant vacates the unit. However, the tenant need not remove the modifications if they will not interfere with the next tenant’s use and enjoyment of the unit (for instance, a wider door need not be made smaller again). The housing provider may ask that the tenant set up an interest bearing account not to exceed the amount of the modifications to cover the cost of returning the apartment or house back to its original configuration.

5. There are very limited situations where a housing provider does not have to provide a requested accommodation. It is not a reasonable accommodation to tolerate a tenant who poses a direct threat to the health and safety of other tenants or employees of the housing provider. However, it would be a reasonable accommodation to approve a tenant’s plan for acceptable minimization or elimination of the direct threat of the behavior. If the tenant fails to follow the plan and repeats the violating behaviors, the tenant may no longer be entitled to the protection of the fair housing laws.

Examples of Reasonable Accommodations and Modifications:

• Providing a prospective tenant with a disability with assistance in filling out the rental application.

• Considering approving an application despite poor credit if a prospective tenant with a disability offers to have the disability check directly deposited with a payee who will ensure the rent gets paid each month.

• Allowing a tenant to have a live-in caregiver.

• Showing a tenant with developmental disability how to use the stove, refrigerator, washer, dryer, door locks or fire extinguishers.

• Reading notices to a tenant with a disability who has difficulty in reading. Another option would be providing the notices in tape recorded form or, with the tenant’s permission, sending copies of the notices to his or her case manager or other support person.
• Granting a parking space to a tenant with a mobility disability upon request, even if the tenant does not drive but has someone drive for him or her. (It is preferable to provide a reserved space for that specific tenant and to mark it with appropriate signage designating it as accessible.)

• Permitting a tenant to keep a service animal despite a "no pets" policy, if the tenant provides a letter from his or her doctor stating that the dog is medically necessary. (Because the animal is not a pet, no pet deposit can be charged; however, the housing provider can charge a cleaning deposit if it charges all tenants a cleaning deposit. Remember that such animals need not be "certified" or have a special identifying harness or tag. Housing providers can expect the owner to manage the animal's behavior (no constant barking, no property damage), to keep the animal on leash, and to handle the animal's waste appropriately.)

• Granting permission for a tenant to add grab bars to his shower, at the tenant's expense, with the work done professionally.

• Installing a ramp or widen a sidewalk so a tenant can access the clubhouse. (Accessibility ramps are almost always considered reasonable and the widening of walkways would generally be considered so as well. The housing provider would be responsible for this cost unless they could demonstrate that the changes would either fundamentally alter the premises or pose an undue financial or administrative hardship on them.)

• Providing sufficient time when talking with a tenant who has a speech disability.

• When a housing provider has received complaints about the annoying behavior of a tenant, working with the tenant (and his or her advocate) when the tenant asserts that the behavior is related to his or her disability and requests that the provider negotiate a plan that will allow him or her to get assistance to remediate the problem.

Affirmatively Furthering Fair Housing

Housing providers can promote fair housing by planning and implementing a set of fair housing policies and procedures that address reasonable modification and accommodation requirements. This would include the following:

1. signs in the common area that state management's policies
2. an information sheet for applicants describing management's policies and procedures with regard to accommodations and modifications during applicant screening and tenancy
3. reasonable modification and accommodation information that is reviewed with each tenant along with the rental agreement, and is given to the tenant
4. forms and procedures for staff to follow when there is a situation with a tenancy that may be covered by the Fair Housing Act and local ordinances
5. arranging for fair housing training for managers, maintenance staff, and other employees
When working with tenants who have developmental disabilities, keep the following in mind:

- It is not appropriate to ask tenants or prospective tenants if they have a disability, what medications a person is taking, or probe about the nature or severity of a disability.

- Not all disabilities are visible, so it is best to inform all tenants about one's fair housing policies and advise them about the availability of assistance for tenants who have disabilities.

- Each accommodation request should be evaluated on a case-by-case basis.

- Housing providers may not reject an accommodation request based on a desire to treat all tenants alike. Such a request can only be rejected if it is unreasonable under the circumstances, if it will impose an undue financial or administrative burden on the provider, or if it will require a fundamental alteration of the services provided to tenants. For example, if one older building in a complex has no elevator, it might be an unreasonable cost to provide a requested elevator, when the common room services available there could be moved to another, more accessible building for much less cost.

- Some people with developmental disabilities live in subsidized housing, while others have section 8 vouchers and seek housing in the community. While source of income is not covered by the federal Fair Housing Act, many local communities have fair housing ordinances that do protect people with housing subsidies from being denied housing on the basis of the nature or source of that subsidy which may be considered income.

- If a tenant expresses concern over possible discrimination, don't hesitate to suggest they contact their local fair housing agency.

- Rely on a tenant's support system, including advocates, caregivers, social service workers, etc.

- All tenants wish to be treated with respect and dignity. Although some people with disabilities may look or act somewhat differently than others, housing providers should treat them similar to the way other tenants are treated, with the same rights and responsibilities.
Module 2: Fair Housing Act Accessibility Requirements

Design and Construction Requirements- Federal Fair Housing Law.

In 1988 Congress added design and construction requirements to the Fair Housing Law. (FHL).

These changes dramatically changed the relationship between the FHL and the architectural and building communities. The requirements that Congress added mandated that "new multifamily housing" had to be designed and constructed with certain accessible features.


"Multifamily housing" meant any project with four or more units and includes condominiums, apartments and single-story townhouses.

Who is to benefit from this change in the law?

Congress added design and construction requirements to the FHL to provide anyone with a mobility-related disability a better chance of finding housing that works more for them than against them. For example, someone who uses a wheelchair or walker will find it easier to enter and exit rooms that have 32" doors versus doors that are only 28 inches wide.

Responsible parties

Developers, builders, owners, and architects responsible for the design or construction of new multifamily housing may be held liable under the Fair Housing Act if their buildings fail to meet these design requirements. The Department of Justice has brought many enforcement actions against those who failed to do so. Most of the cases have been resolved by consent decrees providing a variety of types of relief, including: retrofitting to bring inaccessible features into compliance where feasible and where it is not -- alternatives (monetary funds or other construction requirements) that will provide for making other housing units accessible; training on the accessibility requirements for those involved in the construction process; a mandate that all new housing projects comply with the accessibility requirements, and monetary relief for those injured by the violations. In addition, the Department has sought to promote accessibility through building codes.

Promoting Accessibility through Building Codes

The Civil Rights Division of the U.S. Department of Justice recognizes that barriers in the built environment pose a serious impediment to the full integration of people with disabilities into society. Federal law has attempted to address the lack of accessibility in certain residential buildings through the design and construction requirements of the Fair Housing Act and in commercial and public properties through the design and construction requirements of the Americans with Disabilities Act. These properties also may be subject to other federal accessibility requirements such as Section 504 of the Rehabilitation Act. Many states have enacted laws mandating accessibility for people with disabilities in housing, public sector and business properties.
Most states or localities in this country have adopted building codes to govern construction within their jurisdictions. These building codes are enforced by local or state code officials. The Civil Rights Division believes that incorporation of the design and construction requirements of the Fair Housing Act and the Americans with Disabilities Act into building codes represents an opportunity to enhance compliance with these federal laws.

Some model codes and some state and local codes include provisions that may afford an even greater degree of accessibility in some respects than does federal law.

What are the guidelines?

1. There are 7 basic guidelines and I have prepared a sheet on each of them. I’ll speak briefly on each one
2. Units must have an accessible entrance and must be on an accessible route;
3. Public and common-use areas must be accessible;
4. The doors within units must be usable doors;
5. There must be an accessible route into and through the unit;
6. Light switches, electrical outlets and environmental controls must be accessible;
7. Bathrooms must have reinforced walls; and
8. Kitchens and bathrooms must be usable. In buildings without elevators only first floor units need to comply. In buildings with elevators every unit must comply.
Class Exercise: using the seven requirements above, fill in the blanks.

1. **How deep does a pantry have to be for requirement 3 and requirement 4 to affect construction?** ________ **What are the shelving requirements?** Shelves should be ________________.

2. **Requirement 7:** What is the minimum clearance between countertops and opposing countertops, appliances and walls? ________. **Where should it be measured?** The required _____ inch clearance must be measured from ________________________________ ________________.

3. **Requirement 5:** What parts of outlets and switches must be within the reach ranges specified in the Guidelines? **For accessible controls and outlets, all** ________ ________ **must be within the required reach ranges.** Outlets must be located _____” above the finished floor. Placement of thermostats and other environmental controls cannot exceed - -______” from the finished floor.

4. **Requirement 4:** Accessible route: **what in the unit must be on this route?** __________, ______________ and ________________.

5. **Requirement 3:** How is a door determined to be usable? Measure with the ______________, the clearance is measured between the face of the door and the opposing doorstop. The primary entrance door to dwellings and public and common use doors must have a _____ inch minimum clear opening. Passage doors within a dwelling must have a nominal _____-inch clear opening.

6. **Requirement 1:** What constitutes accessible route? It cannot be ________ ________, and __________ or require people with disabilities to travel ________ distances. It also requires that use of an accessible route not place requirements, like a special key, an attendant, or additional waiting periods, on people with disabilities.

7. **Requirement 2:** Can you use a patio door, a side door, say to a club house entrance, or a rear door to comply with this requirement? - ________, Here’s why: Using a patio door or a secondary door like a back door as the only accessible entrance establishes ________ ________ and ________ for people with disabilities. This practice may also require a person with disabilities to use ________ or __________ routes, which violates the Act.

8. **Requirement 6:** When a molded fiberglass conventional tub/shower unit is installed in bathrooms, molded portions of the sidewalls, even if reinforcing is provided, can interfere with the later installation of grab bars. Do these types of fixtures comply with the Fair Housing Act requirements? ________, Here’s why:

______________________________________________________________________________ ________________________________________________________________________________
Common Violations of the Fair Housing Act

Design and Construction Requirements

Successful accessibility is often measured in inches, so attention to detail can make the difference between achieving access and excluding or injuring someone. When the minimum requirements are not met, the results can limit access for a person with a disability or exclude them from the housing altogether. Sometimes lack of access can even be dangerous.

This is a sampling of common accessibility errors or omissions that have been identified through review of a number of properties that do not comply with the requirements. It is not intended to be comprehensive or exhaustive. Any failure to comply with the requirements violates the Fair Housing Act.

Requirement 1 - Accessible Building Entrance on an Accessible Route

**Error:** The dwelling entrance has steps or the entrance walk is too steep, exceeding allowable slopes. Accessible entrance walks cannot be steeper than 1:20 (5%) unless they are designed as ramps. Ramps cannot be steeper than 1:12 (8.33%) and must have railings and edge protection.

**Result:** Steps can block access completely for people who are disabled. Steep ramps without safety provisions like handrails, edges and landings can be dangerous because people using walkers, canes and wheelchairs may fall off them. Wheelchair users and other people with disabilities cannot go up and down the ramp or may lose control while using it.

**Error:** Even though an accessible entrance walk may be provided to the dwelling entrance, many times it does not connect to a pedestrian arrival area (often a parking lot). Typical barriers are no curb ramps and no access aisles.

**Result:** People with disabilities cannot travel from the site entry points to accessible entrances. They cannot get from parking to the building entrance.

Requirement 2 - Accessible and Usable Public and Common Use Areas

**Error:** Curb ramps may be steep, lack side wings, or be accessed only from heavily "trafficked" areas. Curb ramps must be designed and built in a way that is compliant with ANSI standards.

**Result:** Steep and improperly designed curb ramps are a hazard for everyone and can cause injury to both ambulatory and non-ambulatory persons.

**Error:** There are not enough curb ramps provided to make the site accessible.

**Result:** People using wheelchairs may run into "dead ends" at sidewalks causing them to travel far in excess of persons who can step over a 6" curb, or it may cause them to use the parking lot and driveway as a means of getting around the site. If
automobile and pedestrian traffic is segregated on a site, then persons with disabilities should be able to use the pedestrian sidewalk system.

Error: There is no accessible parking at site facilities. Accessible parking is required at facilities such as mailbox kiosks, laundry rooms, playgrounds, tennis courts, leasing offices, garbage dumpsters, etc.

Result: Many sites are large, and one way for a person using a wheelchair or other mobility aid to enjoy full use of the housing is to get in their cars and drive to the facility. Also, many sites are too steep for a pedestrian accessible route to connect each building entrance with site facilities. When accessible parking is not provided at facilities and amenities, persons with disabilities may not be able to get to and use the facility.

Requirement 3 - Usable Doors

Error: Doors to walk-in closets and storage rooms do not provide a nominal 32" clear opening (31 5/8").

Result: Many people who use wheelchairs, scooters or walkers cannot use a door with a less than 32" clear opening because the wheelchair is too wide to get through the door. All doors intended for passage must be accessible.

Error: The second door into a bathroom, when more than one door is provided, does not provide a nominal 32" clear opening (31 5/8"). Many times a bathroom has both a door from a hallway and a second door from a bedroom. Both doors are required to be accessible.

Result: Multiple doors into a bathroom are provided as an amenity to residents to allow privacy and convenience. If one of the doors is too narrow, this amenity/feature may not be available to residents or their guests who are in wheelchairs.

Requirement 4 - Accessible Route Into and Through the Unit

Error: Level changes at primary entrances exceed the allowable 1/2" between the finished floor of the unit and the exterior entry landing.

Result: Even small steps or level changes can completely block access for people who are disabled.

Error: Door thresholds exceed the maximum height of 3/4" and are not beveled 1:2 or less.

Result: Abrupt level changes can be extremely difficult to go over for people using mobility aids such as wheelchairs, walkers and canes. Also, people who do not lift their feet completely may experience difficulty passing over excessively high thresholds that are not beveled.
Requirement 5 - Light Switches, Electrical Outlets, Thermostats and Other Environmental Controls in Accessible Locations

Error: Outlets are placed too low. Both outlets must be located at least 15" above the finished floor.

Result: People with limited reach, such as people using wheel chairs and people who have back problems, may not be able to reach and use the outlet.

Error: Switches are placed too high. Thermostats and other environmental switches are placed higher than 48" above the finished floor.

Result: People with limited reach may not be able to reach the thermostats and switches.

Requirement 6 - Reinforcing In Walls for Grab Bars

Error: Reinforcing is not placed in walls during construction around tubs, toilets and showers.

Result: People who need to install a grab bar may not be able to adapt their dwelling without extensive construction. Fiberglass tub/shower units, which are very frequently used, are most effectively reinforced by having the reinforcement cast into the sidewalls of the unit at the factory.

Requirement 7 - Usable Kitchens and Bathrooms

Error: In the kitchen there is not 30" x 48" clear floor area parallel to and centered on the kitchen sink and range. Many times the sink or range is positioned into the "elbow" of an L-shaped kitchen, or sometimes in a small angled section of counter that doesn't provide a full 48" clear floor area.

Result: The purpose of the 30" x 48" clear floor area in front of the sink or range is to allow people using a wheelchair to position themselves in front of the sink and use it. If there is not a clear floor area centered in front of the sink, a person using a wheelchair may encounter obstructions that can keep them from being able to reach the faucets and use the sink.

Error: Sinks in bathrooms are not positioned with 30" x 48" clear floor area parallel to and centered on the sink.

Result: A person using a wheelchair cannot reach faucets or the sink to use it.
Module 3: The Patriot Act in light of the Federal Fair Housing Act for real estate and leasing professionals

Patriot Act Fact Sheet: What Real Estate Professionals need to know*

In 2001 the Federal government passed a law designated the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism," known as the USA Patriot Act. Title III of the Act, also known as the International Monetary Laundering Abatement and Financial Anti-Terrorism Act of 2001, made a number of amendments to the Anti-Money-Laundering provisions of the Bank Secrecy Act, which amendments are intended to make it easier to prevent, detect and prosecute international money laundering and financing terrorism.

In Section 352 of the Patriot Act, 31 U.S.C. § 5318(h) was amended to require the creation of anti-money laundering compliance programs by financial institutions. Under that Act, the Financial Crimes Enforcement Network of the Treasury Department (“FinCEN”) temporarily exempted certain financial institutions, including individuals involved in real estate closings and settlements, from the Act’s anti-money laundering requirements. The stated purpose of that exemption was to enable the Treasury Department to study the affected industries and to consider the extent to which anti-money-laundering requirements should be applied to them.

At this time real estate professionals engaged in brokerage or property management activities and their real estate firms are not financial institutions and do not need to implement anti money laundering programs. Financial institutions, as a matter of course, must implement a customer identification program and may ask a real estate professional’s client for personal information to complete a financial transaction. Commercial property managers do not need to implement a Customer Identification Program (CIP), but should periodically check Treasury’s list of Specially Designated Nationals and Blocked Persons (SDN) list to ensure that current and prospective tenants are not on the list.

Issue:

The passage of the USA PATRIOT Act and the issuance of Executive Order 13224 have increased the level of the government’s scrutiny of financial transactions in an effort to isolate and block the financial dealings of terrorists and terrorist affiliated. While every business has a responsibility to be vigilant in ensuring that they are not dealing with a restricted entity, it falls squarely on the financial institutions to actively screen their customers for any links to restricted entities by creating a CIP and an Anti-Money Laundering Program.

Key Federal Entities:

FinCEN: Financial Crimes Enforcement Network, housed in the Treasury Department, supports domestic and international law enforcement efforts to combat money laundering and other financial crimes. FinCEN is the entity that monitors CIP compliance.
OFAC: Office of Foreign Asset Control (OFAC), housed in the Treasury Department, maintains the list of Specially Designated Nationals and Blocked Persons (SDN). OFAC also monitors compliance with executive order 13224 that prohibits US entities from entering into business transactions with SDN entities. The industries for which OFAC has established clear compliance guidelines are: insurance, import/export, tourism, securities and banks.

What does this mean for real estate professionals?

Money Laundering/Customer Identification Programs: As of October 1, 2003, all financial institutions must implement a CIP. Financial Institutions, as defined by the Treasury Department, are those institutions that are regulated by The Treasury Department, Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Reserve System, Federal Deposit Insurance Corporation and the National Credit Union Administration. Financial institutions also include all private banks, credit unions, and trust companies that do not have a federal regulator.

In addition, the Bank Secrecy Act includes “persons involved in real estate settlements and closings” in its definition of Financial Institutions. The Treasury Department issued an advanced notice of proposed rule making in April 2003 seeking comment about the nature of the anti-money laundering program requirements that should apply to “Persons involved in Real Estate Closings and Settlements,” and the persons to whom those requirements should apply. NAR stated, in a comment letter to FinCEN, that NAR supported efforts to combat money laundering, but expressed concerns that additional regulations on real estate brokerages might be burdensome and unnecessary without further justification from the federal agencies as to why current local, state, and federal money laundering rules are insufficient. The comment period ended on June 9th, 2003. No decision has been made yet on when or whether proposed rules will be issued.

For CIP purposes and other purposes, it appears that real estate professionals engaged in brokerage or property management activities and their real estate firms are not financial institutions, and not required to implement anti-money laundering or CIP efforts.

As of October 1, 2003 Financial Institutions must implement a CIP that includes:

1. Collect identifying information about customer's opening an account.
2. Verify that the customers are who they say they are
3. Maintain records used to verify their identity
4. Determine whether the customer appears on any list of suspected terrorists or terrorist organizations.

Because of their duty to satisfy CIP requirements, financial institutions may ask a customer or client for personal information, such as a social security number or other identifying information, to verify the person’s identity. In instances where a real estate professional acts only as an intermediary between the customer and the financial institution, by, for example, facilitating the creation of an escrow or using the escrow to close a transactions, it appears that the responsibility falls on the bank with which the
customer and real estate professional interacts to verify a customer’s identity or otherwise satisfy CIP requirements.

Commercial Real Estate Transactions and USA PATRIOT Act Compliance

The PATRIOT Act also prohibits transactions with certain entities. Even though real estate professionals in the U.S. and their firms are not “financial institutions” for CIP or OFAC purposes, they, as well as their clients and customers, are subject to OFAC jurisdiction and are prohibited from engaging in any transactions involving blocked property and from providing any service benefiting any person or entity on the OFAC maintained master list of “Specially Designated Nationals and Blocked Persons” ("SDN List"), regardless of where in the world they are located. All real estate professionals should be aware of the sanctions programs administered by OFAC and their obligation to comply with OFAC regulations. Any professional whose practice involves transactions with foreigners or foreign properties should be particularly aware of who he or she is dealing with.

OFAC Compliance:

OFAC has not adopted specific due diligence procedures or other guidelines for compliance by real estate professionals (like those for banks, the securities industry, insurance companies, tourism, and exporters/importers). However, the American Land Title Association in an article in Title News discussing OFAC compliance for real estate professionals suggests the following in regard to OFAC compliance:

1. Compliance should involve scanning customer lists against the SDN List on a regular basis for matches. The updated and current SDN List is readily available at OFAC's website (http://www.treas.gov/ofac). Many private companies offer specific OFAC compliance consulting and special software to help companies scan customer lists for matches.

2. Any matches should be confirmed to be sure that are not "false positives" before contacting the OFAC Compliance Hotline. Evaluate the quality of the match by examining how closely the information matches the entry on the SDN List, including address, date of birth, and identification numbers, if any.

3. If there is a valid match, the professional should contact OFAC's Compliance Hotline at (800) 540-6322 for further guidance.

source: State Association Executives/Government Affairs Directors David Lereah, Chief Economist & SVP, and Regulatory & Industry Relations & Joe Ventrone, Managing Director, Regulatory & Industry Relations – for more information contact call Tom Heinemann 202-383-1090 (theinemann@realtors.org

Also, go to http://www.complianceheadquarters.com

OFAC: https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx

Revised: Jan 2016
Guidance on the Fair Housing Law and the Patriot Act in leasing, rental and real estate transactions

Introduction

This document provides guidance and a range of operational options for apartment owners to consider in light of a general, non-specific threat warning issued by the FBI regarding terrorists, how to react to the requests for information mandated by The Patriot Act and how to stay mindful of the time honored Fair Housing Act in this a post 9/11 milieu.

It is adapted from the National Multi Housing Counsel: GUIDANCE ON THE RECENT FEDERAL BUREAU OF INVESTIGATION THREAT WARNING* and The U.S. Department of Housing and Urban Development (HUD) document with guidance on “Fair Housing Compliance in the Post-September 11 Environment.”**

* National Multi Housing Counsel
  1850 M Street, NW, Suite 540
  Washington, DC 20036
  Phone (202) 974-2300   Fax (202) 775-0112
  Home Page: www.nmhc.org   E-mail: info@nmhc.org


This paper covers:

1. Specific steps firms can take to protect their resident.
2. Talking points firms can use if they receive media inquiries on the warning;
3. A model letter to share with residents if a warning is issued
4. Policies to review in the wake if 9/11,
5. A look at the sections of the Patriot Act affecting rental managers, staff and residents with Fair Housing concerns
6. HUD’s guidance on use of the Fair Housing law in the wake of implementing the Patriot Act.

It is important to note that the NMHC reaction and building of the following suggestions was a reaction to a FBI threat advisory NMHC shared with members on May 16, 2002. It was a general, non-specific threat involving terrorists renting apartments for the purpose of storing explosives. The advisory was not linked to any time, place, property type or terrorist organization, and the FBI indicated that the information was communicated to the industry out of caution. NMHC claims that some local apartment organizations reported receiving similar threat advisories from local law enforcement since early April of 2002. These steps are merely options you may wish to consider and are not meant to suggest a standard of care for property operations. They are not the recommendations of the FBI, but are rather operational considerations that some member firms have reported. Some of the suggested policies have long been in place, while others are new in light of recent heightened security awareness. Indeed, based
on this advice, many firms may choose to consider and re-confirm current operations policies in light of these policy options. The suggestions from HUD, though, are important to use in re-evaluating operations because HUD is the agency the federal legislature gives authority over setting fair housing policy in the United States. No new policies should be implemented that are contrary to the fair housing law. To do so might cause one to incur some liability they think they are now protected from.

These are trying times for our country, and we are hopeful that none of us will have to deal with the activity addressed by the general threats we have received. We encourage you to use your common sense and to take reasonable measures in response to any suspicious possible terrorist activities at your property and follow the fair housing laws in compliance to any requests for information from a law enforcement body.

Specific Operational Steps You May Choose to Take

1. **Internal Reporting**
   a. Share FBI warnings with all onsite management and instruct them to make all employees aware of the information.
   b. Advise all employees and contractors to be vigilant and aware of any suspicious behavior with respect to property, residents, and prospective residents.
   c. Report any suspicious activity to the local FBI field office. Ask to speak to the representative with the Joint Terrorism Task Force. A list of those offices can be found at [www.nmhc.org/Content/BrowseContent.cfm?IssueID=318](http://www.nmhc.org/Content/BrowseContent.cfm?IssueID=318).

2. **Resident Communications**
   a. Encourage residents who believe they have witnessed something suspicious to contact the FBI field offices first, but also to notify you as well.
   b. Share the model letter below with your residents if you so choose.
   c. Encourage resident-to-resident communications through resident socials and crime safety awareness programs.
   d. The FBI has encouraged heightened awareness of student residents who do not appear to leave the property to attend classes.
   e. Take steps to address concerns of residents who complain about being subjected to harassing behavior by other residents and guests on the basis of various protected classes under the Fair Housing Act. (Note: state laws also may treat repeated harassment as a hate crime. See Fair Housing: September 11: What Now?, Ryan, California Apartment Association Perspective, [www.caanet.org/default.asp?ID=1891](http://www.caanet.org/default.asp?ID=1891).)

3. **Unit Inspections**
   a. Perform move-out and move-in inspections with the involvement of your resident, in order to better address any disputes over property condition that may arise. (See the attached form)
b. Inspect occupied units, where permitted under local law, providing notice where appropriate under the lease and/or local law.

c. Inspect all vacant units regularly to make sure they are vacant and secured.

d. During inspections of common areas and property grounds, look for suspicious or prohibited materials or unauthorized occupants. The FBI has told owners to be on the lookout for items that can be used for pipe bombs, such as gunpowder, PVC or metal piping, nails and dismantled kitchen timers that that can be used for pipe bombs. Firearms or ammunition and industrial-grade chemicals may also require closer inspection.

e. Expand daily property-wide tours to include a viewing of all building perimeters to inspect for any suspicious materials or evidence of any invasive undertakings on the building exteriors.

4. Contractors and Employees

   a. Management should review work performed by contractors on a regular basis, perhaps daily. In particular, contractor work in non-public areas should be closely inspected.

   b. Management agreements should require that contractors screen employees for prior criminal history, bond employees, and see that they have fair-housing training.

   c. Management may wish to review existing employee verification procedures for compliance with applicable law - including background checks, background check authorization forms, and compliance with applicable non-citizen work eligibility laws - and ensure appropriate documentation is on file.

5. Resident Applicant Verification

   a. Verify the identification prospective residents provide when leasing an apartment since a signed lease can provide proof of occupancy for residents for other circumstances, such as obtaining a driver’s license and other official documents. (Remember to obey fair housing laws by verifying identification under uniform procedures for all prospective residents.)

   b. Require original documents to prove identity. (Note: Privacy laws may prohibit an owner from requiring a Social Security Number as a condition of the application process. Applicants may choose to provide valid, unexpired, alternative identification to the Social Security Number from work visas, passports and other sources.)

   c. Require each adult occupant to complete an application.

   d. Verify prior addresses provided by the applicant for conformity with available credit, criminal and reference check information.

   e. Request residents to explain any gaps in prior addresses of record. Management may then verify such explanations through criminal history and background checks.

   f. Verify provided visa and work history information for accuracy, subject to fair housing laws. Individuals with expired visas may be awaiting additional clearance from the
Immigration and Naturalization Service (INS) and thus may be in the country legally, notwithstanding an expired visa.

g. Undertake individual applicant checks on each individual resident applicant participating in a corporate guarantor or corporate tenant program.

h. Note any one individual or group renting multiple apartments at the same time.

i. Firms renting to students may choose to require regularly updated evidence of school registration, subject to applicable fair housing laws and/or state or local student protections.

6. Cooperation with Law Enforcement

a. Be cooperative with law enforcement, but respect resident privacy as well. Consider requesting a subpoena or warrant before releasing non-public information about a resident.

b. Federal law enforcement may ask apartment management to share information based on certain agency-developed indicia. For example, the FBI has indicated that paying the entire lease term up front in cash or residents breaking a lease and leaving early under suspicious circumstances without a forwarding address are two circumstances that may deserve further exploration. If law enforcement requests that management undertake a file audit of transactions with these or other characteristics, management, if it chooses to cooperate, should be sure that any audit conforms to the Fair Housing Act and resident privacy laws and should provide such information only under a subpoena or magistrate’s order.

c. With respect to Federal Bureau of Investigation (FBI) inquiries and requests for assistance, the new USA PATRIOT Act, signed into law by President George Bush on October 26, 2001, provides apartment management and other “landlords” with new liability protections and rights to compensation for certain kinds of assistance provided to FBI investigations. (Pub. L. 107-56) The Act also puts restrictions on the information an assisting apartment owner can disclose about its participation in the investigation.

d. Section 215 of the Act authorizes FBI representatives to obtain “tangible things,” including books, records, papers, and other documents, for international terrorism and covert intelligence activity investigations. The FBI must first obtain a magistrate’s order in order to exercise its authority under this section. This section also provides immunity from liability for property management who, in good faith, produces documents or other tangible information pursuant to such an order.

e. Section 215 could apply to resident and employee records. Importantly, owners and managers may not disclose “to any other person (other than those persons necessary to produce the tangible things under this section) that the FBI has sought or obtained tangible things under this section.”

f. Section 216 provides for the installation and use of a pen register or trap and trace device anywhere within the United States pursuant to a court order authorizing such installation and use. A pen register captures telephone numbers on outgoing calls, as...
well as routing and addressing information in Internet communications. A trap and trace device captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing, and signaling information relevant to identifying the source of a wire or electronic communication.

g. Section 222 of the Act states that “a provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to Section 216 shall be reasonably compensated” for expenditures incurred when providing facilities or assistance. Owners, therefore, have the right to request compensation for reasonable costs incurred by management in helping FBI representatives set up pen register and trap and trace facilities. For example, staff time and materials costs associated with setting up a pen register in the telephone closet might be compensable.

h. Section 225 of the Act amends the Foreign Intelligence Surveillance Act (FISA) to provide immunity to apartment owners and other “landlords” who assist law enforcement in FISA-authorized activities. The Act states no court will accept jurisdiction over a cause of action filed against “any provider of a wire or electronic communication service, landlord, custodian or other person” that supplies information, facilities, or technical assistance in accordance with a court order or request for emergency assistance authorized under the Act. This broad and important provision allows owners to comply with law enforcement requests for assistance under FISA without risking exposure to lawsuits. Section 225 differs from Section 222 in that Section 222 provides reasonable compensation for compliance with court-ordered pen register or trap and trace while Section 225 provides immunity for compliance with any FISA-authorized activity.

i. The USA PATRIOT Act also creates a new section of the Fair Credit Reporting Act that provides new authority for consumer reporting agencies to provide consumer reports and all related files to government agencies where the agency produces a written certification that the requested information is necessary for conducting a terrorism investigation. Section 358 (g) of the USA PATRIOT Act also requires that the consumer reporting agency and its agents and employees treat the request as confidential and provides for protection from liability for the agency and its employees and agents who disclosed information in “good faith reliance” on an agency’s written certification.

7. Community Security Measures

a. Keep non-public areas - especially equipment areas, shops and storage areas - off-limits to all but identified employees and those allowed for specified business purposes with those employees.

b. Monitor vacant units on a regular basis to ensure they are vacant and secured.

c. Manage key and lock control at unit turnover closely. Keep access codes, locks, and keys under tight control with access limited to identified employees. Report loss of keys, access cards, and codes.

d. Require photo identification when a resident requests a lockout key.
e. Enforce stated “no solicitors” policies.

f. Inventory industrial-grade chemical supplies and materials in each storage area on a regular basis.

g. Review property parking lots for unattended or unauthorized vehicles.

h. Review package delivery procedures and ensure that unclaimed packages are disposed of in a timely fashion. Some firms now require residents to advise the leasing office in advance of a package delivery or the management will refuse delivery of the package.

i. Review existing company site emergency recovery plans and recovery programs to ensure information is understood by site staff and up-to-date. The Federal Emergency Management Agency (FEMA) provides a document detailing considerations for businesses adopting emergency recovery plans at www.nmhc.org/Content/ServeContent.cfm?IssueID=318&ContentItemID=2354.

j. Management may choose to review existing site design and operations in the context of new voluntary procedures released by the Department of Health and Human Services for reducing the risk of damage due to chemical, biological, or radiological (CBR) attacks. Designed for all types of commercial real estate, the guidance suggests “things not to do,” physical security, ventilation and filtration, and maintenance, administration and training. A copy is available at www.nmhc.org/Content/ServeFile.cfm?FileID=2830.

Media Talking Points

Firms who receive inquiries from the media are encouraged to communicate the following key points.

1. Proper Perspective. It is important to put this issue in the right perspective. Many FBI warnings are a non-specific and uncorroborated general warning. Many times officials say they have no information that the proposal has gone beyond the discussion stage and that they are not releasing an official warning on it. Rather, they are simply notifying field offices and apartment owners out of caution and not because officials believe any threat is imminent.

2. Apartment owners take the security of their residents very seriously. They have been attuned to security issues for some time and even more so after September 11. This new warning is just a reminder to apartment firms and residents that we should all be vigilant about our security.

3. Apartment firms continue to take a balanced approach to protecting resident security while still respecting their residents’ civil rights and complying with federal and local fair housing laws.

4. It is important for people to understand is that this is a non-specific threat. There is no reason for residents and nearby neighbors of apartment properties to be unduly concerned. That said, the warning is a good reminder for all of us, owners and residents, to be vigilant about suspicious activity and to notify the FBI if we witness something.

Sample Resident Letter
Following is a model resident letter about the recent FBI advisory for you to use if you choose to send one.

Dear Resident,

As you may have seen in the news in recent days, the FBI has informed apartment building owners and managers that a general, non-specific threat of terrorist activities may exist for apartment buildings. In passing along the information to the apartment industry, the FBI emphasized that the information was general and non-specific in nature. The FBI also indicated that it would continue to work with other agencies to gather more specific information, if any exists, and that if additional credible and specific information is forthcoming, it will be passed along.

The FBI is encouraging the apartment industry as a whole to take reasonable, commonsense measures in response to any suspicious activities. Residents are also encouraged to exercise solid safety measures with regard to both person and property and to remain vigilant. If you should notice any suspicious activity or odd behavior at our property that causes you concern, please contact the FBI field offices first, but also notify your management office. The telephone number for the FBI field office for our area is: <insert local number here>.

The general, non-specific threat information being communicated essentially is:

“There are indications that discussions were held about the possibility of renting apartment units in various areas of the United States and rigging them with explosives. The FBI has no information indicating that this subject advanced beyond the discussion stage.”

In passing this information along, the FBI emphasized the general, non-specific nature of the information. According to a senior FBI official, the Bureau is “continuing to work with other agencies to gather more information, if additional information is out there to gather.” The official further indicated that “if the FBI develops additional credible and specific information it will be passed along.”

The FBI encourages the industry to take reasonable, common-sense measures in response to any suspicious activities. The agency is also asking apartment owners and property managers that “should they encounter suspicious renters or rental arrangements, they should contact the FBI supervisor of the Joint Terrorism Task Force in their local FBI office.” Contact information for the FBI’s field offices is at http://www.nmhc.org/Content/BrowseContent.cfm?IssueID=318.

A senior official with the FBI’s Counter-Terrorism division passed along this information in order to have it communicated on a “top-down” basis within the apartment industry. That effort is intended to complement the “bottom-up” communication campaign through the Joint Terrorism Task Forces. NMHC/NAA is not aware of any additional details of this matter beyond what has been communicated in this memorandum.

Sincerely,

Apartment Owner

In implementing a FBI request or in revising/updating operational procedures, companies are advised to remember the Fair Housing Act prohibitions on discrimination on the basis of national origin, race, or
ethnicity and limitations on sharing non-public resident and applicant data under state and federal resident privacy laws. The following website has HUD’s press release on its position on the post 9/11 atmosphere and what we need to do to stay in compliance. We have also included the press release in the appendices.

http://www.hud.gov/offices/fheo/library/sept11.cfm

Response to concerns about housing security following September 11, 2001

U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability. One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to reasonable accommodations.

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such
accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling."[6] The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.[7] With certain limited exceptions (see response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct - i.e., refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling - may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. See e.g., City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such impairment; and (3) individuals with a record of such impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.[8] This list of major life activities is not exhaustive. See e.g., Bragdon v. Abbott, 524 U.S. 624, 691-92 (1998) (holding that for certain individuals reproduction is a major life activity).
4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.

Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (e.g., current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (i.e., a significant risk of substantial harm). In such a situation, the provider may request that the individual document how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant’s current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks’ lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks’ rental manager investigates the
incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing provider must make an exception to its "no pets" policy to accommodate this tenant.
7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable - i.e., if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider’s operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester’s disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester’s disability-related needs without a fundamental alteration to the provider’s operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester’s disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester’s disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

**Example:** As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant’s disability-related needs - for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider’s maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a fundamental alteration of the provider’s operations and would involve little financial and administrative burden for the provider while accommodating the tenant’s disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual’s disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a "fundamental alteration"?
A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in...
a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

**Example 2:** Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. **When and how should an individual request an accommodation?**

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

**Example:** A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. **Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?**
No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words "reasonable accommodation" are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.
Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example 1: An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (i.e., difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

Example 2: A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Example 3: An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.
18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (see Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (e.g., proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits or a credible statement by the individual). A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (e.g., a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: www.hud.gov; or
- By mailing a completed complaint form or letter to:

  Office of Fair Housing and Equal Opportunity
  Department of Housing & Urban Development
  451 Seventh Street, S.W., Room 5204
  Washington, DC 20410-2000

Revised: Jan 2016
Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as amicus curiae in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for amicus participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section - G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at http://www.usdoj.gov/crt/housing/hcehome.html.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice’s policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.


2. The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. See Bragdon v. Abbott, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

3. 42 U.S.C. § 3604(f) (3) (B).

4. Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with
disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (e.g., providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. See U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) http://www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf and "Section 504: Frequently Asked Questions," (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).


6. 42 U.S.C. § 3604(f) (3) (B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

7. This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

8. The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. See Toyota Motor Mfg, Kentucky, Inc. v. Williams, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. See Sutton v. United Airlines, Inc., 527 U.S. 470, 492 (1999).


10. Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. See e.g., Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797 (1999) (noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).
Appendix 2:

1. HUD Review of the Fair Housing Accessibility Requirements Fair
2. Housing Press Release: Accessibility FIRST
3. FAQs: Frequently asked questions.


Dated: May 31, 2007 Kim Kendrick, Assistant Secretary for Fair Housing and Equal Opportunity [FR-5136-N-01]

HUD Recognized Safe Harbors and HUD Policy

With its review of the 2006 International Building Code and the 2003 ICC/ANSI A117.1 as safe harbors, the Department currently recognizes ten safe harbors for compliance with the design and construction requirements of the Act. These documents are:


7. 2000 ICC Code Requirements for Housing Accessibility (CRHA), published by the International Code Council (ICC), October 2000 (http://www.iccsafe.org) (ICC has issued an errata sheet to the CRHA);

9. 2003 International Building Code (IBC) (http://www.iccsafe.org), published by ICC December 2002, with one condition: Effective February 28, 2005, HUD determined that the IBC 2003 is a safe harbor, conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, “ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7”; and ICC’s website includes information about the condition on the 2003 IBC at the following links: http://www.icesafe.org/news/nr/2005/index.html; http://www.iccsafe.org/government/news/; http://www.iccsafe.org/news/ePeriodicals/eNews/archive/ICCeNews_0305.html.

10. 2006 International Building Code (http://www.iccsafe.org), published by ICC, January 2006, with the 2007 erratum (to correct the text missing from Section 1107.7.5), and interpreted in accordance with relevant 2006 IBC Commentary.

HUD’s March 23, 2000 Final Report addresses HUD’s policy with respect to the above safe harbors. If a state or locality has adopted one of the above documents without modification to the provisions that address the Act’s design and construction requirements, a building that is subject to these requirements will be deemed compliant provided the building is designed and constructed in accordance with construction documents approved during the building permitting process and the building code official does not waive, incorrectly interpret, or misapply one or more of those requirements. However, neither the fact that a jurisdiction has adopted a code that conforms with the accessibility requirements of the Act, nor that construction of a building subject to the Act was approved under such a code, changes HUD’s statutory responsibility to conduct an investigation, following receipt of a complaint from an aggrieved person, to determine whether the requirements of the Act have been met. Nor does either fact prohibit the Department of Justice from investigating whether violations of the Act’s design and construction provisions may have occurred. The Act provides that: “determinations by a State or unit of general local government under paragraphs 5(A) and (B) shall not be conclusive in enforcement proceedings under this title.”

HUD’s investigation of an accessibility discrimination complaint under the Act typically involves a review of building permits, certificates of occupancy, and construction documents showing the design of the buildings and the site, and an on-site survey of the buildings and property. During the investigation, HUD investigators take measurements of relevant interior and exterior elements on the property. All parties to the complaint have an opportunity to present evidence concerning whether HUD has jurisdiction over the complaint, and whether the Act has been violated, as alleged. In enforcing the design and construction requirements of the Fair Housing Act, a prima facie case may be established by proving a violation of HUD’s Fair Housing Accessibility Guidelines. This prima facie case may be rebutted by demonstrating compliance with a recognized, comparable, objective measure of accessibility. See Order on Secretarial Review, U.S. Department of Housing and Urban Development and Montana Fair Housing, Inc. v. Brent Nelson; HUD ALJ 05-068FH (September 21, 2006) (2006 WL. 4540542 (H.U.D. A.L.J.).
In making a determination as to whether the design and construction requirements of the Fair Housing Act have been violated, HUD uses the Fair Housing Act, the regulations, and the Guidelines, which reference the technical standards found in ANSI A117.1-1986.

It is the Department’s position that the above-named documents represent safe harbors only when used in their entirety; that is, once a specific safe harbor document has been selected, the building in question should comply with all of the provisions in that document that address the Fair Housing Act design and construction requirements to ensure the full benefit of the safe harbor. The benefit of safe harbor status may be lost if, for example, a designer or builder chooses to select provisions from more than one of the above safe harbor documents or from a variety of sources, and will be lost if waivers of provisions are requested and received. A designer or builder taking this approach runs the risk of building an inaccessible property. While this does not necessarily mean that failure to meet all of the respective provisions of a specific safe harbor will result in unlawful discrimination under the Fair Housing Act, designers and builders that choose to depart from the provisions of a specific safe harbor bear the burden of demonstrating that their actions result in compliance with the Act’s design and construction requirements. HUD’s purpose in recognizing a number of safe harbors for compliance with the Fair Housing Act’s design and construction requirements is to provide a range of options that, if followed in their entirety during the design and construction phase, will result in residential buildings that comply with the design and construction requirements of the Fair Housing Act, so long as they are applied without modification or waiver.

IV. Conclusion

Through this report, the Department is formally announcing that it has assessed the provisions of the 2006 International Building Code, as corrected by the January 31, 2007 erratum, that relate to facilities covered by the Act. HUD has determined that these provisions, when interpreted in accordance with relevant 2006 IBC commentary, are consistent with the Act, HUD’s regulations, and the Fair Housing Accessibility Guidelines. Therefore, the 2006 IBC, as corrected by the January 31, 2007 erratum to the IBC, if adopted without modification and without waiver of any of the provisions intended to address the Fair Housing Act’s design and construction requirements, constitute a safe harbor for compliance with the design and construction requirements of the Act, HUD’s regulations and the Guidelines, and interpreted in accordance with relevant 2006 IBC commentary. The Department looks forward to continuing to work with members of the housing industry, persons with disabilities and advocacy organizations, model code officials, state and local governments, fair housing organizations and all other interested parties on our common goal of eliminating discrimination against persons with disabilities and eliminating structural barriers to housing choice for persons with disabilities. 24

Environmental Impact

This report is a policy document that sets out fair housing and nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this report is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321).
Press Release: HUD LAUNCHES EDUCATION AND OUTREACH PROGRAM TO CREATE MORE BARRIER-FREE HOUSING

Program Educates Building and Design Industries about Accessibility Provisions of Fair Housing Act

WASHINGTON - A Department of Housing and Urban Development initiative recently announced will allow homebuilders, developers, architects and designers to have access to the latest training and technical guidance on how to comply with accessible design and construction requirements of the Fair Housing Act.

HUD has dubbed its comprehensive campaign, which includes formal training, a website and a technical guidance resource center, Fair Housing Accessibility FIRST.

"The education and outreach activities of this project will help to make those in the housing industry more aware of their responsibilities under the Fair Housing Act," said Carolyn Y. Peoples, HUD assistant secretary for fair housing and equal opportunity. "Housing discrimination contradicts the principles of freedom and opportunity we treasure as Americans."

According to Peoples, the Fair Housing Accessibility FIRST program is intended to educate and inform people about the Act's requirements before design and construction begins, thus avoiding costly retrofitting by builders and increasing housing opportunities for persons with disabilities.

Training is a major component of HUD's efforts. The training curriculum consists of nine modules that can be presented individually or in any combination. The modules include: an overview of the fair housing act accessibility requirements; disability rights laws; enforcement of the act; strategies for compliant kitchens; strategies for compliant bathrooms; common design and construction violations and solutions; accessible routes; and accessible public and common-use areas.

The newly developed website (http://www.fairhousingfirst.org/) contains information about educational and legal materials, best practices, a training and conference calendar, frequently asked questions, and links to related sites.

The Design and Construction Resource Center has experts who can answer questions about legal and technical requirements of Act. The program is being implemented by BearingPoint, Inc. The Center's toll-free number is (888) 341-7781, and is staffed Monday through Friday, 9 AM - 5 PM (ET). Questions can also be emailed to contact@fairhousingfirst.org, or visit http://www.fairhousingfirst.org/
1. What are the Fair Housing Act's requirements for housing to be accessible?

The Fair Housing Act requires all "covered multifamily dwellings" designed and constructed for first occupancy after March 13, 1991 to be accessible to and usable by people with disabilities. Covered multifamily dwellings are all dwelling units in buildings containing four or more units with one or more elevators, and all ground floor units in buildings containing four or more units, without an elevator. Federal regulations adopted by the Department of Housing and Urban Development at 24 CFR 100.201 define covered multi-family dwellings.

Return To Top

2. Where can I find the accessibility standards for dwelling units required to be accessible under the Fair Housing Act's design and construction requirements?

The Fair Housing Act requires seven basic requirements that must be met to comply with the access requirements of the Act. Those Requirements are:

Requirement 1. An accessible building entrance on an accessible route.
Requirement 2. Accessible common and public use areas.
Requirement 3. Usable doors (usable by a person in a wheelchair).
Requirement 4. Accessible route into and through the dwelling unit.
Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.

These requirements are stated in the Fair Housing Act, as amended, 42 U.S.C. 3604(f)(3)(C). To describe these requirements in more detail, HUD published Fair Housing Accessibility Guidelines (the Guidelines) on March 6, 1991, and supplemented those Guidelines with a Supplemental Notice: Questions and Answers About the Guidelines published on June 28, 1994. The Guidelines are one of seven safe harbors for compliance that HUD has identified.

Return To Top

3. What are the seven "safe harbors" for compliance with the Fair Housing Act and where I can I find them?

HUD recognizes seven safe harbors for compliance with the Fair Housing Act's design and construction requirements. They are:

2. HUD Fair Housing Act Design Manual

HUD's adoption of these standards is found in the Preamble to the Fair Housing Act Design Manual (1998). Information about how to get copies of the above standards is found elsewhere on this website.
4. Why are there so many new townhouse developments that have more than one level and that aren't accessible? Doesn't the Fair Housing Act's design and construction requirements prohibit them?

The Fair Housing Act's design and construction requirements do not cover multistory townhouses—units that have two, three, or even four stories—unless the building has an elevator. There is a discussion of townhouses in the preamble to the Guidelines under "Section 2-Definitions [Covered Multifamily Dwellings]" at 56 FR 9472, 9481, March 6, 1991. A copy of the preamble to the Guidelines is contained in the Fair Housing Act Design Manual in Appendix B.

5. Does the Fair Housing Act require any minimum number of accessible dwelling units?

No, the Fair Housing Act's design and construction requirements do not require a minimum number of accessible dwelling units. If a building with four or more units that does not have an elevator is covered, all (100%) of the ground floor units must be accessible, and if the building has an elevator, all (100%) of the units in the building must be accessible. Other federal, state or local codes sometimes require a specified number of units to be accessible.

6. Do the Fair Housing Act's design and construction requirements require fully accessible units?

No, the Fair Housing Act does not require fully accessible units. Although the requirements apply to a broad number of dwelling units, the Act's design and construction requirements are modest and result in units that do not look different from traditional units but can be easily adapted by people with disabilities who require features of accessibility not required by the Fair Housing Act.

7. Under the Fair Housing Act's design and construction requirements, how many resident parking spaces must be made accessible at the time of construction?

A minimum of two percent of the number of parking spaces serving covered dwelling units must be made accessible and they must be located on an accessible route; if different types of parking are offered, such as surface parking, garage, or covered spaces, a sufficient number of each type must be made accessible. Fair Housing Act Design Manual, page 2.23.

If buyers or renters request an accessible space at the time of the first sale or rental, it may be necessary to provide additional accessible parking spaces if the two percent are already reserved. These spaces must be offered on the same terms and with the full range of choices offered to others.

If additional spaces are needed as a reasonable accommodation to a person with a disability after the buildings are constructed, additional accessible parking spaces may be required.

8. Do the Fair Housing Act's design and construction requirements apply to alteration or renovation of properties?

No, alterations, rehabilitation or repair of covered multifamily dwellings are not covered because the Act's design and construction requirements only apply to new construction of buildings built for first occupancy after March 13, 1991. However, a covered multifamily dwelling that has been constructed to comply with the law cannot later be altered to make it non-compliant with the law. Additions of four or more units are covered by the design and construction requirements. Fair Housing Act Design Manual, page 11, Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines, 59 FR 33362-33368, June 28, 1994.
9. Do the Fair Housing Act’s design and construction requirements apply to detached single-family homes?

No, the Fair Housing Act’s design and construction requirements only apply to covered multifamily dwellings—buildings that have four or more units. In buildings that have an elevator, all of the units are covered. If the building does not have an elevator, all of the ground floor units are covered. This includes single-family homes when there are four or more in the building (for example, condominiums). However, detached single-family houses are not covered by the Fair Housing Act’s design and construction requirements. Although the Fair Housing Act’s design and construction requirements may not apply to detached single-family homes, the Fair Housing Act’s other provisions, such as nondiscrimination in sales, rental, or financing practices, do apply.

Other laws may require accessibility in detached single-family houses.

10. Do any accessibility requirements apply to detached single-family homes?

Detached single family homes that are funded in any way by federal, state, or local funds may be required to be accessible under laws other than the Fair Housing Act. These laws, particularly Section 504 of the 1973 Rehabilitation Act and Title II of the Americans with Disabilities Act, have requirements for accessibility. For example, detached single family houses funded through the HOPE VI program operated by the Department of Housing and Urban Development (HUD), whether for sale or rental, must comply with HUD’s requirements for Section 504. This includes making at least 5% of the units accessible to persons with mobility impairments and at least 2% of the units accessible to persons with vision and hearing impairments. The applicable standard for compliance is the Uniform Federal Accessibility Standard or UFAS.

11. Do the Fair Housing Act’s design and construction requirements cover condominiums?

Yes. The Fair Housing Act’s design and construction requirements cover condominiums in covered multifamily dwellings; the design and construction requirements make no distinctions based on ownership.

12. How do the Fair Housing Act’s design and construction requirements affect existing State and local building codes?

Existing state and local codes remain in effect. The Fair Housing Act has no effect on existing state or local codes that require greater accessibility than the Fair Housing Act requires. However, if a state or local code requires less accessibility than the Fair Housing Act, the Fair Housing Act requirements will prevail and must be followed.

13. If builders, architects, developers or others believe that a property with which they were involved is covered by the Fair Housing Act’s design and construction requirements but does not comply with them, what can they do?

They should seek technical assistance from a consultant with expertise in the Fair Housing Act’s design and construction requirements about a plan to correct the violations. They may also consult with a private lawyer for assistance. The FIRST website provides more information about the accessible standards for compliance.
14. If someone thinks s/he have been discriminated against because housing built since March 13, 1991 does not meet the Fair Housing Act's accessibility requirements, what should they do?

They may contact the United States Department of Housing and Urban Development (HUD) to discuss the possibility of filing an administrative complaint that will be investigated by HUD or by a state or local agency that enforces a law that is equivalent to the Fair Housing Act. They may also consult with a private fair housing group or with a private lawyer for assistance.

Return To Top

15. The Fair Housing Act was amended to cover people with disabilities in 1988, but its accessibility requirements only apply to housing built after 1991. Why?

Before Congress passed the law in 1988, no federal law required private housing to be accessible unless it was funded with federal dollars. That meant that the Fair Housing Act represented a major change in housing law. Congress delayed the effective date for the access provisions to give developers, builders, and architects more time to incorporate the new access standards into their building plans.

Return To Top

16. What is the effective date of the Fair Housing Act's design and construction requirements and why is it a different date from the date the rest of the changes adopted by Congress in 1988 went into effect?

The Fair Housing Act's design and construction requirements apply to housing that was designed and constructed for first occupancy after March 13, 1991. They apply to properties that were occupied after that date and those where the last building permit or renewal of a building permit was issued after June 15, 1990.

Other requirements in the Fair Housing Act, such as those generally forbidding discrimination based on disability and requiring that reasonable accommodations and reasonable structural modifications be made if they are necessary for a person with a disability to use housing, went into effect on March 12, 1989, six months after the amendments were passed by Congress.

Return To Top


The determination of first occupancy is made on a building-by-building basis. The Fair Housing Act regulations provide that "covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991 (and therefore not covered by the Act's accessibility requirements) if they are occupied by that date or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, county or local government on or before June 15, 1990." See Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines, 59 FR 33362-33368, June 28, 1994, question 8.

Return To Top

18. Does HUD review plans for compliance with the design and construction requirements of the Fair Housing Act?

No. Under the Fair Housing Act, HUD is not required to review or approve builder's plans or issue certifications of compliance with the Fair Housing Act's design and construction requirements. 42 U.S.C. 3604(f)(5)(D). The burden of compliance rests with the person or persons who design and construct covered multifamily dwellings. See the Fair Housing Act Design Manual, page 2; HUD does provide training and technical assistance about interpretations of the law, regulations, the Guidelines and so forth, including through the Fair Housing Accessibility FIRST project.

Return To Top
19. If someone is successfully sued under the Fair Housing Act, will a court order the building to be torn down and rebuilt?

No judge has ever ordered a non-compliant building to be torn down, nor has any federal law enforcement agency requested that kind of remedy. Typical remedies sought in Fair Housing Act access cases include requiring full retrofitting where that is possible, building additional accessible units in other locations, funding accessibility changes to individual units when the units become vacant, or with the agreement of occupants, and other creative options. However, maximizing accessibility and providing at least as many accessible units as should have been provided in the property are likely to be key relief that will be sought in such cases.

Return To Top

20. Who can be sued for violations of the design and construction requirements of the Fair Housing Act?

The following persons and entities may be sued:

1. Any person or entity involved in the design and construction of the building may be held liable for violations of the Act.
2. A later owner of a building may be held liable if the later owner makes structural changes so that the building does not meet the access requirements.
3. A person or entity that has bought a building or property after it was designed and constructed may be sued when that person or entity is necessary to provide authority to remedy violations.

Individual owners or occupants of inaccessible units who were not involved in building, developing, or managing them, and who own only individual units will not be named in HUD complaints.

Return To Top

21. Are there other accessibility issues that are not addressed by the design and construction requirements that can still be challenged as violating other provisions of the Fair Housing Act?

Yes. In some situations, design and construction-related issues may be challenged as violating other provisions of the Fair Housing Act. In some instances, design or construction of some features are not required by the design and construction requirements, but they may be requested by applicants or residents as reasonable accommodations or reasonable structural modifications. Depending on which law or laws apply, builders, developers, owners, managers and others may be required to provide reasonable accommodations in existing properties, or to permit reasonable structural modifications to existing properties which provide greater or different levels of accessibility than the design and construction requirements.

For example, an applicant or resident may need grab bars installed. Although installation of grab bars is not required under the Fair Housing Act's design and construction requirements, permitting the installation of grab bars at the expense of the applicant or resident may be required as a reasonable structural modification. In federally funded properties, grab bar installation may be required in order to comply with applicable federal laws, or as a reasonable accommodation to the disability-related needs of the applicant or resident.

Return To Top

22. What kind of housing is covered by the Fair Housing Act's access requirements?

Almost all types of housing with four or more units in one building that have been designed and constructed since March 13, 1991 are covered. This includes condominiums, apartment buildings, vacation or other time share units, assisted living projects, public housing authorities, HOPE VI projects, projects funded with HOME or other federal funds, transitional housing, and SROs (single room occupancy units) designed for more than overnight stays, dormitory rooms, homeless shelters used as a residence, cooperatives, hospices, and more.

If there is at least one elevator in the building, all units must comply. If there is no elevator, all of the ground floor units must comply.
23. How do the Fair Housing Act's accessibility requirements apply when historic preservation codes are involved?

Existing buildings that are converted to dwelling units are not subject to the Act's access requirements because they are not newly constructed for first occupancy after March 13, 1991. New construction in historic areas must comply with the Fair Housing Act, and building code requirements for historic preservation should not conflict with access requirements. If there is a conflict involving new construction in areas of historic preservation, the federal requirements must still be met. Further discussion is found in the Preamble to the Guidelines, 56 FR 9472, 9477 (March 6, 1991).

24. Does a condominium unit that is pre-sold and custom designed during construction for a particular purchaser have to comply with the access requirements in the Fair Housing Act?

Yes. The fact that a condominium unit is sold before the completion of construction does not exempt a developer from compliance with the access requirements. The access requirements are mandatory regardless of the ownership status of the individual unit. Preamble to the Guidelines, 56 FR 9472, 9481 (March 6, 1991), Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines, 59 FR 33362-33368, June 28, 1994, question 3(b).

25. Are buildings with covered dwellings that are separated by firewalls treated as separate buildings under the Fair Housing Act?


26. Does the separation of units with breezeways affect whether or not a building has four or more dwelling units under the Act's design and construction requirements?

No. In situations where the dwelling units are connected by a covered walkway (a breezeway) or stairs that are structurally tied to the main body of the building, the dwelling units are considered to be in a single building. Ground floor units in these buildings, if there is no elevator, are covered by the Fair Housing Act's design and construction requirements. Fair Housing Act Design Manual, Page 10.

27. Are the public and common use areas of a newly constructed development that consists entirely of buildings that have no covered dwelling units required to be accessible under the Fair Housing Act?

If there are no covered multifamily dwellings on a site, then the public and common use areas of the site are not required to be accessible under the Fair Housing Act. Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines, 59 FR 33362-33368, June 28, 1994, question 13.

However, the Americans with Disabilities Act (Title III) may apply to certain areas that serve the public. The Americans with Disabilities Act (Title II) may apply to housing that is operated by public entities such as state or local governments. Section 504 of the 1973 Rehabilitation Act may apply to public and common use areas of properties that are operated by entities that receive federal financial assistance. An independent determination should be made regarding whether or not the ADA or Section 504 may apply and require accessibility when the Fair Housing Act

Revised: Jan 2016  47
28. Are multistory townhouses required to comply with the Fair Housing Act’s design and construction requirements? What if a multistory townhouse is located in an elevator building?

The Fair Housing Act applies only to new construction of covered multifamily dwellings. Multistory townhouses, provided that they meet the definition of "multistory" in the Guidelines, are not covered multifamily dwellings if the building does not have an elevator. There is a discussion of townhouses in the Preamble to the Fair Housing Act Regulations, 54 FR 3243-44, January 23, 1989, and in the Preamble to the Guidelines at 56 FR 9472, 9481, March 6, 1991.

If an elevator building has multistory townhouses, the story of the unit that is served by the elevator must be the primary entrance level, and that level must comply with design and construction Requirements 3-7 and must include an accessible bathroom or powder room. If both a bathroom and a powder room are on the accessible level, the bathroom must comply. Further discussion of this issue is found in the Fair Housing Act Design Manual, page 4.9.

29. Are multistory townhouses that contain individual elevators considered to be covered multifamily dwelling units subject to the Fair Housing Act’s design and construction requirements?

Yes. The Fair Housing Act defines "covered multifamily dwellings" as buildings consisting of four or more units, if such buildings have one or more elevators and ground floor dwelling units in other buildings consisting of four or more dwelling units. Covered multifamily dwellings must comply with the design and construction requirements of the Fair Housing Act.

A multistory dwelling unit (defined as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it, Guidelines, Section 2, Definition of Multistory Dwelling Unit) that is located in a building with four or more units is not covered by the design and construction requirements of the Fair Housing Act if the building does not have an elevator. A multistory townhouse is covered by the requirements if there are four or more units in the building and the building contains one or more elevators. Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, 59 FR 33362-33368, June 28, 1994, question 13 and see Preamble to the Fair Housing Act regulations, 54 Fed. Reg. 3244 (1989), “the Department continues to believe that townhouses consisting of more than one story are covered only if they have elevators and if there are four or more such townhouses.”

In addition, the Preamble to the proposed Guidelines, at 55 FR 24370, 24377, June 15, 1990, states:

"In the proposed and final rulemaking, the Department stated that a dwelling unit with two or more floors in a non-elevator building is not a “covered dwelling unit” even if it has a ground floor entrance, because the entire dwelling unit is not on the ground floor. (Of course, if the unit had an internal elevator, it would be subject to the Fair Housing Act requirements.)"

Therefore, multistory townhouses with private elevators are covered by the design and construction requirements, assuming that there are four or more units in the building.

30. If a freight elevator in a building with covered dwellings is the only elevator provided, is the building covered by the design and construction requirements?

Yes, the presence of a freight elevator, even where there is no passenger elevator, makes the building an elevator building and requires all units to comply with the Fair Housing Act's access requirements.

31. Can an elevator in a building serve just some units?
An elevator that is installed in a building and that serves one or more units makes the building an elevator building. All units in an elevator building must comply with Fair Housing Act access requirements. The Fair Housing Act Design Manual, page 1.21-1.22 discusses access requirements in elevator buildings in more detail.

An exception to this general rule occurs when an elevator is provided only as a means of creating an accessible route to dwelling units on a ground floor. In that case, the elevator is not required to serve dwelling units on floors that are not ground floors, and the building is not considered to be an elevator building. Only the ground floor units served by this elevator are required to meet the requirements of the Guidelines. The Fair Housing Act Design Manual, page 1.31, illustrates this situation.

If an elevator building has multistory townhouses, the story of the unit that is served by the elevator must be the primary entrance level, and that level must comply with design and construction Requirements 3-7 and must include an accessible bathroom or powder room. If both a bathroom and a powder room are on the accessible level, the bathroom must comply. Further discussion of this issue is found in the Fair Housing Act Design Manual, page 4.9.

32. Are carriage house type units--where a dwelling unit is constructed over a garage--covered by the Fair Housing Act design and construction requirements?

If an individual stacked flat unit incorporates parking that serves only that unit, and the dwelling footprint is located over the footprint of the garage below, the unit is treated like a multistory unit and is not covered. However, if the stacked flat unit is not in the footprint of the garage below, i.e., where several flat units are located over a common garage, the units are covered, and must be accessible.

33. What properties does Section 504 of the 1973 Rehabilitation Act cover?

Section 504 covers properties if they are constructed, renovated, operated or purchased by a recipient of federal financial assistance. If the federal financial assistance comes from HUD and the project contains five or more units, HUD's regulations require that at least one unit, or a minimum of 5% of the dwelling units (whichever is the greater number) constructed or renovated, must be accessible to people with physical disabilities and at least one unit or a minimum of 2% of the units (whichever is the greater number) must be accessible to people with hearing and vision disabilities. The 5% and 2% requirements are floors, not ceilings. 24 CFR 8.22 and 8.23.

The 5% and 2% requirements apply to each "project" that receives federal financial assistance. The term "project" includes units that are covered by a single contract or application for federal assistance. A housing development located on a single site may consist of several "projects" as defined in HUD's regulations; when this happens the 5% and 2% requirements applied to each "project" may require more units to be made accessible than if the 5% and 2% were applied to the development as a whole. On the other hand, a "project" might consist of dwelling units located on several scattered sites but funded by one contract or application for federal assistance. When this happens, the 5% and the 2% requirements apply to the total number of dwelling units covered by the contract or application.

34. If Section 504 and the Fair Housing Act apply to the same property, which standard applies?

If housing was built for first occupancy after March 13, 1991 and federal financial assistance is involved, both laws apply and the accessibility standards under both laws must be used. Preamble to the Guidelines, 56 FR 9472, 9477 and 9479, March 6, 1991.

35. If the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Fair Housing Act requirements both apply to the same property, which standard should be used?

Title III of the ADA, in relevant part, applies to commercial facilities and public accommodations. Inns, hotels, motels,
and other places of lodging are public accommodations under Title III of the ADA, as are dormitories, homeless shelters, nursing homes, and some timeshares. See 28 CFR 36.104. In addition, the common areas that are for public use at "covered multifamily dwellings" under the Act must meet the ADA Standards for Accessible Design (ADA Standards). For example, a rental office in a multifamily residential development or a convenience store located in that development would be covered under Title III of the ADA. 28 CFR 36.104. Common use areas that are for use only by the residents and their guests would not be covered by the ADA.

The Fair Housing Act's design and construction requirements do not preempt the ADA and in those cases where a development is subject to more than one accessibility standard, the laws and the standards must be read together and followed together.

There are certain properties, or portions thereof, that are covered by both the Act and Title II and/or Title III of the ADA. These may include certain timeshares, dormitories, residential hotels, boarding houses, nursing homes, homeless shelters, congregate care facilities, public use portions of private multifamily dwellings, and public housing. These properties must be designed and built in accordance with the accessibility requirements of both the Act and the ADA. In addition, to the extent that the requirements of these various laws overlap, the more stringent requirements of each law must be met, in terms of both scoping and technical requirements.

In the preamble to its rule implementing Title III, DOJ discussed the relationship between the requirements of the Fair Housing Act and the ADA. The preamble noted that many facilities are mixed use facilities. For example, a hotel may allow both residential and short term stays. In that case, both the ADA and the Fair Housing Act may apply to the facility. The preamble to the Title III rule also stated that residential hotels, commonly known as "single room occupancies," may fall under the Fair Housing Act when operated or used as long term residences, but they are also considered "places of lodging" under the ADA when guests are free to use them on a short term basis. The preamble also discussed a similar analysis with respect to homeless shelters, nursing homes, residential care facilities, and other facilities where persons may reside for varying lengths of time. The preamble concluded that such facilities should be analyzed separately under both the Fair Housing Act and the ADA. 56 FR at 3551-52.
financial assistance. Section 504 requires that "programs and activities" such as a rental office be accessible. When physical accessibility cannot be provided, access to rental office services must be made available in some other way.

39. Is a single family home which is being designed and constructed to be a group home covered by the design and construction requirements if it contains four or more sleeping rooms and shared kitchens or baths?

A single family house that will be occupied by four or more unrelated persons that functions as one distinct household, such as what is commonly referred to as a "group home", is not considered to be a "covered multifamily dwelling" for purposes of the application of the design and construction requirements of the Act, even if it contains four or more sleeping areas. This interpretation is consistent with case precedent and the position of the Department of Housing and Urban Development and the Department of Justice with respect to the application of zoning and land use restrictions to single family group homes.

On the other hand, each sleeping room occupied by a separate household in a building with shared toileting or kitchen facilities is a separate dwelling unit, and buildings with four or more of these sleeping rooms are covered multifamily dwellings for purposes of the Fair Housing Act's design and construction requirements.

40. Under Section 504, what is the accessibility standard?

The access standard for units covered by Section 504 is the Uniform Federal Accessibility Standards or UFAS. Changes to this standard and issuance of a new standard are currently under consideration.

41. Why isn't there one uniform accessibility standard for compliance with the Fair Housing Act's design and construction requirements?

Congress did not provide statutory authority for one national uniform set of accessibility standards. Although one uniform accessibility standard is desirable, there are many ways for buildings to be built to be accessible. HUD has noted that the ANSI (American National Standards Institute) standard was the design basis for the Fair Housing Accessibility Guidelines, and that it is also the underlying standard for the Uniform Federal Accessibility Standards (UFAS) and many state and local codes. Preamble to the Guidelines, 56 FR 9472, 9478-79, March 6, 1991.

HUD recognizes seven safe harbors for compliance with the design and construction requirements of the Fair Housing Act. They are:

2. HUD Fair Housing Act Design Manual

42. If a property is built to some standard other than one of the safe harbors, can it still comply with the Fair Housing Act's access requirements?

Yes. HUD said in the Introduction to the Accessibility Guidelines, "builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair
Housing Act." The standard employed must meet all of the design and construction requirements specified in the Fair Housing Act and HUD's Fair Housing Act regulations, and provide the same or a stricter degree of accessibility than the recognized safe harbors. Fair Housing Act Design Manual, page 13. Preamble to the Guidelines, 56 FR 9478-79, March 6, 1991. The purpose of the Fair Housing Act Guidelines is "to describe the minimum standards of compliance with the specific accessibility requirements of the Act." Preamble to the Guidelines, 56 FR 9472, 9476, March 6, 1991.

43. The local code office has refused to review plans to see if they comply with the Fair Housing Act. If my building doesn't comply with fair housing requirements, can I sue my local code office?

We cannot provide any indication about whether or not someone can be sued in this situation. The Fair Housing Act provides that the Secretary of HUD may encourage, but may not require, state and local government permitting agencies to review building plans for compliance with the Act.

44. Can an accessible route be an indirect route? Can it have locks or a call button for its use?

HUD requires that an accessible route not be hidden, remote, circuitous or require people with disabilities to travel long distances. It also requires that use of an accessible route not place requirements, like a special key, an attendant, or additional waiting periods, on people with disabilities. Providing an accessible route that has different and less favorable conditions for people with disabilities than for people without disabilities may violate the Fair Housing Act because it amounts to a difference in terms and conditions of housing based on disability. However, imposing key requirements or other special access provisions, or providing an indirect route does not violate the law if those requirements apply to all people and not just people with disabilities.

45. Which entrance or entrances to a covered unit must be accessible? Can the accessible entrance be a patio door or a back door?

An entrance is an exterior access point used by residents for the purpose of entering the building. Using a patio door or a secondary door like a back door as the only accessible entrance establishes different terms and conditions for people with disabilities. This practice may also require a person with disabilities to use long or circuitous routes, which violates the Act. This principle was recently affirmed in United States v. Edward Rose Construction Co., Civil Action No. 02-73518, (W.D. MI, 2003) where the court said, "HUD interprets the Act such that a primary entrance is part of the public or common use areas, regardless of whether it opens from the interior or exterior. If this is true, then, it must comply with the FHA accessibility requirements, even if there is a secondary entrance that is adequately accessible. A 'primary entrance,' it seems, is one that is on an accessible route and is most likely to be used as such, particularly when it is most convenient to parking."

46. Under the Fair Housing Act's design and construction requirements, may an accessible entrance be through a loading dock or service door?

No. See Guidelines, Definition of "Entrance," which states, "For purposes of these guidelines, an "entrance" does not include a door to a loading dock or a door used primarily as a service entrance, even if non-handicapped residents occasionally use that door to enter." Fair Housing Accessibility Guidelines, 56 FR 9472, 9482, March 6, 1991.

47. If a required accessible route has a slope of more than 5%, is this portion of the route a walkway or a ramp?
It is a ramp and must meet the requirements for ramps, including slopes not to exceed 8.33%, handrails on both sides, edge protection, and comply with all other applicable specifications of ANSI A117.1.

48. Why must the routes between public and common use areas and dwelling units be accessible?

Requirement 1 requires that at least one building entrance be located on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site. Requirement 2 requires an accessible route that connects accessible elements and spaces in a building or within a site, such as between common and public use areas and dwelling units.

49. Do the Fair Housing Act's design and construction requirements require accessible routes between buildings that contain only covered multifamily dwellings?

No, accessible routes, walks, or paths between buildings containing only covered dwelling units are not required. Fair Housing Act Design Manual, page 2.16. However, accessible routes between buildings with covered dwellings are encouraged on sites with slopes that do not exceed 8.33% between buildings. Such voluntary accessible routes should meet the same specifications as required accessible routes except that handrails are not required. Fair Housing Act Design Manual, page 1.8.

50. Must an accessible route between public and common use areas and dwelling units be an interior route if the general circulation path is interior?

An accessible route between public and common use areas and dwellings may be interior or exterior. However, if the general circulation path is interior, it would not be appropriate to provide only an exterior accessible route for persons with disabilities. The Guidelines require equitable use of covered multifamily dwellings for persons with disabilities and require public and common use areas to be "readily accessible to and usable by" persons with disabilities. Requiring persons with disabilities to go outside of a building to access a public and common use area when persons without disabilities are not required to do so is not consistent with these provisions. Further, the Fair Housing Act prohibits providing housing to persons with disabilities on different terms and conditions. Requiring persons with disabilities to travel outside while persons without disabilities travel inside would be a different term or condition of housing.

51. When swimming pools are provided as a public and common use amenity, what are the accessibility requirements under the Fair Housing Act?

Requirement 2 covers recreational facilities such as swimming pools. Fair Housing Act Design Manual, Chart 2.4, Diagram 2.8. A swimming pool must be located on an accessible route, but there is no requirement that an accessible route be provided into the pool. In addition, a door or gate accessing the pool must meet Requirement 3 and the route must provide access to the deck around the pool.

52. Do the Fair Housing Act design and construction requirements contain a height requirement for vertical clearance in a garage?

No, Fair Housing Act standards do not require a particular vertical clearance for garages for van access. Preamble, Guidelines for Requirement 2, Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines, 59 FR 33362-33368, June 28, 1994, question 14(d). However, if a parking garage provides a passenger-loading zone, such as near the lobby or an elevator, the passenger-loading zone would have...
to meet applicable ANSI provisions 4.6, "Parking in Passenger Loading Zones," including the requirement for a minimum vertical clearance of 108 inches.

53. If new covered multifamily dwellings are added to housing that was constructed before March 13, 1991 do the public or common use areas have to be retrofitted to be accessible?

No. Although new covered multifamily dwellings constructed after March 13, 1991 have to comply with the Act's access requirements, public and common use areas constructed before that date do not have to be modified to comply with the Act's requirements. On the other hand, where a new covered multifamily dwelling shares a non-accessible entrance with an existing building, an accessible entrance must be provided for the new building. Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines, 59 FR 33362-33368, June 28, 1994, question 4(c).

54. May an accessible route that complies with the Fair Housing Act's design and construction requirements that goes through a public and common use area be blocked by later installation of equipment or furnishings?

No, accessible routes in public and common use areas may not be blocked by later installation of equipment or furniture provided by the property.

55. Are garbage dumpsters required to be accessible under the design and construction requirements?

The garbage dumpster itself is not covered by the design and construction requirements. However, a sufficient number of garbage dumpsters must be located on an accessible route. If an enclosure is built around the dumpster, the opening must have a 32 inch clear width and an accessible route must be provided to the dumpster door. If parking is provided at the dumpster, accessible parking must also be provided.

56. Where must the required clear opening at doors be measured?

With the door open 90 degrees; the clearance is measured between the face of the door and the opposing doorstop. The primary entrance door to dwellings and public and common use doors must have a 32-inch minimum clear opening. Passage doors within a dwelling must have a nominal 32-inch clear opening. Preamble to the Guidelines, 56 FR 9472, 9487, Guidelines for Requirement 3, March 6, 1991.

57. If a bathroom has more than one entrance door, must all doors comply with access requirements?

Yes, all doors that are for user passage must meet access requirements and provide a nominal 32-inch clear opening.

58. What is a nominal 32-inch clear opening?

A nominal 32-inch clear opening measures at least 31 and 5/8 inches from the face of the door to the opposing doorstop when the door is open 90 degrees.
60. Can a unit have a loft or a sunken living room, and still be compliant with the Act's requirements?

Yes, as long as the loft, or sunken living room, does not interrupt the required accessible route throughout the rest of the unit. A loft (defined as an intermediate level between the floor and the ceiling of a story, located within a room) may be provided without providing an accessible route to the loft. A unit with a loft is treated as a single-story unit; therefore inclusion of a loft does not make a unit a multistory townhouse that is not covered by the Fair Housing Act's requirements because a loft is not the same as a second story. The Guidelines specify that kitchens and all bathrooms, including powder rooms, must be on an accessible route; therefore a kitchen, bathroom, or powder room may not be located in a loft, or in a raised or sunken area, unless an accessible route is provided to the loft.

Because a unit with a loft is a single-story unit, all primary or functional living spaces must be on an accessible route. Secondary living spaces, such as a den, play area, or an additional bedroom, are the only spaces that may be in a loft unless an accessible route is provided to the loft. See Fair Housing Act Design Manual, page 4.7.

61. May a unit have both a sunken area and a loft?

No, only one non-accessible design feature is allowed per unit. Other changes in level are allowed only if they are served by an accessible route. Fair Housing Act Design Manual, page 4.9.

62. From where is the 3/4” maximum height of thresholds measured?

The maximum height of a threshold is measured from the finished floor of the dwelling unit. If carpet is installed and the pad is included, the measurement should be calculated with a fully compressed carpet and pad. Fair Housing Act Design Manual, page 4.11, 4.12.

63. Are entrances to showers required to have a flat or beveled entrance?

No. A shower stall may have a curb. However, a flat or beveled entrance makes the shower stall more accessible to people with disabilities. One recommended way of making an entrance to a shower stall more accessible is to provide a 1/2 inch maximum threshold beveled at 1:2. Fair Housing Act Design Manual, page 7.59.

64. Do special electrical outlets for refrigerators, ovens, washers and dryers have to be in accessible locations?

No. Electrical outlets installed to serve individual appliances, such as refrigerators or built-in microwave ovens, may be mounted in non-accessible locations. These are not the type of electrical outlets which a disabled resident or tenant would need access to on a regular or frequent basis. Preamble, Fair Housing Act Accessibility Guidelines, 56 FR 9472, 9491 (March 6, 1991).

65. Are light and fan switches that are located on stoves required to be accessible?

No. Switches that are located on stoves are appliance controls that are not covered by the Act. Range hood fan switches located on the range hood are not required to be located in accessible locations. Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, 59 FR 33362-33368, question 22.
However, if a range hood fan or light is wired to a separate switch on a wall or somewhere other than on the hood, range or cook top, then the control must be in an accessible location. The Fair Housing Act Design Manual contains additional discussion about switch locations at pages 5.3-5.4. Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines, 59 FR 33362-33368, June 28, 1994, question 22.

66. What kinds of switches are NOT covered by Requirement 5?

Switches or controls that are not covered by Requirement 5 include appliance mounted controls, telephone jacks, circuit breakers, and garbage disposal switches. Controls for security and intercom switches within the unit are not covered, but such controls in public and common use areas are covered.

67. What parts of outlets and switches must be within the reach ranges specified in the Guidelines?

For accessible controls and outlets, all operable parts must be within the required reach ranges. The height is measured from the finished floor to the highest or lowest operable part of the outlet or switch. When electrical outlets are installed horizontally or vertically, duplex outlets must have both receptacles within the required reach range. Fair Housing Act Design Manual, 5.8.

68. Are controls for ceiling fans covered by Requirement 5?

Yes, environmental controls, including wall switches for ceiling fans, are covered and must be located in accessible locations. Fair Housing Act Design Manual, page 5.3.

70. If grab bars are installed in a bathroom during or after the design and construction of a covered dwelling unit, must reinforcements still be provided in walls at the minimum areas specified in the Guidelines?

Regardless of whether grab bars are provided as part of a fixture or added during construction, the reinforcing must be located in the appropriate places to support grab bars in a range of positions that comply with the minimum specifications in the Guidelines. Fair Housing Accessibility Guidelines, 56 FR 9472, 9509, Requirement 6, Note, March 6, 1991.

71. When a molded fiberglass conventional tub/shower unit is installed in bathrooms, molded portions of the sidewalls, even if reinforcing is provided, can interfere with the later installation of grab bars. Do these types of fixtures comply with the Fair Housing Act requirements?

No, the fixtures will not comply unless the reinforcements are placed so as to permit the later installation of grab bars. A bathroom that contains fixtures that are shaped in ways that that would not permit grab bar installations to reach the reinforcing will not comply even if the reinforcing is provided. Fair Housing Accessibility Guidelines, 56 FR 9472, 9509, Requirement 6, Note, March 6, 1991.

72. Do walls and floor areas behind or under removable or adaptable cabinets have to be finished?

Yes. This issue is addressed in the Supplement to the Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines, 59 FR 33362-33368, question 30.
73. Must the clear floor space at sinks, lavatories, and appliances be centered on these fixtures and appliances?

(a) In kitchens, the Guidelines require a parallel approach to the cook top or range and sinks and a parallel or forward approach to other appliances. These approaches are illustrated in the Guidelines, Figure 6 (a) and (b). The Fair Housing Act Design Manual requires both parallel and forward approaches be centered on appliances and the kitchen sink. Fair Housing Act Design Manual, page 7.3-7.6.

(b) In bathrooms, both forward and parallel approaches to sinks and lavatories are allowed and must be centered on the fixture as shown in the Guidelines, Figure 7 (c). Fair Housing Act Design Manual, page 7.47.

If a forward approach is provided, knee space must be provided below the sink, lavatory or appliance.

74. In specification "A" bathrooms where a 48-inch by 60-inch clear floor space is provided for a forward approach to the bathtub, must the 60-inch minimum clear floor space between the bathtub and walls measure exactly 60 inches?

No. A standard building industry tolerance in a conventional bathtub installation may result in clearances slightly less than 60 inches. In a typical 60-inch bathtub installation, after wall finishes are installed on both end walls of the bathtub, the 60-inch clearance may measure slightly less, or no more than 1/2 inch less, at each end of the bathtub.

75. Where should the 40-inch clearance between countertops and opposing countertops, appliances and walls in kitchens be measured?

The required 40-inch clearance must be measured from the edge of the countertop to the edge of the opposing countertop, face of appliance or wall, excluding handles or controls. The Fair Housing Act Design Manual, page 7.7.

76. Must the 40-inch clearance be provided between full-length cabinets and opposing countertops, appliances or walls? The Guidelines do not mention full-length cabinets.

Yes. The Guidelines specify that clearance between counters and all opposing base cabinets, countertops, appliances or walls must be at least 40 inches. A full-length pantry cabinet is treated the same as a base cabinet and therefore there must be a 40-inch or greater clearance between the face of the cabinet pantry and any opposing countertop, appliance or wall.

77. What are the accessibility standards for pantries?

Shallow closet pantries that have an interior depth of 24 inches or less may have doors of any width. Deeper walk-in pantries must have doors that comply with Requirement 3, and an accessible route into the pantry that complies with Requirement 4.

Shelving is not addressed in the Guidelines, but it is recommended that some shelves be provided at accessible levels, or that the shelves be adjustable.
78. Are washers and dryers provided in individual units subject to the Guidelines?

No. The Guidelines do not require washers and dryers in individual covered multifamily dwelling units to be accessible. However, if such laundry equipment is located in a separate utility room where users enter the room to access the machines, there must be an accessible route into the room, the door must provide a nominal 32-inch clear opening, and switches and outlets, except those outlets that are for the machines, must be accessible. Front loading washers and dryers are recommended, as are parallel 30- by 48-inch clear floor spaces positioned in front of the machines. Fair Housing Act Design Manual 7.19. Where laundry equipment is located in a common use area, it must conform to the requirements for accessible public and common use facilities. Fair Housing Act Design Manual, page 2.26, and see ANSI 4.32.6 (1986).
Appendix 3: HUD position paper on Rights and Responsibilities of Landlords and Residents in Preventing Housing Discrimination Based on Race, Religion, or National Origin in the Wake of the Events of September 11, 2001

In response to the widespread concern of future terrorist attacks, landlords and property managers throughout the country have been developing new security procedures to protect their buildings and residents. Many have educated their residents on the signs of possible terrorist activity and how to communicate security concerns to management or law enforcement. Landlords and property managers are working to keep their buildings safe, but at the same time they are responsible for making sure their efforts do not infringe on the fair housing rights of current or potential residents. Since the attacks of September 11, 2001, persons who are, or are perceived to be, Muslim or of Middle Eastern or South Asian descent have reported increased discrimination and harassment, sometimes in connection with their housing. To help address this growing concern, the following is a review of federal fair housing laws and answers to some questions regarding housing discrimination that have been raised since the events of September 11, 2001.

The Fair Housing Act

The Fair Housing Act (the Act) prohibits discrimination because of race, color, religion, sex, national origin, disability, and familial status in most housing related transactions. Further, the Act makes it unlawful to indicate any preference or limitation on these bases when advertising the sale or rental of a dwelling. The Act also prohibits harassment of anyone exercising a fair housing right and retaliation against an individual because s/he has assisted, or participated in any manner, in a fair housing investigation.

Screening and Rental Procedures

It is unlawful to screen housing applicants on the basis of race, color, religion, sex, national origin, disability, or familial status. In the wake of the attacks of September 11, 2001, landlords and property managers have inquired about the legality of screening housing applicants on the basis of their citizenship status. The Act does not prohibit discrimination based solely on a person’s citizenship status. Accordingly, asking housing applicants to provide documentation of their citizenship or immigration status during the screening process would not violate the Fair Housing Act. In fact, such measures have been in place for a number of years in screening applicants for federally-assisted housing. For these properties, HUD regulations define what kind of documents are considered acceptable evidence of citizenship or eligible immigration status and outline the process for collecting and verifying such documents.* These procedures are uniformly applied to every applicant. Landlords who are considering implementing similar measures must make sure they are carried out in a nondiscriminatory fashion.

Example 1: A person from the Middle East who is in the United States applies for an apartment. Because the person is from the Middle East, the landlord requires the person to provide additional information and forms of identification, and refuses to rent the apartment to him. Later, a person from Europe who is in the United States applies for an apartment at the same complex. Because the person is from Europe,
the landlord does not have him complete additional paperwork, does not verify the information on the application, and rents the apartment. This is disparate treatment on the basis of national origin.

Example 2: A person who is applying for an apartment mentions in the interview that he left his native country to come study in the United States. The landlord, concerned that the student’s visa may expire during tenancy, asks the student for documentation to determine how long he is legally allowed to be in the United States. If the landlord requests this information, regardless of the applicant’s race or specific national origin, the landlord has not violated the Fair Housing Act.

*See HUD Regulations at 24 CFR 5.506-5.512

Rules and Privileges of Tenancy

A landlord must make sure s/he enforces the rules of tenancy in a nondiscriminatory manner. A landlord’s response to a violation of the rules must not differ based on the person’s race, religion, or national origin. A landlord may not impose more severe penalties because the person is Muslim, of Middle Eastern or South Asian descent.

While landlords must be responsive to complaints from tenants, they should be careful to take action against residents only on the basis of legitimate property management concerns. Landlords should consider whether a complaint may actually be motivated by race, religion, or national origin.

Example: A landlord receives a complaint from a tenant who claims a Muslim tenant is “having a group of about five or six other Muslim men over to his apartment every Monday night.” The tenant claims “the men appear unfriendly” and thinks they may be “up to something.” However, the tenant’s visitors do not disturb the other residents in their peaceful enjoyment of the premises. A landlord could be accused of religious discrimination if s/he asks the tenant to refrain from having Muslim guests when there is no evidence of any violation of established property management rules.

Landlords must also give all tenants the same privileges. A landlord cannot limit the use of building amenities such as community rooms, gyms, etc. based on person’s race, religion, or national origin.

Example: A landlord typically allows building residents to reserve the community room for activities such as birthday parties. When a tenant who is Arab American asks to reserve the building’s community room for a birthday party for his son, his request is denied even though the room was available. Later, the landlord grants the reservation to a tenant who is white, of European descent. By failing to give persons of different national origins the same privileges, this landlord could be accused of national origin discrimination.

Responding to Problem Tenants

The Fair Housing Act does not protect tenants who are unruly or who pose a danger to other residents. Landlords are allowed to take action against persons, whose behavior is disruptive to the neighborhood, including evicting such persons from the property. Of course, landlords must have the same eviction procedures for all tenants. Any disciplinary action taken must be on the basis of a person’s behavior or other violations of property management rules, and not on race, national origin, religion, sex, color, disability, or familial status.

Landlords also do not have to rent to persons who do not financially qualify for the housing and may evict tenants who are delinquent in their payments. As long as the landlord uses the same standards to
determine if an applicant is financially suitable and takes the same action against all persons who fall behind in payments, the landlord's actions would not violate the Fair Housing Act.
PRINCIPLES OF FAIR HOUSING
For Review with Patriot Act Implementation
AGENCIES THAT MAY BE ABLE TO ASSIST YOU

Fair Housing Complaints

Residents of the City of Dayton:
   City of Dayton Human Relations Council 937-333-1403
Residents of Montgomery County, other than City of Dayton
   Miami Valley Fair Housing Center 937-223-6035
Residents of Miami County 937-440-8121
Residents of Clark County 937-328-2498
Residents of Greene County 937-562-5350
   (Greene County residents living in Kettering call MVFHC, 937-223-6035)
Residents of Darke County 937-547-7368
Residents of Preble County 937-456-8143
Residents of Shelby County other than Sidney 937-498-7273
   Residents of Sidney 937-498-8131

State Agencies:
Ohio Civil Rights Commission 888-278-7101

Landlord/Tenant Issues

If you cannot afford an attorney:

Montgomery, Darke, Preble and Greene Counties (Dayton office)
   Legal Aid of Western Ohio (LAWO) 1-888-534-1432

Miami, Shelby, Clarke Counties (Springfield Office)
   Legal Aid of Western Ohio (LAWO) 1-888-534-1432

Other Landlord/Tenant Resources

City of Dayton: HRC 937-333-1403
Better Business Bureau 937-222-5825
Ombudsman (City of Dayton only) 937-223-4613
Dayton Housing Inspector East, 333-3977, West 333-3959
Montgomery County Building Regulations 937-225-4622

Attorney Referral Service:
Ohio Lawyer Referral Service 800-282-4738
Dayton Bar Association 937-222-7902
**Our Mission:** To eliminate housing discrimination and ensure equal housing opportunity for all people and:

- To assist in the enforcement of laws whose purpose it is to ensure freedom of choice in housing for all persons regardless of race, color, religion, sex, familial status, disabilities, national origin and ancestry
- To focus on the elimination of housing discrimination and promote open housing patterns everywhere
- To educate the public about the laws regarding fair housing

Every year, Miami Valley Fair Housing Center advocates for many individuals and families using mediation, litigation and, if necessary, filing complaints with the U.S. Department of Housing and Urban Development or the Ohio Civil Rights Commission.

**What is fair Housing?**

Relevant to the area we live in, The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, the State of Ohio Fair Housing Law Chapter 4112 of O.R.C., and the City of Dayton Human Rights Ordinance, prohibits discrimination in housing because of:

<table>
<thead>
<tr>
<th>Federal</th>
<th>State of Ohio</th>
<th>City of Dayton</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race</td>
<td>All federal</td>
<td>All federal</td>
</tr>
<tr>
<td>Color</td>
<td>Ancestry</td>
<td>Ancestry</td>
</tr>
<tr>
<td>Religion</td>
<td>Military Status</td>
<td>Age</td>
</tr>
<tr>
<td>Sex</td>
<td></td>
<td>Sexual Orientation</td>
</tr>
<tr>
<td>Handicap</td>
<td></td>
<td>Marital Status</td>
</tr>
<tr>
<td>Familial Status</td>
<td></td>
<td>Gender Identity</td>
</tr>
<tr>
<td>National Origin</td>
<td></td>
<td>Military Status</td>
</tr>
</tbody>
</table>

**What Housing Is Covered?**

The Fair Housing Act covers most housing. In some circumstances, the Act and local ordinance exempt housing operated by organizations and private clubs that limit occupancy to members. All other housing is covered by the Act.

**What Is Prohibited?**

**In the Sale and Rental of Housing:**

- Refuse to rent or sell housing
- Refuse to negotiate for housing
21st Century Fair Housing Issues

- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting) or
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

In Mortgage Lending:

- Refuse to make a mortgage loan
- Refuse to provide information regarding loans or impose different terms or conditions on a loan, such as different interest rates, points, or fees
- Discriminate in appraising property
- Refuse to purchase a loan or
- Set different terms or conditions for purchasing a loan.

In addition, it is illegal for anyone to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right.
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, ancestry, religion, sex, familial status, or handicap.

Disability protections, if you or someone you know:

- Have a physical or mental disability (including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation) that substantially limits one or more major life activities
- Have a record of such a disability or
- Are regarded as having such a disability

Then!

Your landlord may not:

- Refuse to let you make reasonable modifications to your dwelling or common use areas, at your expense, if necessary for the disabled person to use the housing. (Where reasonable, the landlord may permit changes only if you agree to restore the property to its original condition when you move.)
- Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing.
  - Example: A building with a "no pets" policy must allow a visually impaired tenant to keep a guide dog.
• **Example:** An apartment complex that offers tenants ample, unassigned parking must honor a request from a mobility-impaired tenant for a reserved space near her apartment if necessary to assure that she can have access to her apartment.

However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.

**Requirements for New Buildings**

In buildings that are ready for first occupancy after March 13, 1991, and have an elevator and four or more units: Public and common areas must be accessible to persons with disabilities, doors and hallways must be wide enough for wheelchairs & **All units must have:**

- An accessible route into and through the unit
- Accessible light switches, electrical outlets, thermostats and other environmental controls
- Reinforced bathroom walls to allow later installation of grab bars and
- Kitchens and bathrooms that can be used by people in wheelchairs.

If a building with four or more units has no elevator and was ready for first occupancy after March 13, 1991, these standards apply to ground floor units. These requirements for new buildings do not replace any more stringent standards in State or local law.

**Housing Opportunities for Families: 55+ and 62 and over Housing Communities:**

Unless a building or community qualifies as housing for older persons, it may not discriminate against pregnant women and anyone securing legal custody of a child under 18 or families in which one or more children under 18 live with:

- A parent
- A person who has legal custody of the child or children or is in the process of gaining legal custody
- The designee of the parent or legal custodian, with the parent or custodian's written permission.

**Exemption:** Housing for older persons is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State or local government program, or
- It is occupied solely by persons who are 62 or older, or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates intent to house persons who are 55 or older.