

“Fair Housing & the ADA”

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Fair Housing Act

The Fair Housing Act, as amended in 1988, prohibits housing discrimination on the basis of race, color, religion, sex, disability, familial status, and national origin. Its coverage includes private housing, housing that receives Federal financial assistance, and State and local government housing. It is unlawful to discriminate in any aspect of selling or renting housing or to deny a dwelling to a buyer or renter because of the disability of that individual, an individual associated with the buyer or renter, or an individual who intends to live in the residence. Other covered activities include, for example, financing, zoning practices, new construction design, and advertising.

The Fair Housing Act requires owners of housing facilities to make reasonable exceptions in their policies and operations to afford people with disabilities equal housing opportunities. For example, a landlord with a "no pets" policy may be required to grant an exception to this rule and allow an individual who is blind to keep a guide dog in the residence. The Fair Housing Act also requires landlords to allow tenants with disabilities to make reasonable access-related modifications to their private living space, as well as to common use spaces. (The landlord is not required to pay for the changes.) The Act further requires that new multifamily housing with four or more units be designed and built to allow access for persons with disabilities. This includes accessible common use areas, doors that are wide enough for wheelchairs, kitchens and bathrooms that allow a person using a wheelchair to maneuver, and other adaptable features within the units.

Fair Housing Defined

The Federal Fair Housing Law is administered by the US Department of Housing and Urban Development (HUD). The Federal Fair Housing Act makes it unlawful to discriminate in the sale, rental and financing of housing and the provision of brokerage and appraisal services base on: Race, color, religion, sex, handicap, familial status or national origin.

Federally Protected Classes

Race:

A local geographic or global human population distinguished as a more or less distinct group by genetically transmitted physical characteristics; any group of people united or classified together on the basis of common history, nationality, or geographical distribution; mankind as a whole. For Section 1982 litigation in fair housing, race has been expanded to mean those persons not considered white in the year 1866.

Religion:

The expression of one's belief in and/or reverence for a supernatural power(s) regarded as the creator and/or governor of the universe; or lack thereof.

Color:

The complexion of a person's skin; usually refers only to skin color or pigmentation of a person not categorized as white.

Sex:

The condition or character of being male or female; the physiological, functional, and psychological differences that distinguish the male and female.

National Origin:

Characteristic of or peculiar to the people of a nation; of or relating to ancestral beginnings.

Handicap:

A person who (1) has a physical or mental impairment (including, but not limited to, hearing mobility, visual impairments, chronic alcoholism, chronic mental illness, AIDS and AIDS related complex, and mental retardation) that substantially limits one or more

major life activities; (2) has a record of such an impairment, or (3) is regarded as having such an impairment. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing hearing, speaking, breathing, learning and working.

Familial Status:

This makes it illegal to deny housing to persons with children, such as adults-only communities, excepting those communities which meet the standards for housing for the elderly. Children include individuals under 18, living with a parent or legal guardian, or with a designee having written custody as well as persons who are pregnant or in the process of securing legal custody.

Examples of Discriminatory Behavior

- Blockbusting
- Steering
- Unsolicited Remarks
- Indifference of Service Providers
- Unequal Education of Prospective Buyers and Tenants
- Differing Availability, Prices, Rents, Incentives, Financing & Insurance
- Cultural Perceptions
- Actions which "have the effect" of denying housing to protected classes

Other Fair Housing Definitions

Dwelling:

Any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as a residence by one or more families and any vacant land which offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

It covers cooperatives, time-shares, condominiums, mobile home parks, foster care facilities and all other residential property.

Americans with Disabilities Act

The 1988 amendment to the Fair Housing Law, made persons with disabilities a protected class. In 1990, the Americans With Disabilities Act, generally referred to as

ADA, required all companies doing business with the public to make their place of business, and the services being offered, accessible to persons with disabilities as defined by the Act. It also requires that housing providers follow policies and procedures which include persons with disabilities.

Who Is Covered

- Hearing or vision impaired
- Physically disabled
- Mental illness or retardation
- AIDS or HIV infection
- Epilepsy
- Cerebral Palsy
- Use of a wheelchair or walker
- Use of a personal care attendant
- Use of a service animal
- Persons who have a record of a disability or who are currently under treatment for same or who are regarded as such
- Alcoholics, in treatment or not
- Prior drug users who have completed a rehab program
- Persons using prescription drugs under a physician's direction

Who Is Not Covered

- Current illegal users of controlled substances
- Transvestites

Notes on Companion Animals

Companion animals differ from service animals, like guide dogs, with which we are familiar. Companion animals have been prescribed by a doctor as part of the patient's therapy. Therefore persons qualifying for coverage under ADA have a right to keep them regardless of an owner's refusal to allow pets in the home or unit. All of the following apply;

- owner may not prohibit without unusual circumstances, i.e. owners own allergies and imminent return
- tenant must request and show documentation
- no extra deposit may be required

Rentals and Reasonable Modification

Reasonable accommodation refers to the right of the disabled to modify rental housing in order to accommodate their disability. Owners and landlords must do so under the following guidelines;

- Must be requested by the tenant
- The modifications must be practical & feasible
- All costs are paid by the tenant
- Changes which *will not* be acceptable to future tenants must be returned to their original state at the tenant's expense upon expiration of the lease or termination of tenancy.
- Owner has the right to approve the plans, the contractor, and the quality of the work
- Owner has the right to require money to be placed in escrow to ensure compliance and any interest would accrue to the tenant. This escrow is not a deposit and may not be accessed by the owner for any purpose other than to return the property to its original condition.

Owners and Compliance

- Owners may not ask about a disability.
- Owners may ask for financial, credit and tenant history as they would any other applicant

Handicapped Accessible

The standards for a home to be marketed as Handicapped Accessible are as follows:

- All doors which allow passage into and within all premises must be sufficiently wide to accommodate persons who use wheelchairs (39")
- There must be an accessible route into and throughout the dwelling
- Light switches, electrical outlet, thermostats, and other environmental controls must be placed in accessible locations
- Reinforcements must be installed in bathrooms to allow for later installation of grab bars, and
- Kitchens and bathrooms must allow persons in wheelchairs to maneuver about the space

Jurisdiction/Organization	Federal Protection	Additional State Protection	Additional Protections Afforded by County in Addition to Federal and State Laws
Federal	race, color, national origin, sex, religion, familial status, physical or mental disability		
State		marital status, sexual orientation	
City/County			
Allegany			creed
Anne Arundel			age, creed
City of Annapolis			lawful income
Baltimore County			age, creed
Baltimore City			age, ancestry, gender identity
Calvert			X
Caroline			X
Carroll			X
Cecil			X
Charles			age, creed, ethnic or national origin
Dorchester			X
Frederick County			X
City of Frederick			source of income
Garrett			X
Harford			age, creed, occupation, personal appearance, political opinion
Howard			age, creed, occupation, personal appearance, political opinion, source of income
Kent			X
Montgomery			age, ancestry, family responsibility, gender identity, presence of children, source of income
Prince George's			age, occupation, personal appearance, political opinion
Queen Anne's			X
Saint Mary's			X
Somerset			X
Talbot			X
Washington			X
Wicomico			X
Worcester			X

"X" indicates that this county has no additional protected classes other than those recognized under the state and federal laws.

Accessibility Requirements for Buildings

The following provides information on the housing accessibility requirements for both private and Federally assisted housing.

- **Accessibility Requirements for Multifamily Housing:** Both privately owned and publicly assisted housing, regardless of whether they are rental or for sale units, must meet the accessibility requirements of the Fair Housing Act when they are located in a building of four or more units, built for first occupancy after March 13, 1991. To help builders comply with these requirements, HUD issued in 1991 its **Fair Housing Act Accessibility Guidelines**. In 1994, the Department responded to questions on the Guidelines by issuing a **Question and Answer Supplement to the Guidelines**. In 1996, HUD provided further guidance on ways to design and construct housing that complies with the Fair Housing Act by issuing the **Fair Housing Act Design Manual**, which is filled with detailed illustrations and sample room designs. HUD has designated the Fair Housing Act Accessibility Guidelines, when used in conjunction with the Question and Answer Supplement, the Fair Housing Act Design Manual, and five other documents as safe harbors for compliance with the Fair Housing Act accessibility requirements. For more information on the requirements and the seven safe harbors for compliance, visit **Fair Housing Accessibility, FIRST**.
- **Accessibility Requirements for Federally Assisted Housing:** All Federally assisted new construction housing developments with 5 or more units must design and construct 5 percent of the dwelling units, or at least one unit, whichever is greater, to be accessible for persons with mobility disabilities. These units must be constructed in accordance with the **Uniform Federal Accessibility Standards (UFAS)** or a standard that is equivalent or stricter. An additional 2 percent of the dwelling units, or at least one unit, whichever is greater, must be accessible for persons with hearing or visual disabilities. For more information on the accessibility requirements for Federally assisted new construction and substantial alterations of existing Federally assisted housing, see **Section 504: Disability Rights in HUD Programs**.
- **Americans with Disabilities Act of 1990 (ADA):** The ADA primarily deals with accessibility of public facilities such as restaurants, hotels, and parks. With respect to housing accessibility, Title II of the ADA covers housing provided by public entities (state and local governments), such as housing on a State university campus. Title III requires that public and common use areas at housing developments are accessible. Please visit the **Department of Justice ADA home page** for more information on the ADA.

The following provides information on the obligation of HUD programs to comply with applicable accessibility requirements, as well as information on government resources for funding building modifications.

- **Community Planning and Development Notice: Affirmatively Further Fair Housing and the Accessibility Requirements of the Fair Housing Act**
- **Public and Indian Housing Notice: Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988**
- **Assisted Housing Notice: Compliance with Section 504 of the Rehabilitation Act of 1973 and the Disability/Accessibility Provisions of the Fair Housing Act of 1988**
- **Funds Available for Building Modifications**

Facts About the Americans with Disabilities Act

Title I of the Americans with Disabilities Act of 1990 prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. The ADA covers employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations. The ADA's nondiscrimination standards also apply to federal sector employees under section 501 of the Rehabilitation Act, as amended, and its implementing rules.

An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Reasonable accommodations are adjustments or modifications provided by an employer to enable people with disabilities to enjoy equal employment opportunities. Accommodations vary depending upon the needs of the individual applicant or employee. Not all people with disabilities (or even all people with the same disability) will require the same accommodation. For example:

- A deaf applicant may need a sign language interpreter during the job interview.
- An employee with diabetes may need regularly scheduled breaks during the workday to eat properly and monitor blood sugar and insulin levels.
- A blind employee may need someone to read information posted on a bulletin board.
- An employee with cancer may need leave to have radiation or chemotherapy treatments.

An employer does not have to provide a reasonable accommodation if it imposes an "undue hardship." Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

An employer is not required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids.

An employer generally does not have to provide a reasonable accommodation unless an individual with a disability has asked for one. If an employer believes that a medical condition is causing a performance or conduct problem, it may ask the employee how to solve the problem and if the employee needs a reasonable accommodation. Once a reasonable accommodation is requested, the employer and the individual should discuss the individual's needs and identify the appropriate reasonable accommodation.

Where more than one accommodation would work, the employer may choose the one that is less costly or that is easier to provide.

Title I of the ADA also covers:

- **Medical Examinations and Inquiries**
Employers may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.

Medical records are confidential. The basic rule is that with limited exceptions, employers must keep confidential any medical information they learn about an applicant or employee. Information can be confidential even if it contains no medical diagnosis or treatment course and even if it is not generated by a health care professional. For example, an employee's request for a reasonable accommodation would be considered medical information subject to the ADA's confidentiality requirements.
- **Drug and Alcohol Abuse**
Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA when an employer acts on the basis of such use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on disability or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADA.

Federal Tax Incentives to Encourage the Employment of People with Disabilities and to Promote the Accessibility of Public Accommodations

The Internal Revenue Code includes several provisions aimed at making businesses more accessible to people with disabilities. The following provides general – non-legal – information about three of the most significant tax incentives. (Employers should check with their accountants or tax advisors to determine eligibility for these incentives or visit the Internal Revenue Service's website, www.irs.gov, for more information. Similar state and local tax incentives may be available.)

- **Small Business Tax Credit (Internal Revenue Code Section 44: Disabled Access Credit)**
Small businesses with either \$1,000,000 or less in revenue or 30 or fewer full-time employees may take a tax credit of up to \$5,000 annually for the cost of providing reasonable accommodations such as sign language interpreters, readers, materials in alternative format (such as Braille or large print), the purchase of adaptive equipment, the modification of existing equipment, or the removal of architectural barriers.
- **Work Opportunity Tax Credit (Internal Revenue Code Section 51)**
Employers who hire certain targeted low-income groups, including individuals referred from vocational rehabilitation agencies and individuals receiving Supplemental Security Income (SSI) may be eligible for an annual tax credit of up to \$2,400 for each qualifying employee who works at least 400 hours during the tax year. Additionally, a maximum credit of \$1,200 may be available for each qualifying summer youth employee.
- **Architectural/Transportation Tax Deduction (Internal Revenue Code Section 190 Barrier Removal):**
This annual deduction of up to \$15,000 is available to businesses of any size for the costs of removing barriers for people with disabilities, including the following: providing accessible parking spaces, ramps, and curb cuts; providing wheelchair-accessible telephones, water fountains, and restrooms; making walkways at least 48 inches wide; and making entrances accessible.