



# housing rights of people with disabilities

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**NOTE:** *This publication is for general information purposes only. Individual cases and circumstances vary widely, and the law is subject to change at any time through Congressional or judicial action. For specific questions, please seek assistance from a lawyer or call Access Living at (312) 640-2100 (voice) or (312) 640-2102 (TTY).*



# what is a disability?

Anti-discrimination laws that protect persons with disabilities, such as the Fair Housing Act, define the term "**disability**." To be protected under the law, a person's disability must fall within the law's definition. The U.S. Congress has estimated that 43 million Americans have a disability as defined by federal civil rights laws.

Under anti-discrimination laws, a person has a "**disability**" if he or she:

- Has a **physical or mental impairment**
- OR a **record** of such impairment
- that **substantially limits**
- one or more **major life activities**.

## What is a "**physical or mental impairment**"?

It can be **any medically-documented physical or mental limitation**. These include persons in wheelchairs and persons who are blind or deaf, but also persons with AIDS, HIV and who are obese.

**NOTE:** This definition **does not** apply to every law or program concerning people with disabilities. Laws and programs using **different** definitions include:

- **Supplemental Security Income (SSI) eligibility**
- **Special education** eligibility (under the Individuals with Disabilities Education Act)

"Disability" **does not include** :

- Impairments that can be **corrected** through prosthetics, eyeglasses, medication or other means. Examples may include diabetes, epilepsy or schizophrenia.
- **Current** drug or alcohol abuse (however, persons in recovery are covered).

**What is a “major life activity”?**

**Any activity**, so long as it is of **central importance** to the **daily life** of **most people**. Examples include walking, self-care, breathing, reading, and reproduction. A particular task related to a person’s job will usually not count as a “major life activity.”

**What does “substantially limit” mean?**

The impairment must **severely** limit the major life activity. Minor limitations are not enough.

**NOTE: What if someone thinks you have a disability, but they are wrong?**

The law protects a person who suffers discrimination because someone **regards them as having a disability** even if the person does not have an actual disability (an impairment that substantially limits a major life activity).

However, to be covered under the law, the person must be believed to have a disability **as the law defines it** – an impairment which substantially limits a major life activity. Thus, prejudice or discomfort with a person’s impairment – absent a belief the impairment limits the person in any activities – will not suffice.



**non-**

The federal ***Fair Housing Act*** was amended in 1988 to prohibit discrimination against people with disabilities in the ***sale, rental, management or administration of housing.***

# discrimination

Under the Fair Housing Act, it is ***illegal:***

- To refuse to sell or rent housing to a person ***because of the person's disability***
- To refuse to sell or rent to a person, whether disabled or non-disabled, because ***someone else with a disability will be living*** in the house or apartment
- To refuse to sell or rent because a person, whether disabled or non-disabled, is ***associated with*** someone who has a disability.

**What "housing" does the Fair Housing Act cover?**

- ***Private dwellings*** (houses and apartments), including government-subsidized housing, ***are covered.***
- ***Shelters*** and other temporary living quarters ***are covered.***

**What isn't covered?**

- ***Hotels.*** However, hotels are subject to the accessibility requirements for "public accommodations" under the Americans with Disabilities Act.
- ***Owner-occupied*** buildings with ***four or fewer units.***



# reasonable accommod- ations

Discrimination and exclusion exist in many forms. The Fair

Housing Act recognizes that physical barriers or across-the-board policies and practices may be just as discriminatory as hanging a

sign that says "No Disabled Need Apply." The Act thus requires housing providers to make **reasonable accommodations and modifications** to afford people with disabilities the **equal opportunity to use and enjoy** a house or apartment.

## What is an accommodation or modification?

- A **change** to a **general policy, practice or service** that takes into account a person's disability.

**Example:** Waiving a "no pets" policy so that a person with a disability may keep a support dog.

- **Removal of a physical barrier** or **installation of a device** that allows a person with a disability **to overcome a barrier** preventing access.

**Example:** Installing grab bars in a bathroom so that it may be used by people in wheelchairs.

## When is an accommodation or modification "reasonable?"

An accommodation or modification is reasonable **unless** it would **unduly burden** the housing provider or **fundamentally alter** the housing.

- **Undue Burden** is when a housing provider cannot reasonably afford to provide a requested modification. Usually, this is a question of money. Whether a housing provider must provide or install a modification will depend on a) the cost of the modification and b) the housing provider's financial resources.

- **Fundamental Alteration** is when a proposed accommodation, such as a change in rules, would be **so fundamental** that it would substantially impair or compromise the housing provider's goals or business purposes.

**Example of a Fundamental Alteration:** A request not to pay rent.

### **Modifications or accommodations *within an individual house or apartment:***

Under the Fair Housing Act, when a modification is **solely within** the individual house or apartment, **the resident must pay for the modification.** However, the housing provider **cannot refuse permission** to make the modification if it is reasonable.

**Example of a Reasonable Modification Within an Apartment:** Installing grab bars in the bathroom.

If the house or apartment is **rented**, the landlord **may**, if reasonable, require that the tenant **restore** the interior of the house or apartment **to its original state** (how the apartment looked before the modification was installed) **when the tenant moves out.** The tenant does not have to restore damage caused by reasonable wear and tear.



# “new” buildings

The Fair Housing Act places additional requirements on newly-constructed (“new”) buildings. New residential buildings must be constructed so that people with **physical disabilities** can **use** the apartments and public areas.

## What is a “new” building?

Any building that was **first occupied** (i.e., the first resident moved in) on or after **March 13, 1991**.

### NOTE: Why March 13, 1991?

This date is exactly 30 months after Congress passed the amendments to the Fair Housing Act covering people with disabilities. Thirty months was the “grace period” builders had to comply with the Act.

## Which “new” buildings are covered?

Any building with **four or more apartments** is subject to the Act’s new construction requirements. Single family homes and townhomes are not covered.

## If the building has four or more apartments, how many must be usable by people with disabilities?

- If the building has an **elevator**:  
**Every apartment**
- If the building **does not** have an elevator:  
**Ground floor apartments only**

**What must a new apartment contain to be “usable”?** The requirements are designed to allow residents with mobility disabilities to **use** and **easily modify** an apartment to make it fully accessible. This is sometimes called “universal design.”

For each apartment covered under the law, the Fair Housing Act requires:

- An **accessible route** for people in wheelchairs to enter and move through the apartment
- Accessible **light switches, thermostats, and environmental controls**

**Which means:** No higher than 48 inches/no lower than 15 inches from the ground

- **Doors** wide enough to allow **passage by a wheelchair**

**Which means:** 36 inch wide doors leading out of the apartment/32 inch wide doors within the apartment

- **Bathroom walls** must be **reinforced** from behind to allow the resident (at the resident's expense) to **install grab bars** for wheelchair users or others with mobility impairments
- **Kitchens and bathrooms** in which a person in a wheelchair can **maneuver**

**Which means:**

- At least 48 square inches of floor space, and
- Sinks that either:
  - have a clear space below (so a person in a wheelchair can approach head-on), **or**
  - are far enough from walls to permit parallel wheelchair approach

**NOTE:**

**Aren't these requirements expensive?**

No. A HUD study found that these usability design requirements increased construction costs on new buildings by less than one percent.

**Would a non-disabled person want to rent a "usable" apartment?**

Yes. "Usable" or "universal" design does not obviously alter the appearance of the apartment or building. Indeed, many people appreciate the convenience that wide doors and extra floor space offer.

**What are the requirements for common areas?**

- At least **one building entrance** must be on an **accessible route**.
- **Every public use and common area** must be **readily (immediately) accessible to and usable by** people with disabilities.



# public housing

Public or subsidized housing is covered by two federal anti-discrimination laws:

- The Fair Housing Act  
(described above)  
and
- **Section 504 of the Rehabilitation Act**  
("Section 504")

While public and government-subsidized housing must follow the Fair Housing Act, as explained earlier, Section 504 places **additional obligations** on providers of **public or government-subsidized housing**.

## What is Section 504?

Section 504 prohibits anyone who **receives federal financial assistance** from discriminating on the basis of disability. Generally, public housing authorities receive federal assistance, as do private landlords who own **units** that are subsidized (as opposed to a Section 8 voucher, where the **tenant** is subsidized.)

## Reasonable accommodations or modifications

Just like the Fair Housing Act, Section 504 requires public housing providers to make **reasonable accommodations and modifications** for tenants with disabilities. However, unlike the Fair Housing Act, Section 504 requires the public housing provider **to always pay** for the modification, **even if it is located within an individual apartment**, provided the cost is not unreasonable.

## Requirements for "new" buildings

Any public housing first occupied on or after **June 1988** must comply with Section 504's new construction requirements. A **renovated project** is considered "new" if:

- The project has **15 or more apartments**, and
- The cost to renovate is **75 percent or more** of the cost to replace the building entirely.

**Requirements for New Buildings under Section 504:**

- **Five percent or at least one apartment**, whichever is greater, must be **accessible to and usable by** people with **mobility disabilities** (e.g. people who use wheelchairs).
- **Two percent or at least one apartment**, whichever is greater, must be accessible to **persons with hearing or vision disabilities**.

**NOTE:** New public housing must comply with both Section 504 and the Fair Housing Act. Thus, in a building with four or more apartments, **five percent** must be **immediately accessible** under Section 504, and **every other apartment** (or ground floor apartment if there is no elevator) must comply with the Fair Housing Act.

Accessible units must be ***distributed throughout the development***, not clustered, and should represent the types of housing available. For example, not all accessible apartments should be one-bedroom if two bedroom apartments are offered.

**Section 504's Accessibility Requirements:**

An "accessible" apartment under Section 504 must comply with the **Uniform Federal Accessibility Standards**. These can be obtained at [www.access-board.gov/ufas](http://www.access-board.gov/ufas), or by contacting HUD at (202) 755-5404 (TDD: (202) 708-0113 or (800) 877-8399).

**Major Differences Between Section 504 and the Fair Housing Act**

	Effective Date for New Buildings	Which New Buildings Are Covered	Percentage of New Units Required to be Usable by People with Disabilities	Requirements for Accessibility in New Units	Modification to an Existing Apartment: Who Pays?
<b>Fair Housing Act</b>	March 13, 1991	Residential buildings with 4 or more apartments	<i>With an Elevator:</i> Every apartment  <i>Without an Elevator:</i> Ground-floor apartments	"Universal Design": <i>See American Nat'l Standards Institute (ANSI) 117.1</i>	Tenant
<b>Section 504, Rehabilitation Act</b>	June 1988	Federally-funded housing developments	<i>Mobility Disabilities:</i> Five (5) % or one unit  <i>Hearing Disabilities:</i> Two (2) % or one unit	Immediate accessibility <i>See Uniform Federal Accessibility Standards (UFAS)</i>	Landlord



filing a

# complaint

The U.S. Department of Housing and Urban Development (HUD) investigates complaints of housing discrimination by people with disabilities (as well as race, gender, and familial status). In Illinois, persons who wish to file a complaint should contact HUD at the following address:

U.S. Department of Housing and Urban Development  
Office of Fair Housing and Equal Opportunity  
77 West Jackson Street, 21<sup>st</sup> Floor  
Chicago, IL 60604  
Tel:(800) 669-9777  
TTY:(800) 543-8294

## Deadline for filing a complaint:

A HUD complaint must be filed *in writing* within *one year* of either the *occurrence* or the *termination* of discrimination.

**NOTE:** *If the problem is ongoing, the discriminatory act will not "terminate" until the problem is corrected.*

## Time to complete investigation:

HUD generally has 100 days to investigate and issue findings, but can take extra time if necessary. If HUD cannot complete its investigation within 100 days, it must send a written notice to the person who filed the complaint explaining the reasons for the delay.

## Conciliation:

The Fair Housing Act requires HUD to conciliate housing complaints. This means HUD will try to negotiate a settlement between the person filing the complaint and the housing provider before it completes its investigation.

**Findings:**

If the case does not settle, HUD issues findings. These conclude either that a) ***no discrimination occurred***, or b) that there is ***reasonable cause*** to find that discrimination occurred.

**If HUD finds "reasonable cause":**

HUD will try the case against the housing provider before a HUD Administrative Law Judge. However, either the person who filed the complaint or the housing provider has the right to have the case heard in Federal Court. This right must be exercised ***in writing*** not more than ***20 days*** after HUD issues its findings. If the case goes to Federal Court, the U.S. Department of Justice tries the case.

**NOTE:** HUD may refer complaints to ***state and city human rights agencies*** for investigation and enforcement when it determines the state or city has laws that provide substantially the same rights as does the federal Fair Housing Act. While complaints are still filed with HUD, HUD will refer the matter to the state or city human rights agency instead of investigating on its own.

HUD's ***Region 5*** office, located in Chicago, serves ***Illinois, Indiana, Michigan, Ohio, Minnesota and Wisconsin***. This office refers complaints from the following cities to that city's human rights agency:

***Springfield, IL***

***Gary, IN***

***Dayton, OH***

***Elkhart, IN***

***Hammond, IN***

***Parma, OH***

***Fort Wayne, IN***

***South Bend, IN***

***Shaker Heights, OH***

As of 2003, HUD had preliminarily certified the ***Illinois Department of Human Rights (IDHR)*** to handle cases. As of 2003, HUD was referring some (but not all) complaints to IDHR for investigation.

Complaints from ***Michigan*** are referred to that state's human rights agency.

**Other investigative agencies:** The following state and local agencies investigate discriminatory housing complaints under state and local laws:

Illinois Department of Human Rights  
100 West Randolph Street, Suite 10-100  
Chicago, IL 60601  
Tel: (312) 814-6200/TTY: (312) 263-1579

Cook County Commission on Human Rights  
(Cook County residents only)  
69 West Washington Street, Suite 2900  
Chicago, IL 60602-3007  
Tel: (312) 603-1100/TTY:(312) 603-1101

Chicago Commission on Human Relations  
(City of Chicago residents only)  
740 North Sedgwick, Third Floor  
Chicago, IL 60610  
Tel: (312) 744-4111  
TTY: (312) 744-1088

## Access Living's Fair Housing Enforcement Project

Access Living is a Center for Independent Living established under the federal Rehabilitation Act of 1973. Its mission is to promote the equal participation of citizens with disabilities in American society. With support from the U.S. Department of Housing and Urban Development, Access Living's Fair Housing Enforcement Project educates people with disabilities on their rights and investigates complaints of discrimination by people with disabilities.

An important part of Access Living's enforcement of fair housing is "testing" of housing providers to ensure compliance with anti-discrimination laws. As the U.S. Supreme Court has recognized, people who discriminate or exclude people with disabilities do not usually admit they are doing so. Instead, they offer pretextual reasons that mask their intent to discriminate. To determine whether discrimination has occurred, a disabled and non-disabled tester will separately simulate a housing search and gather information on available housing. Their comparative experiences help determine – indeed, may be the only way to determine – whether exclusion based on disability has occurred.

Access Living recruits and trains testers to investigate complaints of housing discrimination based on disability. Access Living administers a comprehensive training program for its testers to ensure the data they collect is objective and reliable for comparative use and analysis. If Access Living determines disability-based discrimination has occurred, it may be able to provide advocacy and legal assistance.

If you suspect you have been the victim of housing discrimination, Access Living may be able to investigate your claim through testing. In addition, Access Living encourages people with and without disabilities to serve as fair housing testers.

If you would like to report suspected discrimination, or are interested in serving as a tester, please call **(312) 640-2100 (voice)** or **(312) 640-2102 (TTY)** and ask for the Test Coordinator, Mary Jo Noriega.