

Americans with Disabilities Act (ADA)

The Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental activities. For the purpose of housing, the Fair Housing Act and the Architectural Barriers Act direct actions related to accommodating people with disabilities.

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.

The Architectural Barriers Act (ABA) requires that buildings and facilities that are **designed, constructed, or altered with Federal funds**, or leased by a Federal agency, comply with Federal standards for physical accessibility. ABA requirements are limited to architectural standards in new and altered buildings and in newly leased facilities. They do not address the activities conducted in those buildings and facilities.

Uniform Federal Accessibility Standard (UFAS)

The Uniform Federal Accessibility Standard (UFAS) sets standards for facility accessibility by physically handicapped persons for **Federal and federally-funded facilities**. These standards are to be applied during the **design, construction, and alteration of buildings and facilities** to the extent required by the Architectural Barriers Act of 1968, as amended. The document embodies an agreement to minimize the differences between the standards previously used by four agencies (the General Services Administration, the departments of Housing and Urban Development and Defense, and the United States Postal Service) that are authorized to issue standards under the Architectural Barriers Act, and between those standards and the access standards recommended for facilities that are not federally funded or constructed.

What we might be interested in:

- Where parking is provided for all residents, is there once accessible space for each accessible dwelling unit?
- Are the designated accessible parking spaces the closest parking to the nearest accessible entrance, on an accessible route?
- Does each accessible parking space have a sign designating as accessible?
- Can legally parked vehicles block access to the curb ramp?

- Are there accessible routes through the property to and from public streets, parking areas, bus stops, and common use facilities?
- Are accessible routes able to be maneuvered by a person in a wheelchair (clearance width of 36" and no steps) and are entrances wide enough (minimum width of 32") for a wheel chair to enter and free of hardware that require grasping or twisting to operate?
- Are accessible routes, entrances, and spaces adequately signed to allow a person with a disability to find and use them?
- Are built-in tables and work surfaces in common areas accessible to people in a wheel chair?

Barrier Free Facilities

Barrier Free Facilities is a term used in Chapter 51-50 of the **Washington Administrative Code** and applies to accessibility in buildings required to use the International Building Code. Provisions of the IBC control the **design and construction of facilities** for accessibility to physically disabled persons. The IBC is used for Residential Group R structures that are more than 3-stories above grade when not classified as an Institutional Group I or when not regulated by the International Residential Code. For the HTF portfolio, this typically means residential occupancies (R-1) containing sleeping units where the occupants are primarily transient (boarding houses, hotels, motels, congregate living facilities w/10 or fewer occupants) and residential occupancies (R-2) containing sleeping units or more than two dwelling units where occupants are primarily permanent (apartment houses, boarding houses, dormitories, hotels, motels, residential treatment facilities, congregate living facilities w/16 or fewer occupants). Detached one-and-two family dwellings, residential group R-1 facilities with not more than five sleeping units for hire or rent that are also occupied as the residence of the proprietor, day care facilities, live/work units, and detention/correctional facilities are exempted from this accessible requirement. Transient for this code is defined as occupancy of a dwelling or sleeping unit for not more than 30 days.

What we might be interested in:

- Accessible routes within the site shall be provided from public transportation stops; accessible parking areas; accessible passenger loading zones; public streets or sidewalks to the accessible building entrance; at least one accessible route shall connect accessible buildings, facilities, elements, and spaces that are on the same site; and when any portion of a building is required to be accessible an accessible route shall be provided to each portion of the building.
- At least 60% of all public entrances shall be accessible.
- For every 25 parking spaces within a parking facility at least one space must be accessible. Accessible parking spaces shall be located on the shortest accessible route of travel between the parking to an accessible building entrance.
- Accessible signage is required for parking spaces, passenger loading zones, accessible entrances, accessible bathrooms, at exits and exits stairways servicing an accessible space, and accessible areas of refuge. Directional signage shall be provided to indicate the nearest accessible entrance, bathroom, and elevator if these areas are between accessible areas.

Housing for Older Persons (HOPA)

Housing for Older Persons Act of 1995 (HOPA) is a federal designation related to HUD supported housing. This designation exempts this type of housing provider from the prohibition against familial status discrimination in the Fair Housing Act if:

- The HUD Secretary has determined that the housing is specifically designed for and occupied by elderly persons under a Federal, State or local government program or
- The housing units are occupied by persons who are 62 or older or
- The housing units have at least one person who is 55 or older in at least 80% of the occupied units and the owner adheres to a policy that demonstrates intent to house persons who are 55 or older.
- HOPA eliminated the Fair Housing requirement that 55 and older housing have significant facilities and services designed for the elderly.

Fair Housing and Rental Properties

What housing is covered?

Most housing is covered by the Fair Housing Act. The Act excepts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to its members. All housing within the Housing Trust Fund portfolio is subject to Fair Housing.

- In Washington State a “broker” is defined as a person acting on behalf of a real estate firm to perform services for compensation related to advising or counseling, advertising for, negotiating for, listing, selling, purchasing, exchanging, optioning, leasing, or renting real estate, real property, a manufactured or mobile home, or any interest in a cooperative.
- A “real estate firm” is defined as a sole proprietorship, partnership, LLP, corporation, LLC, or other legally recognized business entity conducting real estate brokerage services in this state and licensed by the Department of Licensing as a real estate firm.
- Property Management is expressly considered a real estate brokerage activity in Washington State.
- The Fair Housing Act protects residential choices of people with disabilities so Group Homes are subject to Fair Housing because this type of living arrangement cannot be denied by regulations employed to hinder the residential choices of these individuals.
- Shelters are also technically subject to the Fair Housing Act. The Act utilizes the word “dwelling” which the courts have defined as “a temporary or permanent dwelling place, abode or habitation to which one intends to return.” This means that inhabitants of a shelter are subject to the protections of the Act and that owners/operators are also subject to the prohibitions of the Act. As of 2009, the Ninth Circuit declared a single-sex men’s homeless shelter to be in violation of the Fair Housing Act.

What is prohibited?

In the rental of housing, no one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- Refuse to negotiate for, make available, or rent housing
- Set different terms, conditions or privileges for rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection or rental
- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others in exercising their right
- Advertise or make any statement that indicates a limitation or preference for any of the protected classes listed above
- If the renter or someone associated with the renter has a physical or mental disability that substantially limits one or more major life activities; or has a record of such a disability; or is regarded as having such a disability, the landlord may not refuse to let them make reasonable modifications to the dwelling unit or common use areas, at their expense, if necessary to allow the disabled person to use the housing. The landlord may also not refuse to make reasonable accommodations to rules, policies, practices or services if necessary for the disabled person to use the housing.
- Unless a building or community qualifies as housing for older persons, it may not discriminate based on familial status. Meaning, there may not be discrimination against families in which one or more children under 18 lives with a parent, a person who has legal custody of the child or children, or the designee of the parent or legal custodian, with permission. Familial status applies to pregnant women.
- The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Nor does it protect persons who currently use illegal drugs, have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities that present a direct threat to the persons or property of others.

What does the Fair Housing Act have to do with accessibility?

In housing that was 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 the housing has four or more units but no elevator, these standards apply to the ground floor units only.

Why does this matter?

In 1968 the federal government adopted the Fair Housing Act and HUD has been the lead agency in its federal implementation. In 1988 the act was amended which gave HUD an even greater enforcement role. Complaints filed with HUD are investigated by the Office of Fair Housing and Equal Opportunity (FHEO). The FHEO will first try to conciliate the issue and if that is not successful then it will determine whether reasonable cause exists to believe that a discriminator housing practice has occurred. When reasonable cause is found, the parties (complainant and respondent) will be notified and a hearing before an administrative law judge will occur. Either party may elect to terminate this proceeding and request to have the matter litigated in Federal Court. Whenever this occurs, the Department of Justice takes over HUD's role as counsel seeking resolution of the charge on behalf of the aggrieved persons, and the matter proceeds as a civil action. Both the ALJ proceeding or the civil action in Federal court are subject to review in the U.S. Court of Appeals.

A strong commitment to affirmatively furthering fair housing is not only one of HUD's guiding principles, it is a requirement for participating in HUD's many housing and community development programs. HUD funded recipients and Public Housing Agencies have an obligation to implement and enforce the Fair Housing Act.

Landlord Tenant

Washington has a Residential Landlord-Tenant Act which defines the minimum duties of landlords and tenants of residential dwellings. These laws impose certain restrictions and provide remedies if one party fails to carry out a duty.

What housing is covered?

Most tenants who rent a place to live come under the Landlord-Tenant Act. Those generally not covered by this act include:

- Mobile home owners who rent space in a mobile home park
- Residents in hotels and motels
- Residents in public or private medical, religious, educational, recreational or correctional institutions
- Tenants with an earnest money agreement to purchase the dwelling
- Tenants who lease a single-family dwelling with an option to purchase and are exercising that option
- Residents of a single-family dwelling that is rented as part of a lease for agricultural land
- Residents of housing provided for seasonal farm work
- Tenants who are employed by the landlord, when their agreement specifies that they can only live in the rental unit as long as they hold the job

- Tenants who are using the property for commercial rather than residential purposes
- Tenants who are leasing a single family dwelling for one year or more, when their attorney has approved the exemption.

What is covered?

- It is illegal for a rental agreement or lease to contain the following provisions:
 - Waiving any right given to tenants by the Landlord-Tenant Act
 - Requiring tenants to give up their right to defend themselves in court against a landlord's accusations
 - Limiting the landlord's liability in situations where the landlord would normally be responsible
 - Allowing the landlord to enter the rental unit without proper notice
 - Requiring the tenant to pay for all damage to the unit, even if it is not caused by tenants or their guests
 - Requiring the tenant to pay the landlord's attorney's fees under any circumstance if a dispute goes to court
 - Allowing the landlord to seize the tenant's property if the tenant falls behind in rent
 - Allowing the landlord the right to resort to self-help to remove a tenant
- The term "deposit" can only be applied to money which can be refunded to the tenant. If a refundable deposit is charged, the law requires the following:
 - The rental agreement must be in writing and it must say what each deposit is for, what the tenant must do to get the money back, and where the monies will be deposited
 - A written receipt must be provided to the tenant for each deposit paid
 - A checklist or statement describing the condition of the rental units must be completed, signed by all parties, and the tenant given a copy.
- If a "nonrefundable fee" is charged, the law requires that:
 - The rental agreement be in writing and state that the fee will not be returned
 - Some common fees include and the law states that:
 - Screening fees - the fee must be limited to the costs incurred by the landlord to process the application
 - Non-refundable cleaning fees – a tenant who pays a nonrefundable cleaning fee cannot be charged for normal cleaning when moving out
 - Holding fee – after a unit is offered to a tenant, a fee can be charged to hold the unit. If the tenant takes the unit, the fee must be applied towards the security deposit or the first month's rent.
- If a landlord wants to change provisions of a month-to-month rental agreement, the tenant must be given at least 30 days' notice in writing.
- Under a lease, on most cases, changes cannot be made unless both landlord and tenant agree to the proposed change or if the lease specifically authorizes the change.
- The landlord must give the tenant at least two-days' notice of his intent to enter at reasonable times or if provide at least one-days' notice to show the unit to prospective renters a tenant

must not unreasonably refuse the landlord to enter. If requested at reasonable times, a tenant shall not unreasonably refuse a landlord's request to enter a unit to repair, improve, or service the unit.

- The landlord cannot change the locks, add new locks, or otherwise make it impossible for the tenant to use the normal locks and keys.
- The landlord may not shut off utilities because the tenant is behind in rent, or to force the tenant to move out.
- The landlord must maintain the unit so that it does not violate state and local codes in ways that endanger the tenant's health and safety. And make repairs to keep the unit in the same condition as when the tenant moved in (except for normal wear and tear).
- The landlord must maintain common areas as reasonably clean and free from hazards.
- At move-in, the landlord must set water heaters at 120 degrees; provide smoke detectors and ensure they work properly; provide in writing information about fire sprinkler and alarm systems, smoking policies, emergency notification and/or the relocation plan, and an emergency evacuation plan.
- The landlord must investigate whether a tenant is engaging in gang-related activity when notified in writing by another tenant of any suspicion.
- It is the tenant's responsibility to keep the rental unit clean and sanitary; dispose of garbage properly; pay for fumigation of infestations caused by the tenant; properly operate systems within the unit; maintain smoke detectors to include replacing the batteries; not intentionally or carelessly damage the dwelling; not engage in gang-related activity; not engage or allow others to engage in illegal drug activity or assaults; comply with any requirements of city, county or state regulations; and when moving out to restore the dwelling to the same condition as when the tenant moved in except for normal wear and tear.
- The tenant must provide in writing a notice to the landlord when something in the unit needs repair. After receiving the notice, the landlord has 24 hours to begin making repairs on issues related to water, heat, and electricity availability, or for conditions imminently hazardous to life. For issues related to the appliances supplied by the landlord or plumbing the landlord must respond within 72 hours. And for all other repairs the landlord has 10 days to begin the repair.
- If a tenant wants to move out they should consult their rental agreement or lease for specific requirements but in most cases a minimum of 20 days written notice provided to the landlord is required.
- If the landlord wants the tenant to move out, the landlord must give a 20-day written notice to leave. The tenant can only be required to move out at the end of a rental period (the day before a rental payment is due). Usually, a 20-day notice cannot be used if the tenant has signed a lease.

