



Dear Developer,

Attached please find an informational packet containing pertinent and timely guidance and best practices for housing developers from the Fair Housing Center of West Michigan (FHCWM). This packet provides an overview of the relationship between fair housing laws and housing development as well as addresses a variety of topics, including accessibility in design and construction, advertising and human models, occupancy standards, and more.

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FHCWM is a private, non-profit organization whose mission is to eliminate and prevent practices of illegal housing discrimination. Fair housing is the right of individuals to obtain the housing of their choice free from discrimination based on federal, state, and/or local protected classes, which include race, color, religion, national origin, sex, disability, familial status, marital status, age, sexual orientation, gender identity or expression, and source of income (source of income in rental housing only). This resource was created in conjunction with the City of Traverse City and addresses the following topics:

- **Fair Housing Laws** – applicable Federal, State, and Local laws
- **Zoning & Land Use** – HUD & DOJ regulations on how fair housing applies to state and local land use and zoning; please note sections on group homes and reasonable accommodations for persons with disabilities.
- **Accessibility, Design & Construction** - HUD & DOJ regulations on implementing design and construction provisions; note "questions & answers" section to help address common concerns in regards to considering accessibility in construction of covered multifamily dwellings.
- **Accommodations & Modifications for Persons with Disabilities** - Disability-based complaints have been the top allegation at FHCWM since 2015; thus FHCWM offers two complementary guidebooks – one for persons seeking to make or assist in making such requests and one for members of the housing industry to respond to such requests in compliance with fair housing best practices. HUD & DOJ has produced regulations addressing each type of request as well.
- **Advertising** – An advertising best practice is to describe the property and/or development, not the people. All advertising for the sale, rental or financing of residential real estate should contain the Equal Housing Opportunity slogan, logo or statement.
  - **Human Models**- In the event of the use of human models, careful research should be done to create advertising that is demographically, locally representative.
  - **Student Housing**- Student status is not a protected class under the Fair Housing Act; however age and familial status are protected under fair housing laws. There are no exemptions for student housing; therefore, housing providers must ensure that they are not discriminating based on age or familial status and undertake efforts to verify student status as well as promote the housing as available to all regardless of protected class.
- **Occupancy Standards** - Development and implementation of occupancy standards for new or current developments should take into account familial status protections as well as applicable local law and/or the International Property Maintenance Code.

This packet also references suggested fair housing strategies to help promote equal housing opportunity. FHCWM offers training and presentations on the aforementioned topics under fair housing law: <https://fhcwm.org/fair-housing-housing-development-series>. FHCWM also offers to review advertising and promotional materials in advance of publication. If you have any questions, would like additional information, or would like to join our mailing list, please contact our office at 616-451-2980 or visit our website: [www.fhcwm.org](http://www.fhcwm.org).

**Fair Housing Center  
of West Michigan**  
20 Hall Street, SE  
Grand Rapids, MI 49507  
616-451-2980 | telephone  
616-451-2657 | fax  
[www.fhcwm.org](http://www.fhcwm.org)



**CITY OF  
TRAVERSE CITY**

# Fair Housing in Housing Development Resource Guide

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## **SECTION 1**

### **Fair Housing Laws**

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# SUMMARIES OF KEY FAIR HOUSING LAWS

## **CIVIL RIGHTS ACTS OF 1866 AND 1870**

Passed at the conclusion of the U.S. Civil War, the provisions of the Acts were routinely ignored in relation to housing transactions until 1968, when the U.S. Supreme Court ruled that the 1866 law prohibits **all forms of racial discrimination** in the sale or rental of housing. The 1870 Act addresses the making of “contracts”, including property contracts, and was intended to ensure that “all persons” shall have the “full and equal benefit of all laws” as enjoyed “by white citizens.” The 1866 law specifically addresses “property rights” as follows:

*“All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey rental and personal property.”*

## **FAIR HOUSING AMENDMENTS ACT OF 1988**

(Amending the Fair Housing provisions of **Title VIII, the Civil Rights Act of 1968**)

This Act, originally passed in 1968 within one week of the assassination of Dr. Martin Luther King, Jr., with major amendments in 1974 and 1988, includes protection against discrimination based on: **race, color, religion, sex** (includes sexual harassment), **familial status** (one or more persons under the age of 18 living with a parent, legal guardian or the designee of a parent or legal guardian), **national origin**, or **disability**. Major provisions include:

- The Act applies only to housing and housing related transactions (it does not apply to commercial property transactions) and only applies to providers of housing; it does not prohibit the housing consumer from selecting the housing of their choice for whatever reason desired.
- The Act applies, with only a few exceptions, to virtually all types of housing transactions (rental, sales, condominium, housing cooperative, mortgage lending, appraising, insuring) in the United States.
- The Act protects against all forms of **differences in treatment**, based on any of the protected classes.
- The Act has been ruled to prohibit otherwise legal and/or neutral actions or policies that produce **disparate impacts** for protected classes.
- The Act prohibits statements (including advertising and publishing) of intent to discriminate or that indicate a preference or limitation based on any of the protected classes.
- The Act provides exemptions from the familial status provisions of the Act for designated senior citizen facilities.
- In relation to persons with disabilities, besides providing “equal treatment”, housing providers may also be required, under the Act, to make reasonable accommodations in policies and practices or may be required to make or allow to be made reasonable modifications to the physical condition of a unit in order to make it possible for a person with a disability to have access to or use the housing unit.
- The Act allows the application of reasonable limitations as to the maximum number of persons who may occupy a dwelling.
- The Act protects persons from threats or intimidation related to exercising their “fair housing rights”.
- The Act may be enforced administratively by the Federal Government (the U.S. Department of Housing and Urban Development, or, in some cases, the U.S. Department of Justice) or by aggrieved persons who file actions in the appropriate state or federal court.



- A person filing a complaint may seek, and may be awarded, temporary and permanent injunctive relief, including the right to complete a transaction and/or occupy a unit; compensatory and punitive monetary damages; as well as attorney fees and cost.

The Fair Housing Act (42 USC 3601, et seq.) also requires that multi-family housing constructed for first occupancy after March 13, 1991, meet specific design and construction requirements. The seven (7) requirements specified by the Act are as follows:

1. Accessible Building Entrance on an Accessible Route
  - Entrance doorways must be a minimum of 36” wide
2. Accessible and Usable Public and Common Use Areas
3. Usable Doors
  - 32” minimum clear opening width for inside doorways
  - Sufficient maneuvering space on both sides of the door
4. Accessible Route Into and Through the Covered Dwelling
  - Hallways must be a minimum of 36” wide
5. Light Switches, Electrical Outlets, Thermostats and Other Environment Controls in Accessible Locations
6. Reinforced Walls for Grab Bars
7. Usable Kitchens and Bathrooms

In buildings without an elevator on an accessible site and route, all ground floor units must be designed and built to meet each of the seven accessibility requirements. Units on the second floor are not subject to these seven requirements. These requirements are further explained in the Guidelines published by the U.S. Department of Housing and Urban Development in Vol. 56, No. 44 of the Federal Register.

## MICHIGAN ELLIOTT-LARSEN CIVIL RIGHTS ACT

Originally passed in 1968, with major amendments in 1977, 1992, 2024, and 2025, this Act mirrors the coverage, protection, and exemptions of the Federal Fair Housing Act. In addition, the State Act prohibits discrimination in housing based on a person’s **chronological age, marital status, sexual orientation, gender identity or expression, and source of income (source of income in rental housing only)**. The Act applies to both housing and other real estate transactions, including commercial property transactions. The Act provides for administrative enforcement through the Michigan Civil Rights Commission, with administrative complaints filed by aggrieved persons with the Michigan Department of Civil Rights. Like the Federal Act, the State Act also provides the right for aggrieved persons to file private actions in State Circuit Courts without going through the administrative process, with similar penalty provisions.

## MICHIGAN PERSONS WITH DISABILITIES CIVIL RIGHTS ACT

Passed in 1976, provisions of the Act helped to shape the 1988 amendments to the Federal Fair Housing Act that expanded that Act to include protection against discrimination based upon disability. Coverage and protection under this Act are similar to the Federal Act, except that the Michigan Act contains the following “undue hardship” language that is not included in the Federal Act:

*“Except as otherwise provided in Article 2, a person shall accommodate a [person with a disability] for purposes of employment, public accommodation, public services, education, or housing unless the person demonstrates that the accommodation would impose an undue hardship.”*

Enforcement and penalty provisions mirror the Federal Act and the Elliot-Larsen Civil Rights Act.

## ACCESSIBILITY LAW AT-A-GLANCE

*This chart is not intended as a legal document. It is meant to serve as an educational summary of the law. For more detailed information, contact the Fair Housing Center of West Michigan or an attorney.*

Law	Who is Protected?	Coverage Provided in Housing
<b>Michigan Barrier Free Act</b> State Law (1966)	Applies to people with physical disabilities	Current code states “new” multi-family buildings with common entrances must have a certain percentage of barrier-free units in the complex. Does not require “old” construction to provide any barrier-free units unless significant renovations or additions are being made. Code changes approximately every three (3) years. Established state Barrier Free Design Board.
<b>Architectural Barriers Act</b> Federal Law (1968)	Applies to public housing	Requires construction or alteration of public housing to meet certain guidelines with respect to disability.
<b>Section 504 of the Rehabilitation Act</b> Federal Law (1973)	Applies to all people with disabilities who are “ <i>applicants for, and recipients of, HUD assistance in the operation of programs or activities receiving such assistance.</i> ”	People with disabilities shall not “ <i>be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development.</i> ”
<b>Michigan Persons with Disabilities Civil Rights Act</b> State Law (1976; amended 1992)	Applies to all people with disabilities	“ <i>a person shall accommodate a handicapper for purposes of employment, public accommodation, public service, education, or housing unless the person demonstrates that the accommodation would impose an undue hardship.</i> ”
<b>Fair Housing Amendments Act</b> Federal Law (1988)	Applies to all people with disabilities	Landlords must allow tenants to make reasonable modifications at tenant’s expense; landlords will make reasonable accommodations to policies, practices, rules and services; all new multi-family construction built after March 13, 1991, must adhere to seven (7) accessibility requirements.
<b>Americans with Disabilities Act (ADA)</b> Federal Law (1990)	Applies to all people with disabilities	Covers employment, public accommodations and services, transportation, and telecommunications. DOES NOT COVER HOUSING, with the exception of requiring housing rental, sales or lending offices to be accessible.

# THE FEDERAL FAIR HOUSING ACT IN BRIEF

The Fair Housing Amendments Act of 1988 became effective on March 12, 1989.

The Fair Housing Amendments Act of 1988 and Title VIII of the Civil Rights Act of 1968, taken together, constitute the Fair Housing Act.

## Acts of Discrimination Under the Fair Housing Act

Specifically, the Act provides protection against the following discriminatory housing practices if they are based on race, sex, religion, color, handicap, familial status, or national origin:

- Denying or refusing to rent housing
- Denying or refusing to sell housing
- Treating housing applicants differently
- Treating residents differently in connection with terms and conditions
- Advertising a discriminatory housing preference or limitation
- Providing false information about the availability of housing
- Harassing, coercing, or intimidating people from enjoying or exercising their rights under the Act
- “Blockbusting” for profit; persuading owners to see or rent housing by telling them that people of a particular race, religion, etc. are moving into the neighborhood
- Imposing different terms on loans for purchasing, constructing, improving, repairing, or maintaining a home, or loans secured by housing
- Denying use of, or participation in, real estate services e.g. broker’s organizations, multiple listing services, etc.

## Enforcement

- The Fair Housing Act gives HUD the authority to hold administrative hearings unless one of the parties elects to have the case heard in U.S. District Court and to issue subpoenas. The Administrative Law Judge in these proceedings can issue an order for relief, including actual damages, injunctive or other equitable relief and penalties. The penalties range from up to \$10,000 for a first violation, to up to \$50,000 for the third violation and those thereafter. The penalties are paid to the Federal Government. The damage payments go to the proven victims.
- The Act adds criminal penalties of a \$100,000 maximum fine and imprisonments as sanctions against people who willfully fail to give information and evidence or who willfully give false information in a fair housing investigation or proceeding.

## Protection for People with Disabilities

The Act defines handicap as:

- Physical or mental impairments which substantially limit one or more major life activities
- Having a record of such an impairment
- Being regarded as having such an impairment

This includes: mental illness; HIV and AIDS; orthopedic, visual, speech and hearing impairments; mobility impairments, etc.

**ELLIOTT-LARSEN CIVIL RIGHTS ACT**  
**Act 453 of 1976**

AN ACT to define civil rights; to prohibit discriminatory practices, policies, and customs in the exercise of those rights based upon religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, familial status, marital status, or source of income; to preserve the confidentiality of records regarding arrest, detention, or other disposition in which a conviction does not result; to prescribe the powers and duties of the civil rights commission and the department of civil rights; to provide remedies and penalties; to provide for fees; and to repeal acts and parts of acts.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1977, Act 162, Imd. Eff. Nov. 8, 1977;—Am. 1979, Act 91, Imd. Eff. Aug. 1, 1979;—Am. 1982, Act 45, Eff. Mar. 30, 1983;—Am. 1992, Act 124, Imd. Eff. June 29, 1992;—Am. 1992, Act 258, Imd. Eff. Dec. 7, 1992;—Am. 2023, Act 6, Eff. Feb. 13, 2024;—Am. 2024, Act 200, Eff. Apr. 2, 2025.

*The People of the State of Michigan enact:*

**ARTICLE 1**

**37.2101 Short title.**

Sec. 101. This act shall be known and may be cited as the "Elliott-Larsen civil rights act".

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1977, Act 162, Imd. Eff. Nov. 8, 1977.

**37.2102 Recognition and declaration of civil right; action arising out of discrimination based on sex or familial status.**

Sec. 102. (1) The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right.

(2) This section does not prevent an individual from bringing or continuing an action arising out of sex discrimination before July 18, 1980 for a claim based on conduct similar to or identical to harassment.

(3) This section does not prevent an individual from bringing or continuing an action arising out of discrimination based on familial status before June 29, 1992 for a claim based on conduct similar to or identical to discrimination because of the age of anyone residing with the individual bringing or continuing the action.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1979, Act 91, Imd. Eff. Aug. 1, 1979;—Am. 1980, Act 202, Imd. Eff. July 18, 1980;—Am. 1982, Act 45, Eff. Mar. 30, 1983;—Am. 1992, Act 124, Imd. Eff. June 29, 1992;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

**37.2103 Definitions.**

Sec. 103. As used in this act:

(a) "Age" means chronological age except as otherwise provided by law.

(b) "Commission" means the civil rights commission established by section 29 of article V of the state constitution of 1963.

(c) "Commissioner" means a member of the commission.

(d) "Department" means the department of civil rights or its employees.

(e) "Familial status" means 1 or more individuals under the age of 18 residing with a parent or other person having custody or in the process of securing legal custody of the individual or individuals or residing with the designee of the parent or other person having or securing custody, with the written permission of the parent or other person. For purposes of this definition, "parent" includes an individual who is pregnant.

(f) "Gender identity or expression" means having or being perceived as having a gender-related self-identity or expression whether or not associated with an individual's assigned sex at birth.

(g) "National origin" includes the national origin of an ancestor.

(h) "Person" means an individual, agent, association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, this state or a political subdivision of this state or an agency of this state, or any other legal or commercial entity.

(i) "Political subdivision" means a county, city, village, township, school district, or special district or authority of this state.

(j) "Race" is inclusive of traits historically associated with race, including, but not limited to, hair texture

and protective hairstyles. For purposes of this definition, "protective hairstyles" includes, but is not limited to, such hairstyles as braids, locks, and twists.

(k) Discrimination because of sex includes sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature under the following conditions:

(i) Submission to the conduct or communication is made a term or condition either explicitly or implicitly to obtain employment, public accommodations or public services, education, or housing.

(ii) Submission to or rejection of the conduct or communication by an individual is used as a factor in decisions affecting the individual's employment, public accommodations or public services, education, or housing.

(iii) The conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment.

(l) "Sexual orientation" means having an orientation for heterosexuality, homosexuality, or bisexuality or having a history of such an orientation or being identified with such an orientation.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1980, Act 202, Imd. Eff. July 18, 1980;—Am. 1992, Act 124, Imd. Eff. June 29, 1992;—Am. 1999, Act 202, Eff. Mar. 10, 2000;—Am. 2023, Act 6, Eff. Feb 13, 2024;—Am. 2023, Act 45, Imd. Eff. June 15, 2023.

**Compiler's note:** Enacting section 1 of Act 202 of 1999 provides:

"Enacting section 1. This amendatory act is curative and intended to correct any misinterpretation of legislative intent in the court of appeals decision Neal v Department of Corrections, 232 Mich App 730 (1998). This legislation further expresses the original intent of the legislature that an individual serving a sentence of imprisonment in a state or county correctional facility is not within the purview of this act."

## ARTICLE 2

### 37.2201 Definitions.

Sec. 201. As used in this article:

(a) "Employer" means a person that has 1 or more employees, and includes an agent of that person.

(b) "Employment agency" means a person regularly undertaking with or without compensation to procure, refer, recruit, or place an employee for an employer or to procure, refer, recruit, or place for an employer or person the opportunity to work for an employer and includes an agent of that person.

(c) "Labor organization" includes:

(i) An organization of any kind, or an agency or employee representation committee, group, association, or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(ii) A conference, general committee, joint or system board, or joint council that is subordinate to a national or international labor organization.

(iii) An agent of a labor organization.

(d) "Sex" includes, but is not limited to, pregnancy, childbirth, the termination of a pregnancy, or a related medical condition.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1978, Act 153, Imd. Eff. May 22, 1978;—Am. 1980, Act 202, Imd. Eff. July 18, 1980;—Am. 2023, Act 31, Eff. Feb. 13, 2024.

### 37.2202 Employer; prohibited practices; exceptions.

Sec. 202. (1) An employer shall not do any of the following:

(a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.

(b) Limit, segregate, or classify an employee or applicant for employment in a way that deprives or tends to deprive the employee or applicant of an employment opportunity or otherwise adversely affects the status of the employee or applicant because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.

(c) Segregate, classify, or otherwise discriminate against an individual on the basis of sex with respect to a term, condition, or privilege of employment, including, but not limited to, a benefit plan or system.

(d) Treat an individual affected by pregnancy, childbirth, the termination of a pregnancy, or a related medical condition differently for any employment-related purpose from another individual who is not so

affected but similar in ability or inability to work, without regard to the source of any condition affecting the other individual's ability or inability to work.

(2) This section does not prohibit the establishment or implementation of a bona fide retirement policy or system that is not a subterfuge to evade the purposes of this section.

(3) This section does not apply to the employment of an individual by the individual's parent, spouse, or child.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1978, Act 153, Imd. Eff. May 22, 1978;—Am. 1991, Act 11, Eff. May 1, 1991;—Am. 2009, Act 190, Imd. Eff. Dec. 22, 2009;—Am. 2023, Act 6, Eff. Feb. 13, 2024;—Am. 2023, Act 31, Eff. Feb. 13, 2024.

### **37.2202a Designation of racial or ethnic classifications in writing developed by employer; transmission of information to federal agency; "writing" defined.**

Sec. 202a. (1) An employer shall do both of the following if that employer lists racial or ethnic classifications in a writing developed or printed 90 or more days after the effective date of this section, and if that employer requests that an individual select a classification to designate his or her race or ethnicity:

(a) Include in the writing the term "multiracial" as a classification, and a definition of that term that substantially provides that "multiracial" means having parents of different races.

(b) Exclude from the writing the term "other" as a classification.

(2) If a federal agency requires an employer to transmit information obtained from an individual pursuant to a writing described in subsection (1), but rejects the classification "multiracial", the employer shall redesignate the individuals identified as multiracial by allocating those individuals to racial or ethnic classifications approved by the federal agency in the same ratio that those classifications occur within the general population of the group from which the information was solicited.

(3) As used in this section, "writing" means that term as defined in section 2 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.232 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 88, Imd. Eff. June 20, 1995.

### **37.2203 Employment agency; prohibited practices generally.**

Sec. 203. An employment agency shall not fail or refuse to procure, refer, recruit, or place for employment, or otherwise discriminate against, an individual because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status; or classify or refer for employment an individual on the basis of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

### **37.2204 Labor organization; prohibited practices generally.**

Sec. 204. A labor organization shall not do any of the following:

(a) Exclude or expel from membership, or otherwise discriminate against, a member or applicant for membership because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.

(b) Limit, segregate, or classify membership or applicants for membership, or classify or fail or refuse to refer for employment an individual in a way that would deprive or tend to deprive that individual of an employment opportunity, or that would limit an employment opportunity, or that would adversely affect wages, hours, or employment conditions, or otherwise adversely affect the status of an employee or an applicant for employment, because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.

(c) Cause or attempt to cause an employer to violate this article.

(d) Fail to fairly and adequately represent a member in a grievance process because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

### **37.2205 Employer, labor organization, or joint labor-management committee; training programs; prohibited practices.**

Sec. 205. An employer, labor organization, or joint labor-management committee controlling an apprenticeship, on the job, or other training or retraining program, shall not discriminate against an individual because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status, in admission to, or employment or continuation in, a program established to provide apprenticeship on the job, or other training or retraining.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

**37.2205a Employer, employment agency, or labor organization; record of information regarding misdemeanor arrest, detention, or disposition; failure to recite or acknowledge information; “law enforcement agency” defined.**

Sec. 205a. (1) An employer, employment agency, or labor organization, other than a law enforcement agency of this state or a political subdivision of this state, shall not in connection with an application for employment or membership, or in connection with the terms, conditions, or privileges of employment or membership request, make, or maintain a record of information regarding a misdemeanor arrest, detention, or disposition where a conviction did not result. A person is not guilty of perjury or otherwise for giving a false statement by failing to recite or acknowledge information the person has a civil right to withhold by this section. This section does not apply to information relative to a felony charge before conviction or dismissal.

(2) As used in this section, "law enforcement agency" includes the state department of corrections.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1978, Act 610, Eff. Mar. 30, 1979;—Am. 1982, Act 45, Eff. Mar. 30, 1983;—Am. 1999, Act 202, Eff. Mar. 10, 2000.

**Compiler's note:** Enacting section 1 of Act 202 of 1999 provides:

“Enacting section 1. This amendatory act is curative and intended to correct any misinterpretation of legislative intent in the court of appeals decision Neal v Department of Corrections, 232 Mich App 730 (1998). This legislation further expresses the original intent of the legislature that an individual serving a sentence of imprisonment in a state or county correctional facility is not within the purview of this act.”

**37.2205b Repealed. 1982, Act 45, Eff. Mar. 30, 1983.**

**Compiler's note:** The repealed section pertained to announcing availability of polygraph examination.

**37.2206 Employer, labor organization, or employment agency; prohibited practices.**

Sec. 206. (1) An employer, labor organization, or employment agency shall not print, circulate, post, mail, or otherwise cause to be published a statement, advertisement, notice, or sign relating to employment by the employer, or relating to membership in or a classification or referral for employment by the labor organization, or relating to a classification or referral for employment by the employment agency, that indicates a preference, limitation, specification, or discrimination, based on religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.

(2) Except as permitted by rules promulgated by the commission or by applicable federal law, an employer or employment agency shall not do any of the following:

(a) Make or use a written or oral inquiry or form of application that elicits or attempts to elicit information concerning the religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status of a prospective employee.

(b) Make or keep a record of information described in subdivision (a) or disclose that information.

(c) Make or use a written or oral inquiry or form of application that expresses a preference, limitation, specification, or discrimination based on religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status of a prospective employee.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

**Administrative rules:** R 37.1 et seq. of the Michigan Administrative Code.

**37.2207 Individual seeking employment; prohibited practices.**

Sec. 207. An individual seeking employment shall not publish or cause to be published a notice or advertisement that specifies or indicates the individual's religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status, or expresses a preference, specification, limitation, or discrimination as to the religion, race, color, national origin, age, height, weight, sex, sexual orientation, gender identity or expression, or marital status of a prospective employer.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

**37.2208 Application for exemption; bona fide occupational qualification.**

Sec. 208. A person subject to this article may apply to the commission for an exemption on the basis that religion, national origin, age, height, weight, or sex is a bona fide occupational qualification reasonably necessary to the normal operation of the business or enterprise. Upon sufficient showing, the commission may grant an exemption to the appropriate section of this article. An employer may have a bona fide occupational qualification on the basis of religion, national origin, sex, age, or marital status, height and weight without obtaining prior exemption from the commission, provided that an employer who does not obtain an exemption shall have the burden of establishing that the qualification is reasonably necessary to the normal operation of the business.



**History:** 1976, Act 453, Eff. Mar. 31, 1977.

### **37.2209 Covenants.**

Sec. 209. A contract to which this state, a political subdivision, or an agency of this state or of a political subdivision is a party must contain a covenant by the contractor and the contractor's subcontractors not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status. Breach of this covenant may be regarded as a material breach of the contract.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

### **37.2210 Plan.**

Sec. 210. A person subject to this article may adopt and carry out a plan to eliminate present effects of past discriminatory practices or assure equal opportunity with respect to religion, race, color, national origin, or sex if the plan is filed with the commission under rules of the commission and the commission approves the plan.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

**Administrative rules:** R 37.27 et seq. of the Michigan Administrative Code.

### **37.2211 Different standards of compensation; different terms, conditions, or privileges of employment.**

Sec. 211. Notwithstanding any other provision of this article, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

## **ARTICLE 3**

### **37.2301 Definitions.**

Sec. 301. As used in this article:

(a) "Place of public accommodation" means a business, or an educational, refreshment, entertainment, recreation, health, or transportation facility, or institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public. Place of public accommodation also includes the facilities of the following private clubs:

(i) A country club or golf club.

(ii) A boating or yachting club.

(iii) A sports or athletic club.

(iv) A dining club, except a dining club that in good faith limits its membership to the members of a particular religion for the purpose of furthering the teachings or principles of that religion and not for the purpose of excluding individuals of a particular sex, race, or color.

(b) "Public service" means a public facility, department, agency, board, or commission, owned, operated, or managed by or on behalf of this state, a political subdivision, or an agency of this state or of a political subdivision or a tax exempt private agency established to provide service to the public, except that public service does not include a state or county correctional facility with respect to actions and decisions regarding an individual serving a sentence of imprisonment.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1992, Act 70, Imd. Eff. May 29, 1992;—Am. 1999, Act 202, Eff. Mar. 10, 2000;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

**Compiler's note:** Enacting section 1 of Act 202 of 1999 provides:

"Enacting section 1. This amendatory act is curative and intended to correct any misinterpretation of legislative intent in the court of appeals decision *Neal v Department of Corrections*, 232 Mich App 730 (1998). This legislation further expresses the original intent of the legislature that an individual serving a sentence of imprisonment in a state or county correctional facility is not within the purview of this act."

**Constitutionality:** In *Doe v Dep't of Corrections*, 504 Mich 883 (2019), the Michigan Supreme Court denied the application for leave to appeal the March 27, 2018 judgment in *Doe v Dep't of Corrections*, 323 Mich App 479, that held that section 301(b) as amended by Act 202 of 1999 to effectively bar correctional-facility prisoners from bringing ELCRA suits is in direct violation of article I, section 2 of the state constitution of 1963.

### **37.2302 Public accommodations or services; prohibited practices.**

Sec. 302. Except where permitted by law, a person shall not do any of the following:



(a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, or marital status.

(b) Print, circulate, post, mail, or otherwise cause to be published a statement, advertisement, notice, or sign that indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service will be refused, withheld from, or denied an individual because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, or marital status, or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, or marital status.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

**Constitutionality:** The goal of the Civil Rights Act was to broaden the scope of equal protection rather than the standard of equal protection developed by the courts in the course of interpreting the equal protection provisions of United States and Michigan Constitutions. *Civil Rights Department v Waterford*, 425 Mich 173; 387 NW2d 821 (1986).

### **37.2302a Applicability to private club.**

Sec. 302a. (1) This section applies to a private club that is defined as a place of public accommodation under section 301(a).

(2) If a private club allows use of its facilities by 1 or more adults per membership, the use must be equally available to all adults entitled to use the facilities under the membership. All classes of membership must be available without regard to race, color, sex, sexual orientation, gender identity or expression, religion, marital status, or national origin. Memberships that permit use during restricted times may be allowed only if the restricted times apply to all adults using that membership.

(3) A private club that has food or beverage facilities or services shall allow equal access to those facilities and services for all adults in all membership categories at all times. This subsection does not require service or access to facilities to persons that would violate any law or ordinance regarding sale, consumption, or regulation of alcoholic beverages.

(4) This section does not prohibit a private club from sponsoring or permitting sports schools or leagues for children less than 18 years of age that are limited by age or to members of 1 sex, if comparable and equally convenient access to the club's facilities is made available to both sexes and if these activities are not used as a subterfuge to evade the purposes of this article.

**History:** Add. 1992, Act 70, Imd. Eff. May 29, 1992;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

### **37.2303 Exemptions.**

Sec. 303. This article shall not apply to a private club, or other establishment not in fact open to the public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the private club or establishment are made available to the customers or patrons of another establishment that is a place of public accommodation or is licensed by the state under Act No. 8 of the Public Acts of the Extra Session of 1933, being sections 436.1 through 436.58 of the Michigan Compiled Laws. This section shall not apply to a private club that is otherwise defined as a place of public accommodation in this article.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1992, Act 70, Imd. Eff. May 29, 1992.

### **37.2304 Violation.**

Sec. 304. Within 30 days after a determination by the commission that a place of public accommodation that holds a license issued by the liquor control commission under the Michigan liquor control act, Act No. 8 of the Public Acts of the Extra Session of 1933, being sections 436.1 to 436.58 of the Michigan Compiled Laws, has violated this article, the commission shall certify that determination to and shall file a complaint alleging a violation of Act No. 8 of the Public Acts of the Extra Session of 1933 with the liquor control commission.

**History:** Add. 1992, Act 70, Imd. Eff. May 29, 1992.

## **ARTICLE 4**

### **37.2401 Definition.**

Sec. 401. As used in this article, "educational institution" means a public or private institution, or a separate school or department thereof, and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, local school system, university, or a business, nursing, professional, secretarial, technical, or vocational school; and includes an agent of an educational institution.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

### **37.2402 Educational institution; prohibited practices.**

Sec. 402. An educational institution shall not do any of the following:

(a) Discriminate against an individual in the full utilization of or benefit from the institution, or the services, activities, or programs provided by the institution because of religion, race, color, national origin, sex, sexual orientation, or gender identity or expression.

(b) Exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution, because of religion, race, color, national origin, sex, sexual orientation, or gender identity or expression.

(c) For purposes of admission only, make or use a written or oral inquiry or form of application that elicits or attempts to elicit information concerning the religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, or marital status of an individual, except as permitted by rule of the commission or as required by federal law, rule, or regulation, or pursuant to an affirmative action program.

(d) Print or publish or cause to be printed or published a catalog, notice, or advertisement indicating a preference, limitation, specification, or discrimination based on the religion, race, color, national origin, sex, sexual orientation, or gender identity or expression, of an applicant for admission to the educational institution.

(e) Announce or follow a policy of denial or limitation through a quota or otherwise of educational opportunities of a group or its members because of religion, race, color, national origin, sex, sexual orientation, or gender identity or expression.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1982, Act 512, Eff. Mar. 30, 1983;—Am. 1993, Act 216, Imd. Eff. Oct. 29, 1993;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

**Administrative rules:** R 37.1 et seq. of the Michigan Administrative Code.

### **37.2402a Designation of racial or ethnic classification in writing developed by educational institution; transmission of information to federal agency; "writing" defined.**

Sec. 402a. (1) An educational institution shall do both of the following if that educational institution lists racial or ethnic classifications in a writing developed or printed 90 or more days after the effective date of this section, and if that educational institution requests that an individual select 1 of those classifications to designate his or her race or ethnicity:

(a) Include in the writing the term "multiracial" as a classification, and a definition of that term that substantially provides that "multiracial" means having parents of different races.

(b) Exclude from the writing the term "other" as a classification.

(2) If a federal agency requires an educational institution to transmit information obtained from an individual pursuant to a writing described in subsection (1), but rejects the classification "multiracial", the educational institution shall redesignate the individuals identified as multiracial by allocating those individuals to racial or ethnic classifications approved by the federal agency in the same ratio that those classifications occur within the general population of the group from which the information was solicited.

(3) As used in this section, "writing" means that term as defined in section 2 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.232 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 88, Imd. Eff. June 20, 1995.

### **37.2403 Religious educational institution; exemption.**

Sec. 403. The provisions of section 402 related to religion shall not apply to a religious educational institution or an educational institution operated, supervised, or controlled by a religious institution or organization which limits admission or gives preference to an applicant of the same religion.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

### **37.2404 Private educational institution; exemption.**

Sec. 404. The provisions of section 402 relating to sex shall not apply to a private educational institution not exempt under section 403, which now or hereafter provides an education to persons of 1 sex.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

### **37.2404a Single-gender school, class, or program; definitions.**

Sec. 404a. (1) This article does not prohibit the board of a school district or intermediate school district or the board of directors of a public school academy from establishing and maintaining a single-gender school, class, or program within a school as provided under sections 475 and 1146 of the revised school code, 1976 PA 451, MCL 380.475 and 380.1146.

(2) As used in this section, "school district", "intermediate school district", and "public school academy"

mean those terms as defined in the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

**History:** Add. 2006, Act 348, Imd. Eff. Sept. 1, 2006.

## ARTICLE 5

### 37.2501 Definitions.

Sec. 501. As used in this article:

(a) "Real property" includes a building, structure, mobile home, real estate, land, mobile home park, trailer park, tenement, leasehold, or an interest in a real estate cooperative or condominium.

(b) "Real estate transaction" means the sale, exchange, rental, or lease of real property, or an interest in real property.

(c) "Housing accommodation" includes improved or unimproved real property, or a part of improved or unimproved real property, that is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home or residence of 1 or more individuals.

(d) "Real estate broker or salesperson" means a person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property; who negotiates or attempts to negotiate any of those activities; who holds oneself out as engaged in those activities; who negotiates or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon real property; who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of a real estate broker or salesperson.

(e) "Source of income" means that term as defined in section 1 of 1972 PA 348, MCL 554.601.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 2023, Act 6, Eff. Feb. 13, 2024;—Am. 2024, Act 200, Eff. Apr. 2, 2025.

### 37.2502 Persons engaging in real estate transactions, real estate brokers, or real estate salesperson; prohibited practices; prohibition on use of source of income by landlord; section subject to MCL 37.2503.

Sec. 502. (1) A person engaging in a real estate transaction, or a real estate broker or salesperson, shall not on the basis of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, familial status, or marital status of an individual or anyone residing with that individual do any of the following:

(a) Refuse to engage in a real estate transaction with a person.

(b) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.

(c) Refuse to receive from a person or transmit to a person a bona fide offer to engage in a real estate transaction.

(d) Refuse to negotiate for a real estate transaction with a person.

(e) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or knowingly fail to bring a property listing to a person's attention, or refuse to permit a person to inspect real property, or otherwise make unavailable or deny real property to a person.

(f) Make, print, circulate, post, mail, or otherwise cause to be made or published a statement, advertisement, notice, or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, that indicates, directly or indirectly, an intent to make a preference, limitation, specification, or discrimination with respect to the real estate transaction.

(g) Offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection with that transaction.

(h) Discriminate against a person in the brokering or appraising of real property.

(2) A person shall not deny a person access to, or membership or participation in, a multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting real property or discriminate against the person in the terms or conditions of that access, membership, or participation because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, familial status, or marital status.

(3) A person that is a landlord of a rental unit shall not, based on the source of income of an otherwise eligible prospective or current tenant, do any of the following:

(a) Deny or terminate a tenancy to the prospective or current tenant.

(b) Make any distinction, discrimination, or restriction against the prospective or current tenant in the price, terms, conditions, fees, or privileges relating to the rental, lease, or occupancy of a rental unit or in the furnishing of any facilities or services in connection with the rental, lease, or occupancy of the rental unit.

(c) Otherwise make unavailable or deny any rental unit to the prospective or current tenant if the prospective or current tenant would be eligible to rent the rental unit but for the individual's source of income.

(d) Represent to the prospective tenant that a rental unit is not available for inspection, rental, or lease when in fact it is so available, or knowingly fail to bring a rental listing to the prospective tenant's attention, or refuse to permit the prospective tenant to inspect a rental unit.

(e) Make any distinction, discrimination, or restriction against the prospective or current tenant in the price, terms, conditions, fees, or privileges relating to the rental, lease, or occupancy of any rental unit on the basis of the prospective or current tenant's use of emergency rental assistance.

(f) If the person is a landlord that requires a prospective or current tenant to have a certain threshold level of income, exclude any source of income in the form of a rent voucher or subsidy when calculating whether the income criteria have been met. This subdivision does not apply to emergency rental assistance.

(g) Attempt to discourage the rental or lease of any rental unit to the prospective or current tenant.

(h) Publish, circulate, display, or cause to be published, circulated, or displayed any communication, notice, advertisement, or sign of any kind relating to the rental or lease of any rental unit that indicates a preference, limitation, or requirement based on any source of income.

(i) Assist, induce, incite, or coerce another person to commit an act or engage in a practice that violates this subsection.

(j) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected under this subsection.

(4) Subsection (3) does not apply to a person if the person, including all related entities to that person, is a landlord of fewer than 5 rental units in this state. As used in this subsection:

(a) "Person" means an individual, partnership, corporation, association, limited liability company, or any other legal entity.

(b) "Related entity" means a person that, directly or indirectly, controls, is controlled by, or is under common control with another person.

(5) This section is subject to section 503.

(6) As used in this section, "landlord", "tenant", and "rental unit" mean those terms as defined in section 1 of 1972 PA 348, MCL 554.601.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1992, Act 124, Imd. Eff. June 29, 1992;—Am. 2023, Act 6, Eff. Feb. 13, 2024;—Am. 2024, Act 180, Eff. Apr. 2, 2025.

### **37.2503 Nonapplicability of MCL 37.2502; "immediate family" defined; information relative to marital status.**

Sec. 503. (1) Section 502 does not apply to any of the following:

(a) The rental of a housing accommodation in a building that contains housing accommodations for not more than 2 families living independently of each other if the owner or a member of the owner's immediate family resides in 1 of the housing accommodations, or to the rental of a room or rooms in a single family dwelling by a person if the lessor or a member of the lessor's immediate family resides in the dwelling.

(b) The rental of a housing accommodation for not more than 12 months by the owner or lessor if it was occupied by him or her and maintained as his or her home for at least 3 months immediately preceding occupancy by the tenant and is maintained as the owner's or lessor's legal residence.

(c) With respect to the age provision and the familial status provision only, the sale, rental, or lease of housing accommodations meeting the requirements of federal, state, or local housing programs for senior citizens, or accommodations otherwise intended, advertised, designed or operated, bona fide, for the purpose of providing housing accommodations for persons 50 years of age or older.

(2) As used in subsection (1), "immediate family" means a spouse, parent, child, or sibling.

(3) Information relative to the marital status of an individual may be obtained when necessary for the preparation of a deed or other instrument of conveyance.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1992, Act 124, Imd. Eff. June 29, 1992.

### **37.2504 Application for financial assistance or financing; prohibited practices; nonapplicability of MCL 37.2504(1)(b).**

Sec. 504. (1) A person to whom application is made for financial assistance or financing in connection with a real estate transaction or in connection with the construction, rehabilitation, repair, maintenance, or improvement of real property, or a representative of that person, shall not do any of the following:

(a) Discriminate against the applicant because of the religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, familial status, or marital status of the applicant or an individual

residing with the applicant.

(b) Use a form of application for financial assistance or financing or make or keep a record or inquiry in connection with an application for financial assistance or financing that indicates, directly or indirectly, a preference, limitation, specification, or discrimination as to the religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, familial status, or marital status of the applicant or an individual residing with the applicant.

(2) A person whose business includes engaging in real estate transactions shall not discriminate against a person because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, familial status, or marital status, in purchasing loans for acquiring, constructing, improving, repairing, or maintaining a dwelling or in making or purchasing loans or providing other financial assistance secured by residential real estate.

(3) Subsection (1)(b) does not apply to a form of application for financial assistance prescribed for the use of a lender regulated as a mortgagee under the national housing act, 12 USC 1701 to 1750g, or by a regulatory board or officer acting under the statutory authority of this state or the United States.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1992, Act 124, Imd. Eff. June 29, 1992;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

### **37.2505 Condition, restriction, or prohibition limiting use or occupancy of real property; exceptions; inserting or honoring void provision.**

Sec. 505. (1) A condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, familial status, or marital status is void, except a limitation of use as provided in section 503(1)(c) or on the basis of religion relating to real property held by a religious institution or organization, or by a religious or charitable organization operated, supervised, or controlled by a religious institution or organization, and used for religious or charitable purposes.

(2) A person shall not insert in a written instrument relating to real property a provision that is void under this section or honor such a provision in the chain of title.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1980, Act 170, Imd. Eff. June 18, 1980;—Am. 1992, Act 124, Imd. Eff. June 29, 1992;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

### **37.2506 Real estate transactions; prohibited representations.**

Sec. 506. A person shall not represent, for the purpose of inducing a real estate transaction from which the person may benefit financially, that a change has occurred or will or may occur in the composition with respect to religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, familial status, or marital status of the owners or occupants in the block, neighborhood, or area in which the real property is located, or represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1992, Act 124, Imd. Eff. June 29, 1992;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

### **37.2506a Use by landlord of reasonable accommodations.**

Sec. 506a. This article does not preclude the use by a landlord of reasonable accommodations as required by section 102(2) of the Michigan handicappers' civil rights act, Act No. 220 of the Public Acts of 1976, being section 37.1102 of the Michigan Compiled Laws.

**History:** Add. 1992, Act 124, Imd. Eff. June 29, 1992.

### **37.2507 Plan.**

Sec. 507. A person subject to this article may adopt and carry out a plan to eliminate present effects of past discriminatory practices or assure equal opportunity with respect to religion, race, color, national origin, or sex if the plan is filed with the commission under rules of the commission and the commission approves the plan.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

**Administrative rules:** R 37.27 et seq. of the Michigan Administrative Code.

## **ARTICLE 6**

### **37.2601 Commission; powers and duties generally; quorum; vacancy; compensation and expenses; conducting business at public meeting; notice; availability of certain writings to**



**public.**

Sec. 601. (1) The commission shall:

(a) Maintain a principal office in the city of Lansing and other offices within the state as it considers necessary.

(b) Meet and exercise its powers at any place within the state.

(c) Appoint an executive director who shall be the chief executive officer of the department and exempt from civil service, and appoint necessary hearing examiners.

(d) Accept public grants, private gifts, bequests, or other amounts or payments.

(e) Prepare annually a comprehensive written report to the governor. The report may contain recommendations adopted by the commission for legislative or other action necessary to effectuate the purposes and policies of this act.

(f) Promulgate, amend, or repeal rules to carry out this act pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

(g) Request the services of a department or agency of the state or a political subdivision of the state.

(h) Promote and cooperate with a public or governmental agency as in the commission's judgment will aid in effectuating the act and the state constitution of 1963.

(i) Establish and promulgate rules governing its relationship with local commissions, and establish criteria for certifying local commissions for the deferring of complaints.

(2) The commission may hold hearings, administer oaths, issue preliminary notices to witnesses to appear, compel through court authorization the attendance of witnesses and the production for examination of books, papers, or other records relating to matters before the commission, take the testimony of a person under oath, and issue appropriate orders. The commission may promulgate rules as to the issuance of preliminary notices to appear.

(3) A majority of the members of the commission constitutes a quorum. A majority of the members is required to take action on matters not of a ministerial nature, but a majority of a quorum may deal with ministerial matters. A vacancy in the commission shall not impair the right of the remaining members to exercise the powers of the commission. The members of the commission shall receive a per diem compensation and shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties. The per diem compensation of the commission and the schedule for reimbursement of the expenses shall be established annually by the legislature.

(4) The business which the commission may perform shall be conducted at a public meeting of the commission held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(5) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1978, Act 446, Imd. Eff. Oct. 11, 1978.

**Administrative rules:** R 37.1 et seq. and R 37.101 of the Michigan Administrative Code.

**37.2602 Department; powers and duties generally.**

Sec. 602. The department shall:

(a) Be responsible to the executive director, who shall be the principal executive officer of the department and shall be responsible for executing the policies of the commission.

(b) Appoint necessary employees and agents and fix their compensation in accordance with civil service rules. The attorney general shall appear for and represent the department or the commission in a court having jurisdiction of a matter under this act.

(c) Receive, initiate, investigate, conciliate, adjust, dispose of, issue charges, and hold hearings on complaints alleging a violation of this act, and approve or disapprove plans to correct past discriminatory practices which have caused or resulted in a denial of equal opportunity with respect to groups or persons protected by this act.

(d) Require answers to interrogatories, order the submission of books, papers, records, and other materials pertinent to a complaint, and require the attendance of witnesses, administer oaths, take testimony, and compel, through court authorization, compliance with its orders or an order of the commission.

(e) Cooperate or contract with persons and state, local, and other agencies, both public and private, including agencies of the federal government and of other states.

(f) Monitor the awarding and execution of contracts to ensure compliance by a contractor or a subcontractor with a covenant entered into or to be entered into pursuant to section 209.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1992, Act 258, Imd. Eff. Dec. 7, 1992.

**37.2602a Repealed. 1992, Act 258, Eff. Dec. 8, 1994.**

**Compiler's note:** The repealed section pertained to business conducted with the state or an agency, requests for review of equal employment opportunity practices, and creation of civil rights contract monitoring fund.

**37.2603 Complaint; petition for temporary relief or restraining order; notice of pendency of action.**

Sec. 603. At any time after a complaint is filed, the department may file a petition in the circuit court for the county in which the subject of the complaint occurs, or for the county in which a respondent resides or transacts business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this section, including an order or decree restraining the respondent from doing or procuring an act tending to render ineffectual an order the commission may enter with respect to the complaint. If the complaint alleges a violation of article 5, upon the filing of the petition the department shall file for the record a notice of pendency of the action. The court may grant temporary relief or a restraining order as it deems just and proper, but the relief or order shall not extend beyond 5 days except by consent of the respondent, or after hearing upon notice to the respondent and a finding by the court that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

**37.2604 Findings of fact and conclusions of law; final order dismissing complaint; copies of order.**

Sec. 604. If the commission, after a hearing on a charge issued by the department, determines that the respondent has not engaged in a discriminatory practice prohibited by this act, the commission shall state its findings of fact and conclusions of law and shall issue a final order dismissing the complaint. The commission shall furnish a copy of the order to the claimant, the respondent, the attorney general, and other public officers and persons as the commission deems proper.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

**37.2605 Findings of fact and conclusions of law; cease and desist order; amendment of pleadings; findings and order based thereon; copies of order; scope of action ordered; certification of violation to licensing or contracting agency.**

Sec. 605. (1) If the commission, after a hearing on a charge issued by the department, determines that the respondent has violated this act or the handicappers' civil rights act, Act No. 220 of the Public Acts of 1976, being sections 37.1101 to 37.1607 of the Michigan Compiled Laws, the commission shall state its findings of fact and conclusions of law and shall issue a final order requiring the respondent to cease and desist from the discriminatory practice and to take such other action as it deems necessary to secure equal enjoyment and protection of civil rights. If at a hearing on a charge, a pattern or practice of discrimination prohibited by this act or Act No. 220 of the Public Acts of 1976 appears in the evidence, the commission may, upon its own motion or on motion of the claimant, amend the pleadings to conform to the proofs, make findings, and issue an order based on those findings. A copy of the order shall be delivered to the respondent, the claimant, the attorney general, and to other public officers and persons as the commission deems proper.

(2) Action ordered under this section may include, but is not limited to:

- (a) Hiring, reinstatement, or upgrading of employees with or without back pay.
- (b) Admission or restoration of individuals to labor organization membership, admission to or participation in a guidance program, apprenticeship training program, on the job training program, or other occupational training or retraining program, with the utilization of objective criteria in the admission of persons to those programs.
- (c) Admission of persons to a public accommodation or an educational institution.
- (d) Sale, exchange, lease, rental, assignment, or sublease of real property to a person.
- (e) Extension to all persons of the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the respondent.
- (f) Reporting as to the manner of compliance.
- (g) Requiring the posting of notices in a conspicuous place which the commission may publish or cause to be published setting forth requirements for compliance with civil rights law or other relevant information which the commission determines necessary to explain those laws.
- (h) Payment to an injured party of profits obtained by the respondent through a violation of section 506 of this act or of Act No. 220 of the Public Acts of 1976.
- (i) Payment to the complainant of damages for an injury or loss caused by a violation of this act, including

a reasonable attorney's fee.

(j) Payment to the complainant of all or a portion of the costs of maintaining the action before the commission, including reasonable attorney fees and expert witness fees, if the commission determines that award to be appropriate.

(k) Payment of a civil fine for a violation of article 5 of this act, an amount directly related to the cost to the state for enforcing this statute not to exceed:

(i) \$10,000.00 for the first violation.

(ii) \$25,000.00 for the second violation within a 5-year period.

(iii) \$50,000.00 for 2 or more violations within a 7-year period.

(l) Other relief the commission deems appropriate.

(3) In the case of a respondent operating by virtue of a license issued by the state, a political subdivision, or an agency of the state or political subdivision, if the commission, upon notice and hearing, determines that the respondent has violated this act and that the violation was authorized, requested, commanded, performed, or knowingly permitted by the board of directors of the respondent or by an officer or executive agent acting within the scope of his or her employment, the commission shall so certify to the licensing agency. Unless the commission's finding is reversed in the course of judicial review, the finding of the commission may be grounds for revocation of the respondent's license.

(4) In the case of a respondent who violates this act in the course of performing under a contract or subcontract with the state, a political subdivision, or an agency of the state or political subdivision, where the violation was authorized, requested, commanded, performed, or knowingly permitted by the board of directors of the respondent or by an officer or executive agent acting within the scope of his or her employment, the commission shall so certify to the contracting agency. Unless the commission's finding is reversed in the course of judicial review, the finding is binding on the contracting agency.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1992, Act 124, Imd. Eff. June 29, 1992.

### **37.2606 Appeals.**

Sec. 606. (1) A complainant and a respondent shall have a right of appeal from a final order of the commission, including cease and desist orders and refusals to issue charges, before the circuit court for the county of Ingham, or the circuit court for the county in which the alleged violation occurred or where the person against whom the complaint is filed, resides, or has his or her principal place of business. An appeal before the circuit court shall be reviewed de novo. If an appeal is not taken within 30 days after the service of an appealable order of the commission, the commission may obtain a decree for the enforcement of the order from the circuit court which has jurisdiction of the appeal. If the appellant files for appeal in the circuit court for the county of Ingham, the appellee, upon application, shall be granted a change of venue to hear the matter on appeal in the circuit court for the county in which the alleged violation occurred or where the person against whom the complaint is filed, resides, or has his or her principal place of business or where the claimant resides.

(2) A proceeding for review or enforcement of an appealable order is initiated by filing a petition in the circuit court. Copies of the petition shall be served upon the parties of record. Within 30 days after the service of the petition upon the commission or filing of the petition by the commission, or within further time as the court may allow, the commission shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including a transcript of the testimony, which need not be printed. By stipulation of the parties to the review proceeding, the record may be shortened. The court may grant temporary relief as it considers just, or enter an order enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the commission, or may remand the case to the commission for further proceedings. The commission's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(3) The final judgment or decree of the circuit court shall be subject to review by appeal in the same manner and form as other appeals from that court.

(4) A proceeding under this section shall be initiated not more than 30 days after a copy of the order of the commission is received, unless the commission is the petitioner or the petition is filed under subsection (3). If a proceeding is not so initiated, the commission may obtain a court order for enforcement of its order upon showing that a copy of the petition for enforcement was served on the respondent, that the respondent is subject to the jurisdiction of the court, that the order sought to be enforced is an order of the commission, regularly entered, and that the commission has jurisdiction over the subject matter and the respondent.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1980, Act 93, Imd. Eff. Apr. 16, 1980.

## **ARTICLE 7**



### **37.2701 Prohibited conduct.**

Sec. 701. Two or more persons shall not conspire to, or a person shall not:

(a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act.

(b) Aid, abet, incite, compel, or coerce a person to engage in a violation of this act.

(c) Attempt directly or indirectly to commit an act prohibited by this act.

(d) Willfully interfere with the performance of a duty or the exercise of a power by the commission or 1 of its members or authorized representatives.

(e) Willfully obstruct or prevent a person from complying with this act or an order issued or rule promulgated under this act.

(f) Coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this act.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1992, Act 124, Imd. Eff. June 29, 1992.

**Administrative rules:** R 37.1 et seq. of the Michigan Administrative Code.

### **37.2702 Violation of order prohibited.**

Sec. 702. A person shall not violate the terms of an order or an adjustment order made under this act.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

### **37.2703 Revocation or suspension of license.**

Sec. 703. If a certification is made pursuant to section 605(3), the licensing agency may take appropriate action to revoke or suspend the license of the respondent.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

### **37.2704 Termination of contract.**

Sec. 704. Upon receiving a certification made under section 605(4), a contracting agency shall take appropriate action to terminate a contract or portion thereof previously entered into with the respondent, either absolutely or on condition that the respondent carry out a program of compliance with this act, and shall advise the state and all political subdivisions and agencies thereof to refrain from entering into further contracts or extensions or other modifications of existing contracts with the respondent until the commission is satisfied that the respondent carries out policies in compliance with this act.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

### **37.2705 Construction of act.**

Sec. 705. (1) This act shall not be construed as preventing the commission from securing civil rights guaranteed by law other than the civil rights set forth in this act.

(2) This act shall not be interpreted as restricting the implementation of approved plans, programs, or services to eliminate discrimination and the effects thereof when appropriate.

(3) This act shall not be interpreted as invalidating any other act that provides programs or services for persons covered by this act.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

## **ARTICLE 8**

### **37.2801 Action for injunctive relief or damages; venue; “damages” defined.**

Sec. 801. (1) A person alleging a violation of this act may bring a civil action for appropriate injunctive relief or damages, or both.

(2) An action commenced pursuant to subsection (1) may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or has his principal place of business.

(3) As used in subsection (1), "damages" means damages for injury or loss caused by each violation of this act, including reasonable attorney's fees.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

### **37.2802 Costs of litigation.**

Sec. 802. A court, in rendering a judgment in an action brought pursuant to this article, may award all or a

portion of the costs of litigation, including reasonable attorney fees and witness fees, to the complainant in the action if the court determines that the award is appropriate.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

### **37.2803 Legal or equitable remedies.**

Sec. 803. This act shall not be construed to diminish the right of a person to direct or immediate legal or equitable remedies in the courts of the state.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

### **37.2804 Repeal of MCL 423.301 to 423.311, 37.1 to 37.9, and 564.101 to 564.704.**

Sec. 804. Act No. 251 of the Public Acts of 1955, as amended, being sections 423.301 to 423.311 of the Compiled Laws of 1970, Act No. 45 of the Public Acts of the Second Extra Session of 1963, as amended, being sections 37.1 to 37.9 of the Compiled Laws of 1970, and Act No. 112 of the Public Acts of 1968, as amended, being sections 564.101 to 564.704 of the Compiled Laws of 1970, are repealed.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

**PERSONS WITH DISABILITIES CIVIL RIGHTS ACT**  
**Act 220 of 1976**

AN ACT to define the civil rights of persons with disabilities; to prohibit discriminatory practices, policies, and customs in the exercise of those rights; to prescribe penalties and to provide remedies; and to provide for the promulgation of rules.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1980, Act 478, Imd. Eff. Jan. 20, 1981;—Am. 1992, Act 123, Imd. Eff. June 29, 1992;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

*The People of the State of Michigan enact:*

ARTICLE 1

**37.1101 Short title.**

Sec. 101. This act shall be known and may be cited as the “persons with disabilities civil rights act”.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

**37.1102 Opportunity guaranteed; civil right; accommodation of person with disability; undue hardship.**

Sec. 102. (1) The opportunity to obtain employment, housing, and other real estate and full and equal utilization of public accommodations, public services, and educational facilities without discrimination because of a disability is guaranteed by this act and is a civil right.

(2) Except as otherwise provided in article 2, a person shall accommodate a person with a disability for purposes of employment, public accommodation, public service, education, or housing unless the person demonstrates that the accommodation would impose an undue hardship.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1980, Act 478, Imd. Eff. Jan. 20, 1981;—Am. 1990, Act 121, Imd. Eff. June 25, 1990;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

**37.1103 Definitions.**

Sec. 103. As used in this act:

(a) “Alcoholic liquor” means that term as defined in section 105 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1105.

(b) “Commission” means the civil rights commission established by section 29 of article V of the state constitution of 1963.

(c) “Controlled substance” means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(d) Except as provided under subdivision (f), “disability” means 1 or more of the following:

(i) A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:

(A) For purposes of article 2, substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion.

(B) For purposes of article 3, is unrelated to the individual's ability to utilize and benefit from a place of public accommodation or public service.

(C) For purposes of article 4, is unrelated to the individual's ability to utilize and benefit from educational opportunities, programs, and facilities at an educational institution.

(D) For purposes of article 5, substantially limits 1 or more of that individual's major life activities and is unrelated to the individual's ability to acquire, rent, or maintain property.

(ii) A history of a determinable physical or mental characteristic described in subparagraph (i).

(iii) Being regarded as having a determinable physical or mental characteristic described in subparagraph (i).

(e) “Drug” means that term as defined in section 7105 of the public health code, 1978 PA 368, MCL 333.7105.

(f) For purposes of article 2, disability does not include either of the following:

(i) A determinable physical or mental characteristic caused by the current illegal use of a controlled substance by that individual.

(ii) A determinable physical or mental characteristic caused by the use of an alcoholic liquor by that

individual, if that physical or mental characteristic prevents that individual from performing the duties of his or her job.

(g) "Person" includes an individual, agent, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, this state, or any other legal, commercial, or governmental entity or agency.

(h) "Person with a disability" or "person with disabilities" means an individual who has 1 or more disabilities.

(i) "Political subdivision" means a county, city, village, township, school district, or special district or authority of this state.

(j) "State average weekly wage" means the state average weekly wage as determined by the Michigan employment security commission under section 27 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.27.

(k) "Temporary employee" means an employee hired for a position that will not exceed 90 days in duration.

(l) "Unrelated to the individual's ability" means, with or without accommodation, an individual's disability does not prevent the individual from doing 1 or more of the following:

(i) For purposes of article 2, performing the duties of a particular job or position.

(ii) For purposes of article 3, utilizing and benefiting from a place of public accommodation or public service.

(iii) For purposes of article 4, utilizing and benefiting from educational opportunities, programs, and facilities at an educational institution.

(iv) For purposes of article 5, acquiring, renting, or maintaining property.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1980, Act 478, Imd. Eff. Jan. 20, 1981;—Am. 1990, Act 121, Imd. Eff. June 25, 1990;—Am. 1992, Act 123, Imd. Eff. June 29, 1992;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998;—Am. 1999, Act 201, Eff. Mar. 10, 2000.

**Compiler's note:** Enacting section 1 of Act 201 of 1999 provides:

"Enacting section 1. This amendatory act is curative and intended to correct any misinterpretation of legislative intent in the court of appeals decision in *Doe v Department of Corrections*, 236 Mich App 801 (1999). This legislation further expresses the original intent of the legislature that an individual serving a sentence of imprisonment in a state or county correctional facility is not within the purview of this act."

## ARTICLE 2

### 37.1201 Definitions.

Sec. 201. As used in this article:

(a) "Employee" does not include an individual employed in domestic service of any person.

(b) "Employer" means a person who has 1 or more employees or a person who as contractor or subcontractor is furnishing material or performing work for the state or a governmental entity or agency of the state and includes an agent of such a person.

(c) "Employment agency" means a person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) "Genetic information" means information about a gene, gene product, or inherited characteristic of an individual derived from the individual's family history or a genetic test.

(e) "Genetic test" means the analysis of human DNA, RNA, chromosomes, and those proteins and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. A genetic test must be generally accepted in the scientific and medical communities as being specifically determinative for the presence, absence, or mutation of a gene or chromosome in order to qualify under this definition. Genetic test does not include a routine physical examination or a routine analysis including, but not limited to, a chemical analysis of body fluids unless conducted specifically to determine the presence, absence, or mutation of a gene or chromosome.

(f) "Labor organization" includes:

(i) An organization of any kind, an agency or employee representation committee, group, association, or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(ii) A conference, general committee, joint or system board, or joint council which is subordinate to a national or international labor organization.

(iii) An agent of a labor organization.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1990, Act 121, Imd. Eff. June 25, 1990;—Am. 2000, Act 32, Imd. Eff. Mar. 15, 2000.

### **37.1202 Employer; prohibited conduct; exceptions; access to genetic information.**

Sec. 202. (1) Except as otherwise required by federal law, an employer shall not:

(a) Fail or refuse to hire, recruit, or promote an individual because of a disability or genetic information that is unrelated to the individual's ability to perform the duties of a particular job or position.

(b) Discharge or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a disability or genetic information that is unrelated to the individual's ability to perform the duties of a particular job or position.

(c) Limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive an individual of employment opportunities or otherwise adversely affects the status of an employee because of a disability or genetic information that is unrelated to the individual's ability to perform the duties of a particular job or position.

(d) Fail or refuse to hire, recruit, or promote an individual on the basis of physical or mental examinations that are not directly related to the requirements of the specific job.

(e) Discharge or take other discriminatory action against an individual on the basis of physical or mental examinations that are not directly related to the requirements of the specific job.

(f) Fail or refuse to hire, recruit, or promote an individual when adaptive devices or aids may be utilized thereby enabling that individual to perform the specific requirements of the job.

(g) Discharge or take other discriminatory action against an individual when adaptive devices or aids may be utilized thereby enabling that individual to perform the specific requirements of the job.

(h) Require an individual to submit to a genetic test or to provide genetic information as a condition of employment or promotion.

(2) Subsection (1) does not prohibit an individual from voluntarily providing to an employer genetic information that is related to the employee's health or safety in the workplace. Subsection (1) does not prohibit an employer from using genetic information received from an employee under this subsection to protect the employee's health or safety.

(3) This section shall not apply to the employment of an individual by his or her parent, spouse, or child.

(4) Except as otherwise provided in subsection (2), no employer may directly or indirectly acquire or have access to any genetic information concerning an employee or applicant for employment, or a member of the employee's or applicant's family.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998;—Am. 2000, Act 32, Imd. Eff. Mar. 15, 2000.

### **37.1203 Employment agency; prohibited conduct.**

Sec. 203. An employment agency shall not fail or refuse to refer for employment, or otherwise discriminate against an individual because of a disability or classify or refer for employment an individual on the basis of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### **37.1204 Labor organization; prohibited conduct.**

Sec. 204. A labor organization shall not:

(a) Exclude or expel from membership, or otherwise discriminate against a member or applicant for membership because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position which entitles the individual to membership.

(b) Limit, segregate, or classify membership, or applicants for membership, or classify or fail or refuse to refer for employment an individual in a way which would deprive or tend to deprive an individual of employment opportunities, or which would limit employment opportunities or otherwise adversely affect the status of an employee or of an applicant for employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

(c) Cause or attempt to cause an employer to violate this article.

(d) Fail to fairly and adequately represent a member in a grievance process because of the member's disability.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1980, Act 478, Imd. Eff. Jan. 20, 1981;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### **37.1205 Apprenticeship, on the job, or other training or retraining programs; discrimination prohibited.**

Sec. 205. An employer, labor organization, or joint labor management committee controlling apprenticeship, on the job, or other training or retraining programs shall not discriminate against an individual because of a disability in admission to, or employment or continuation in, a program established to provide apprenticeship or other training.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### **37.1206 Prohibited notices, advertisements, inquiries, applications, and records.**

Sec. 206. (1) An employer, labor organization, or employment agency shall not print or publish or cause to be printed or published a notice or advertisement relating to employment by the employer or membership in or a classification or referral for employment by the labor organization, or relating to a classification or referral for employment by the employment agency, indicating a preference, limitation, specification, or discrimination, based on a disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

(2) Except as permitted by applicable federal law, an employer or employment agency shall not:

(a) Make or use a written or oral inquiry or form of application that elicits or attempts to elicit information concerning the disability of a prospective employee for reasons contrary to the provisions or purposes of this act.

(b) Make or keep a record of information or disclose information concerning the disability of a prospective employee for reasons contrary to the provisions or purposes of this act.

(c) Make or use a written or oral inquiry or form of application that expresses a preference, limitation, or specification based on the disability of a prospective employee for reasons contrary to the provisions or purposes of this act.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### **37.1207 Repealed. 1980, Act 478, Imd. Eff. Jan. 20, 1981.**

**Compiler's note:** The repealed section pertained to exemptions.

### **37.1208 Plan.**

Sec. 208. A person subject to this article may adopt and carry out a plan to eliminate present effects of past discriminatory practices or assure equal opportunity with respect to individuals who have disabilities if the plan has been filed with the commission under rules of the commission and the commission has not disapproved the plan.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

**Administrative rules:** R 37.27 et seq. of the Michigan Administrative Code.

### **37.1209 Contract to which state a party; covenant not to discriminate against employee or applicant for employment; breach.**

Sec. 209. A contract to which this state, or a political subdivision, or an agency of this state or of a political subdivision of this state is a party shall contain a covenant by the contractor and any subcontractors not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of this covenant shall be regarded as a material breach of the contract.

**History:** Add. 1980, Act 478, Imd. Eff. Jan. 20, 1981;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### **37.1210 Burden of proof; cost of accommodation as undue hardship; reduction of limitations; restructuring job or altering schedule; applicability of subsections (2) to (16); violation; notices.**

Sec. 210. (1) In an action brought pursuant to this article for a failure to accommodate, the person with a disability shall bear the burden of proof. If the person with a disability proves a prima facie case, the person shall bear the burden of producing evidence that an accommodation would impose an undue hardship on that person. If the person produces evidence that an accommodation would impose an undue hardship on that person, the person with a disability shall bear the burden of proving by a preponderance of the evidence that an accommodation would not impose an undue hardship on that person.

(2) Except as provided in subsections (7), (13), and (17), if the person employs fewer than 4 employees



and is required under this article to purchase any equipment or device to accommodate the person with a disability, the total purchase cost required to be paid by that person for that equipment or device is limited to an amount equal to the state average weekly wage. If the cost of an accommodation under this subsection exceeds the limitation established for that accommodation, the accommodation imposes an undue hardship on that person. If the cost of the accommodation does not exceed the limitation established for that accommodation, the accommodation does not impose an undue hardship on that person.

(3) Except as provided in subsections (7), (13), and (17), if the person employs 4 or more employees but fewer than 15 employees and is required under this article to purchase any equipment or device to accommodate the person with a disability, the total purchase cost required to be paid by that person is limited to an amount equal to 1.5 times the state average weekly wage. If the cost of an accommodation under this subsection exceeds the limitation established for that accommodation, the accommodation imposes an undue hardship on that person. If the cost of the accommodation does not exceed the limitation established for that accommodation, the accommodation does not impose an undue hardship on that person.

(4) Except as provided in subsections (6), (7), (13), and (17), if the person employs 15 or more employees but fewer than 25 employees and is required under this article to purchase any equipment or device to accommodate the person with a disability, the total purchase cost required to be paid by that person is limited to an amount equal to 2.5 times the state average weekly wage. If the cost of an accommodation under this subsection exceeds the limitation established for that accommodation, the accommodation imposes an undue hardship on that person. If the cost of the accommodation does not exceed the limitation established for that accommodation, the accommodation does not impose an undue hardship on that person.

(5) Except as provided in subsections (6), (7), (13), and (17), if the person employs 25 or more employees and the total purchase cost of any equipment or device required to accommodate an employee under this article is equal to or less than 2.5 times the state average weekly wage, the accommodation does not impose an undue hardship on that person.

(6) Except as provided in subsections (7), (13), and (17), if the person employs 15 or more employees and the total purchase cost of any equipment or device required to accommodate an employee under this article is equal to or less than 2.5 times the state average weekly wage, the accommodation does not impose an undue hardship on that person.

(7) Subsections (2) to (6) do not limit the cost of reasonable routine maintenance or repair of equipment or devices needed to accommodate a person with a disability under this article.

(8) Except as provided in subsections (13) and (17), if the person employs fewer than 4 employees and is required to hire or retain 1 or more individuals as readers or interpreters to accommodate the person with a disability in performing the duties of his or her job, the cost required to be paid by that person is limited to an amount equal to 7 times the state average weekly wage for the first year the person with a disability is hired, promoted, or transferred to that job, and 5 times the state average weekly wage for each year after the first year the person with a disability is hired, promoted, or transferred to that job. If the cost of an accommodation under this subsection exceeds the limitation established for that accommodation, the accommodation imposes an undue hardship on that person. If the cost of the accommodation does not exceed the limitation established for that accommodation, the accommodation does not impose an undue hardship on that person.

(9) Except as provided in subsections (13) and (17), if the person employs 4 or more employees but fewer than 15 employees and is required to hire or retain 1 or more individuals as readers or interpreters to accommodate the person with a disability in performing the duties of his or her job, the cost required to be paid by that person is limited to an amount equal to 10 times the state average weekly wage for the first year the person with a disability is hired, promoted, or transferred to that job, and 7 times the state average weekly wage for each year after the first year the person with a disability is hired, promoted, or transferred to that job. If the cost of an accommodation under this subsection exceeds the limitation established for that accommodation, the accommodation imposes an undue hardship on that person. If the cost of the accommodation does not exceed the limitation established for that accommodation, the accommodation does not impose an undue hardship on that person.

(10) Except as provided in subsections (12), (13), and (17), if the person employs 15 or more employees but fewer than 25 employees and is required to hire or retain 1 or more individuals as readers or interpreters to accommodate the person with a disability in performing the duties of his or her job, the cost required to be paid by that person is limited to an amount equal to 15 times the state average weekly wage for the first year the person with a disability is hired, promoted, or transferred to that job, and 10 times the state average weekly wage for each year after the first year the person with a disability is hired, promoted, or transferred to that job. If the cost of an accommodation under this subsection exceeds the limitation established for that accommodation, the accommodation imposes an undue hardship on that person. If the cost of the accommodation does not exceed the limitation established for that accommodation, the accommodation does

not impose an undue hardship on that person.

(11) Except as provided in subsections (12), (13), and (17), if the person employs 25 or more employees and the cost required to hire or retain 1 or more individuals as readers or interpreters to accommodate the person with a disability in performing the duties of his or her job is less than or equal to 15 times the state average weekly wage for the first year the person with a disability is hired, promoted, or transferred to that job, and is less than or equal to 10 times the state average weekly wage for each year after the first year the person with a disability is hired, promoted, or transferred to that job, the accommodation does not impose an undue hardship on that person.

(12) Except as provided in subsections (13) and (17), if the person employs 15 or more employees and the cost required to hire or retain 1 or more individuals as readers or interpreters to accommodate the person with a disability in performing the duties of his or her job is less than or equal to 15 times the state average weekly wage for the first year the person with a disability is hired, promoted, or transferred to that job, and is less than or equal to 10 times the state average weekly wage for each year after the first year the person with a disability is hired, promoted, or transferred to that job, the accommodation does not impose an undue hardship on that person.

(13) If the person with a disability is a temporary employee, the limitations established for accommodations under subsections (2), (3), (4), (5), (6), (8), (9), (10), (11), and (12) are reduced by 50%.

(14) A person who employs fewer than 15 employees is not required to restructure a job or alter the schedule of employees as an accommodation under this article.

(15) Job restructuring and altering the schedule of employees under this article applies only to minor or infrequent duties relating to the particular job held by the person with a disability.

(16) If a person can accommodate a person with a disability under this article only by purchasing equipment or devices and hiring or retaining 1 or more individuals as readers or interpreters, the person shall, subject to subsections (2) to (13) and subsection (17), purchase the equipment or devices and hire or retain 1 or more individuals as readers or interpreters to accommodate that person with a disability. However, if the person can accommodate that person with a disability by purchasing equipment or devices or by hiring or retaining 1 or more individuals as readers or interpreters, the person shall consult the person with a disability and, subject to subsections (2) to (13) and subsection (17), choose whether to purchase equipment or devices or hire or retain 1 or more individuals as readers or interpreters.

(17) Subsections (2) to (16) do not apply to either of the following:

(a) A public employer. As used in this subdivision, "public employer" means this state or a political subdivision of this state.

(b) An organization exempt from taxation under section 501(c)(3) of the internal revenue code of 1986.

(18) A person with a disability may allege a violation against a person regarding a failure to accommodate under this article only if the person with a disability notifies the person in writing of the need for accommodation within 182 days after the date the person with a disability knew or reasonably should have known that an accommodation was needed.

(19) A person shall post notices or use other appropriate means to provide all employees and job applicants with notice of the requirements of subsection (18).

**History:** Add. 1990, Act 121, Imd. Eff. June 25, 1990;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### **37.1211 Powers of person under article.**

Sec. 211. A person may, under this article, do 1 or more of the following:

(a) Establish employment policies, programs, procedures, or work rules regarding the use of alcoholic liquor or the illegal use of drugs.

(b) Apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, transfer system, scheduling system, assignment system, or attendance plan if those standards of compensation or terms, conditions, or privileges of employment are not a subterfuge to evade the purposes of this article.

(c) Establish uniform policies requiring employees who have been absent from work because of illness or injury to submit evidence of the ability to return to work. This subdivision does not allow a person to establish a policy requiring only persons with disabilities to submit evidence of the ability to return to work.

(d) Either of the following:

(i) Prohibit an employee who is being compensated under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, for an injury arising out of and in the course of his or her employment with that person from returning to work in a restructured job.

(ii) Require an employee who is being compensated under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, for an injury arising out of and in the course of his or her



employment with that person to return to work as provided by law, if the person accommodates the employee as required under this article.

**History:** Add. 1990, Act 121, Imd. Eff. June 25, 1990;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### **37.1212 Education and training programs.**

Sec. 212. The department of civil rights shall offer education and training programs to employers, labor organizations, and employment agencies to assist employers, labor organizations, and employment agencies in understanding the requirements of this article.

**History:** Add. 1990, Act 121, Imd. Eff. June 25, 1990.

### **37.1213 Article not in conflict with civil rights act.**

Sec. 213. Nothing in this article shall be construed to conflict with the Elliott-Larsen civil rights act, Act No. 453 of the Public Acts of 1976, being sections 37.2101 to 37.2804 of the Michigan Compiled Laws.

**History:** Add. 1990, Act 121, Imd. Eff. June 25, 1990.

### **37.1214 Accommodation not construed as preferential treatment or employee benefit.**

Sec. 214. For purposes of this act, an accommodation required under this article shall not be construed to be preferential treatment or an employee benefit.

**History:** Add. 1990, Act 121, Imd. Eff. June 25, 1990.

## **ARTICLE 3**

### **37.1301 Definitions.**

Sec. 301. As used in this article:

(a) "Place of public accommodation" means a business, educational institution, refreshment, entertainment, recreation, health, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public.

(b) "Public service" means a public facility, department, agency, board, or commission owned, operated, or managed by or on behalf of this state or a subdivision of this state, a county, city, village, township, or independent or regional district in this state or a tax exempt private agency established to provide service to the public, except that public service does not include a state or county correctional facility with respect to actions or decisions regarding an individual serving a sentence of imprisonment.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1980, Act 478, Imd. Eff. Jan. 20, 1981;—Am. 1999, Act 201, Eff. Mar. 10, 2000.

**Compiler's note:** Enacting section 1 of Act 201 of 1999 provides:

"Enacting section 1. This amendatory act is curative and intended to correct any misinterpretation of legislative intent in the court of appeals decision in Doe v Department of Corrections, 236 Mich App 801 (1999). This legislation further expresses the original intent of the legislature that an individual serving a sentence of imprisonment in a state or county correctional facility is not within the purview of this act."

### **37.1302 Prohibited conduct.**

Sec. 302. Except where permitted by law, a person shall not:

(a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation or public service because of a disability that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by an individual of adaptive devices or aids.

(b) Print, circulate, post, mail, or otherwise cause to be published a statement, advertisement, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation or public service will be refused, withheld from, or denied an individual because of a disability that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by an individual of adaptive devices or aids, or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable because of a disability that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by an individual of adaptive devices or aids.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### **37.1303 Exemptions.**

Sec. 303. This article shall not apply to a private club, or other establishment not in fact open to the public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the

private club or establishment are made available to the customers or patrons of another establishment that is a place of public accommodation, or if it is licensed, chartered, or certified by the state or any of its political subdivisions.

**History:** 1976, Act 220, Eff. Mar. 31, 1977.

## ARTICLE 4

### 37.1401 “Educational institution” defined.

Sec. 401. As used in this article, “educational institution” means a public or private institution or a separate school or department of a public or private institution, includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system, school district, or university, and a business, nursing, professional, secretarial, technical, or vocational school, and includes an agent of an educational institution.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1980, Act 478, Imd. Eff. Jan. 20, 1981.

### 37.1402 Educational institution; prohibited conduct.

Sec. 402. An educational institution shall not do any of the following:

(a) Discriminate in any manner in the full utilization of or benefit from the institution, or the services provided and rendered by the institution to an individual because of a disability that is unrelated to the individual's ability to utilize and benefit from the institution or its services, or because of the use by an individual of adaptive devices or aids.

(b) Exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, and privileges of the institution, because of a disability that is unrelated to the individual's ability to utilize and benefit from the institution, or because of the use by an individual of adaptive devices or aids.

(c) Make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information, or make or keep a record, concerning the disability of an applicant for admission for reasons contrary to the provisions or purposes of this act.

(d) Print or publish or cause to be printed or published a catalog or other notice or advertisement indicating a preference, limitation, specification, or discrimination based on the disability of an applicant that is unrelated to the applicant's ability to utilize and benefit from the institution or its services, or the use of adaptive devices or aids by an applicant for admission to the educational institution.

(e) Announce or follow a policy of denial or limitation through a quota or otherwise of educational opportunities of a group or its members because of a disability that is unrelated to the group or member's ability to utilize and benefit from the institution or its services, or because of the use by the members of a group or an individual in the group of adaptive devices or aids.

(f) Develop a curriculum or utilize textbooks and training or learning materials which promote or foster physical or mental stereotypes.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1980, Act 478, Imd. Eff. Jan. 20, 1981;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### 37.1403 Educational institution; plan.

Sec. 403. An educational institution may adopt and carry out a plan to eliminate present effects of past discriminatory practices or assure equal opportunity with respect to persons with disabilities if the plan is filed with the commission, under rules of the commission and the commission has not disapproved the plan.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

**Administrative rules:** R 37.27 et seq. of the Michigan Administrative Code.

## ARTICLE 5

### 37.1501 Definitions.

Sec. 501. As used in this article:

(a) “Housing accommodation” includes improved or unimproved real property, or a part thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home or residence of 1 or more persons.

(b) “Immediate family” means a spouse, parent, child, or sibling.

(c) “Real estate broker or salesman” means a person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself out as engaged in these

activities, or who negotiates or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon real property, or who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of any of these persons.

(d) "Real estate transaction" means the sale, exchange, rental, or lease of real property, or an interest therein.

(e) "Real property" includes a building, structure, mobile home, real estate, land, mobile home park, trailer park, tenement, leasehold, or an interest in a real estate cooperative or condominium.

**History:** 1976, Act 220, Eff. Mar. 31, 1977.

### **37.1502 Owners, persons engaging in real estate transactions, real estate brokers, and real estate salesmen; prohibited conduct.**

Sec. 502. (1) An owner or any other person engaging in a real estate transaction, or a real estate broker or salesman shall not, on the basis of a disability of a buyer or renter, of a person residing in or intending to reside in a dwelling after it is sold, rented, or made available, or of any person associated with that buyer or renter, that is unrelated to the individual's ability to acquire, rent, or maintain property or use by an individual of adaptive devices or aids:

(a) Refuse to engage in a real estate transaction with a person.

(b) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.

(c) Refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction from a person.

(d) Refuse to negotiate for a real estate transaction with a person.

(e) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available, fail to bring a property listing to a person's attention, refuse to permit a person to inspect real property, or otherwise deny or make real property unavailable to a person.

(f) Make, print, circulate, post, or mail or cause to be made or published a statement, advertisement, or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect to a real estate transaction.

(g) Offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.

(h) Discriminate against a person in the brokering or appraising of real property.

(2) A person shall not deny a person access to or membership or participation in a multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting real property, or discriminate against a person in the terms or conditions of that access, membership, or participation.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1992, Act 123, Imd. Eff. June 29, 1992;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### **37.1503 Certain rentals excepted from MCL 37.1502.**

Sec. 503. Section 502 shall not apply to the rental of a housing accommodation in a building which contains housing accommodations for not more than 2 families living independently of each other, if the owner or a member of the owner's immediate family resides in 1 of the housing accommodations, or to the rental of a room or rooms in a single housing dwelling by a person if the lessor or a member of the lessor's immediate family resides therein.

**History:** 1976, Act 220, Eff. Mar. 31, 1977.

### **37.1504 Financial assistance or financing; prohibited conduct.**

Sec. 504. A person shall not discriminate on the basis of disability in making or purchasing loans for acquiring, constructing, improving, repairing, or maintaining real property, or in providing other financial assistance secured by or otherwise related to real property.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1992, Act 123, Imd. Eff. June 29, 1992;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### **37.1505 Information as to applicant's credit worthiness.**

Sec. 505. Nothing in this article shall be considered to prohibit an owner, lender, or his or her agent from requiring that an applicant who seeks to buy, rent, lease, or obtain financial assistance for housing accommodations supply information concerning the applicant's financial, business, or employment status or

other information designed solely to determine the applicant's credit worthiness, but not concerning disabilities for reasons contrary to the provisions or purposes of this act.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### **37.1506 Prohibited representations.**

Sec. 506. A person shall not represent, for the purpose of inducing a real estate transaction from which he or she may benefit financially or otherwise, that a change has occurred or will or may occur in the composition with respect to persons with disabilities of the owners or occupants in the block, neighborhood, or area in which the real property is located, or represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### **37.1506a Real estate transaction; prohibited conduct; “covered multifamily dwellings” defined.**

Sec. 506a. (1) A person shall not do any of the following in connection with a real estate transaction:

(a) Refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if those modifications may be necessary to afford the person with a disability full enjoyment of the premises. In the case of a rental, the landlord may, if reasonable, make permission for a modification contingent on the renter's agreement to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(b) Refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford the person with a disability equal opportunity to use and enjoy residential real property.

(c) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, fail to include all of the following features:

(i) The dwellings have at least 1 building entrance on an accessible route, unless that is impractical because of the terrain or unusual characteristics of the site.

(ii) The public and common use portions of the dwellings are readily accessible to and usable by persons with disabilities.

(iii) All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons with disabilities in wheelchairs.

(iv) All premises within covered multifamily dwellings contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and kitchens and bathrooms designed so that an individual in a wheelchair can maneuver about the space.

(2) As used in this section, “covered multifamily dwellings” means buildings consisting of 4 or more units if the buildings have 1 or more elevators, and ground floor units in other buildings consisting of 4 or more units.

**History:** Add. 1992, Act 123, Imd. Eff. June 29, 1992;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### **37.1507 Person subject to article; plan.**

Sec. 507. A person subject to this article may adopt and carry out a plan to eliminate present effects of past discriminatory practices or assure equal opportunity with respect to individuals who have disabilities, if the plan is filed with the commission under rules of the commission and the commission has not disapproved the plan.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

**Administrative rules:** R 37.27 et seq. of the Michigan Administrative Code.

## **ARTICLE 6**

### **37.1601 Administration of act; rules.**

Sec. 601. This act shall be administered by the civil rights commission. The commission may promulgate rules to carry out this act pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1980, Act 478, Imd. Eff. Jan. 20, 1981.

### **37.1602 Prohibited conduct.**

Sec. 602. A person or 2 or more persons shall not do the following:

(a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act.

(b) Aid, abet, incite, compel, or coerce a person to engage in a violation of this act.

(c) Attempt directly or indirectly to commit an act prohibited by this act.

(d) Willfully interfere with the performance of a duty or the exercise of a power by the commission or any of its authorized representatives.

(e) Willfully obstruct or prevent a person from complying with this act or an order issued.

(f) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by article 5.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1992, Act 123, Imd. Eff. June 29, 1992.

### **37.1603 Adjustment order; violation of terms prohibited.**

Sec. 603. A person shall not violate the terms of an adjustment order made under this act.

**History:** 1976, Act 220, Eff. Mar. 31, 1977.

### **37.1604 Other acts not invalidated.**

Sec. 604. Nothing in this act shall be interpreted as invalidating any other act that establishes or provides programs or services for persons with disabilities.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### **37.1605 Complaints.**

Sec. 605. A complaint alleging an act prohibited by this act shall be subject to the same procedures as a complaint alleging an unfair employment practice under Act No. 453 of the Public Acts of 1976, as amended, being sections 37.2101 to 37.2804 of the Michigan Compiled Laws.

**History:** 1976, Act 220, Eff. Mar. 31, 1977;—Am. 1980, Act 478, Imd. Eff. Jan. 20, 1981.

### **37.1606 Civil action; commencement; “damages” defined; compensation for lost wages; notice as condition to bringing civil action; applicability of subsection (5).**

Sec. 606. (1) A person alleging a violation of this act may bring a civil action for appropriate injunctive relief or damages, or both.

(2) An action commenced pursuant to subsection (1) may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or has his or her principal place of business.

(3) As used in subsection (1), “damages” means damages for injury or loss caused by each violation of this act, including reasonable attorneys' fees.

(4) The amount of compensation awarded for lost wages under this act for an injury under article 2 shall be reduced by the amount of compensation received for lost wages under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, for that injury and by the present value of the future compensation for lost wages to be received under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, for that injury.

(5) A person with a disability may not bring a civil action under subsection (1) for a failure to accommodate under article 2 unless he or she has notified the person of the need for accommodation as required under section 210(18). This subsection does not apply if the person failed to comply with the requirements of section 210(19).

**History:** Add. 1980, Act 478, Imd. Eff. Jan. 20, 1981;—Am. 1990, Act 121, Imd. Eff. June 25, 1990;—Am. 1998, Act 20, Imd. Eff. Mar. 12, 1998.

### **37.1607 Diminishment of rights prohibited.**

Sec. 607. This act shall not diminish the right of a person to seek direct and immediate legal or equitable remedies in the courts of this state.

**History:** Add. 1980, Act 478, Imd. Eff. Jan. 20, 1981.

## Chapter 605 - Non-Discrimination

### 605.01 - Intent, purpose and construction.

- (a) It is the intent of the City of Traverse City that no person be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his or her civil rights or be discriminated against because of their actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity.
- (b) The prohibitions against discrimination as provided for in this ordinance are intended to supplement state and federal civil rights law prohibiting discrimination in the areas of employment, public accommodations, and housing. Provided, however, this ordinance shall be construed and applied in a manner consistent with First Amendment jurisprudence regarding the freedom of speech and exercise of religion.
- (c) Nothing in this ordinance shall require preferential treatment of any person or group on the basis of sexual orientation or gender identity.

(Ord. 882. Passed 10-4-10)

### 605.02 - Definitions.

As used in this chapter, the following words and phrases have the following meanings:

- (1) *Age*. Chronological age.
- (2) *City manager*. The City Manager of the City of Traverse City or his or her designee.
- (3) *Contractor*. A person who by contract furnishes services, materials or supplies.  
"Contractor" does not include persons who are merely creditors or debtors of the City, such as those holding the City's notes or bonds or persons whose notes, bonds or stock is held by the City.
- (4) *Discriminate*. To make a decision, offer to make a decision or refrain from making a decision based in whole or in part on the actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity, of another person.
  - a. Discrimination based on sex includes sexual harassment, which means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when:
    - 1. Submission to such conduct or communication is made a term or condition either

explicitly or implicitly to obtain employment, public accommodations, or housing.

2. Submission to or rejection of such conduct or communication by an individual is used as a factor in decisions affecting such individual's employment, public accommodations or housing.
  3. Such conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, or housing environment.
- b. Discrimination based on actual or perceived physical or mental limitation includes discrimination because of the use by an individual of adaptive devices or aids.
- (5) *Employer*. Any person employing one or more persons.
- (6) *Employment agency*. A person who undertakes to procure employees for an employer or procures opportunities for individuals to be employed by an employer.
- (7) *Family status*. The state of being in a family.
- (8) *Family*. Includes either of the following:
- a. An individual who is pregnant; or
  - b. Two or more individuals related by blood within three degrees of consanguinity, marriage, adoption, in a foster care relationship or legal custody relationship.
- (9) *Gender identity*. The gender with which one identifies regardless of that person's biological makeup.
- (10) *Housing facility*. Any dwelling unit or facility used or intended or designed to be used as the home, domicile or residence of one or more persons including, but not limited to, a house, apartment, rooming house, housing cooperative, hotel, motel, tourist home, retirement home or nursing home.
- (11) *Labor organization*. An organization of any kind or structure in which employees participate or are members and which exists for the purposes, in whole or part, of dealing with employers concerning the terms and conditions of employment of its participants or members, whether or not such organization is subordinate to or affiliated with a national or international labor organization.
- (12) *Marital status*. The state of being married, never married, divorced, or widowed.
- (13) *Perceived*. Refers to the perception of the person who acts, and not to the perception of the person for or against whom the action is taken.
- (14) *Physical or mental disability*. A determinable physical or mental characteristic resulting from disease, injury, congenital condition of birth, or functional disorder and is unrelated



to one's ability to safely perform the work involved in jobs or positions available to such person for hire or promotion; or unrelated to one's ability to acquire, rent and maintain property; or unrelated to one's ability to utilize and benefit from the goods, services, activities, privileges and accommodations of a place of public accommodation "Physical or mental disability" does not include any condition caused by the current illegal use of a controlled substance or the use of alcohol liquor by an individual.

- (15) *Place of public accommodation.* An educational, governmental, health, entertainment, cultural, recreational, refreshment, transportation, financial institution, business or facility of any kind, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public.
- (16) *Religious organization.* An organization, church, group, or body of communicants that are organized not for pecuniary profit that regularly gathers for worship and religious purposes, and includes a religious-based private school that is not organized for pecuniary profit.
- (17) *Sexual orientation.* Male or female homosexuality, heterosexuality or bisexuality, whether by orientation or practice. Sexual orientation does not include the physical or sexual attraction to a minor by an adult.

(Ord. 882. Passed 10-4-10.)

#### 605.03 - Discriminatory housing practices.

Except as otherwise provided in this ordinance:

- (1) No person shall discriminate in leasing, selling or otherwise make available any housing facilities.
- (2) No person shall discriminate in the terms, conditions, maintenance or repair in providing any housing facility.
- (3) No person shall refuse to lend money for the purchase or repair of any real property or insure any real property solely because of the location in the City of such real property.
- (4) No person shall promote real estate transactions by representing that changes are occurring or will occur in an area with respect to race, religion, national origin, sexual orientation, or gender identity.
- (5) No person shall place a sign or other display on any real property which indicates that the property is for sale or has been sold when it is not for sale or has not recently been sold.

(Ord. 882. Passed 10-4-10.)



#### 605.04 - Discriminatory public accommodation practices.

- (a) Except as otherwise provided in this ordinance, no person shall discriminate in making available full and equal access to all goods, services, activities, privileges, and accommodations of any place of public accommodation.
- (b) Nothing in this ordinance permits or requires access to any place of public accommodation for the purpose or intent of engaging in criminal conduct.
- (c) Nothing in this ordinance shall require the construction or provision of unisex, single-user restrooms, changing rooms, locker rooms, or shower facilities nor effect policies regarding the use of restroom, changing rooms, locker rooms, or shower facilities.

(Ord. 882. Passed 10-4-10.)

#### 605.05 - Discriminatory employment practices.

Except as otherwise provided in this ordinance.

- (1) No employer shall discriminate in the employment, compensation, work classifications, conditions or terms, promotion or demotion, or termination of employment of any person.
- (2) No labor organization shall discriminate in limiting membership, conditions of membership, or termination of membership of any person in any labor union or apprenticeship program.
- (3) No employment agency shall discriminate in the procurement or recruitment of any person for possible employment with an employer.

(Ord. 882. Passed 10-4-10.)

#### 605.06 - Other prohibited practices.

- (a) No person shall adopt, enforce or employ any policy or requirement, publish, post or broadcast any advertisement, sign or notice which discriminates or indicates discrimination in providing housing, employment or public accommodations.
- (b) No person shall discriminate in the publication or distribution of advertising material, information or solicitation regarding housing, employment or public accommodations.
- (c) No agent, broker, labor organization, employment agency or any other intermediary shall discriminate in making referrals, listings or providing information with regard to housing, employment or public accommodations. A report of the conviction of any such person for a violation of this ordinance shall be made to the applicable licensing or regulatory agency for such person or business.

- (d) No person shall coerce, threaten or retaliate against a person for making a complaint or assisting in the investigation regarding a violation or alleged violation of this ordinance, nor require, request, conspire with, assist or coerce another person to retaliate against a person for making a complaint or assisting in an investigation.
- (e) No person shall conspire with, assist, coerce or request another person to discriminate in any manner prohibited by this ordinance.

(Ord. 882. Passed 10-4-10.)

#### 605.07 - Non-discrimination by city contractors.

- (a) All contractors proposing to do business with the City of Traverse City shall satisfy the nondiscrimination administrative policy adopted by the City Manager in accordance with the guidelines of this section. All contractors shall receive approval from the City Manager prior to entering into a contract with the City, unless specifically exempted by administrative policy.
- (b) A contractor shall, as a condition of being deemed a responsible bidder, at the time of its submission to the City in responding to an invitation for bids or request for proposals, certify in writing that it is in compliance with the provisions of this ordinance.
- (c) All City contracts shall provide further that breach of the obligations not to discriminate shall be a material breach of the contract.
- (d) In addition, the contractor shall be liable for any costs or expenses incurred by the City in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under the contract.

(Ord. 882. Passed 10-4-10.)

#### 605.08 - Discriminatory effects.

No person shall adopt, enforce or employ any policy or requirement which has the effect of creating unequal opportunities according to actual or perceived race, color, religion, national origin, sex, age, height, weight, family status, sexual orientation, marital status, physical or mental disability, or gender identify, for a person to obtain housing, employment or public accommodation, except for a bona fide business necessity. Such a bona fide business necessity does not arise due to a mere inconvenience or because of suspected or actual objection to such a person by neighbors, customers, or other persons but shall require a demonstration that the policy or requirement is reasonably necessary to the normal operation of the person's business.

(Ord. 882. Passed 10-4-10.)

## 605.09 - Exemptions.

Notwithstanding anything contained in this ordinance, the following practices shall not be violations of this ordinance:

- (1) For a religious organization to restrict the occupancy of any of its housing facilities or accommodations which are operated as a direct part of religious activities to persons of the denomination involved or to restrict employment opportunities for officers, religious instructors and clergy to persons of that denomination. It is also permissible for a religious organization to restrict employment opportunities, educational facilities, housing facilities, and homeless shelters or dormitories that are operated as a direct part of its religious activities to persons who are members of or who conform to the moral tenets of that religious organization.
- (2) Standards established for the construction, repair, maintenance, improvement, occupancy, lease or sale of one-family and two-family dwellings.
- (3) For the owner or operator of a housing facility or public accommodation facility, respectively, devoted entirely to the housing and accommodation of individuals of one sex, to restrict occupancy and use on the basis of sex.
- (4) To limit occupancy in a housing project or to provide public accommodations or employment privileges or assistance to persons of low income, persons over 55 years of age or disabled persons.
- (5) To engage in a bona fide effort to establish an affirmative action program to improve opportunities in employment consistent with applicable state and federal law.
- (6) To discriminate based on a person's age when such discrimination is required by state, federal, or local law.
- (7) To refuse to enter a contract with an unemancipated minor.
- (8) To refuse to admit to a place of public accommodation serving alcoholic beverages to a person under the legal age for purchasing alcoholic beverages.
- (9) To refuse to admit to a place persons under 18 years of age to a business providing entertainment or selling literature that the operator of said business deems unsuitable for minors.
- (10) For an educational institution to limit the use of its facilities to those affiliated with such institution.
- (11) To provide discounts on products or service to students, or on the basis of age.
- (12) To discriminate in any arrangement for the shared ownership, lease or residency of a dwelling unit.

- (13) For a governmental institution to restrict any of its facilities or to restrict employment opportunities based on duly-adopted institutional policies that conform to federal and state laws and regulations.
- (14) To restrict participation in an instructional program, athletic event or on an athletic team on the basis of age, sex, height, or weight consistent with applicable federal and state law.
- (15) To restrict membership in a private membership organization that is not open to the general public except to the extent that the private membership organization permits members to invite guests on the premises are not exempted as it concerns a member's guest.
- (16) To the employment of an individual by one's family.
- (17) To the use of marital status or family status limitations in a health or pension plan consistent with applicable federal and state laws and regulations.
- (18) To the rental of housing facilities in a building which contains dwelling units for not more than two families living independently of each other if the owner of the building or a member of the owner's family resides in one of the dwelling units, or to the rental of a room or rooms in a single-family dwelling by an individual if the lessor or a member of the lessor's family resides in the dwelling.

(Ord. 882. Passed 10-4-10.)

#### 605.10 - Information and investigation.

- (a) Any person claiming a violation of this ordinance shall file a signed, written complaint with the City Manager or his or her designee setting forth the details, including the names, dates, witnesses and other factual matters relevant to the claim within 180 days of the incident forming the basis of the complaint.
- (b) No person shall provide false information to any authorized employee investigating a complaint regarding a violation of this ordinance.
- (c) In the course of the investigation, the City Manager or his or her designee may request a person to produce books, papers, records or other documents which may be relevant to a violation or alleged violation of this ordinance. If said person does not comply with such request, the City Attorney may apply to the Grand Traverse County Circuit Court for an order requiring production of said materials.
- (d) Within 30 days of a written complaint being filed, the City Manager or his or her designee shall undertake an investigation of any complaint alleging a violation of this chapter not currently recognized or proscribed by Michigan or federal anti-discrimination statutes, and cause all other complaints to be referred to an appropriate state or federal agency for review. After the

completion of an investigation, the City Manager or his or her designee shall give written notice of the results of the investigation to the person who filed the complaint and the person accused of the violation. If the investigation establishes that a violation of this ordinance occurred, the City Manager shall either refer the matter to Conflict Resolution Services or a similar mediation service who will attempt to resolve the matter by mediating a conciliation agreement or refer the complaint to the City Attorney for prosecution in a court of competent jurisdiction.

(Ord. 882. Passed 10-4-10.)

#### 605.11 - Conciliation agreements.

A conciliation agreement may include agreements whereby persons agree to methods of terminating discrimination or to reverse the effects of past discrimination. Violations of such agreements shall be a violation of this ordinance.

(Ord. 882. Passed 10-4-10.)

#### 605.12 - Injunctions.

The City Attorney may commence a civil action to obtain injunctive relief to prevent discrimination prohibited by this ordinance, to reverse the effects of such discrimination or to enforce a conciliation agreement.

(Ord. 882. Passed 10-4-10.)

#### 605.13 - Prosecution.

- (a) At the discretion of the City Attorney, prosecution for violation of this ordinance may be initiated by complaint of the affected person on the basis of a violation of a conciliation agreement or by the City Manager on the basis of an investigation undertaken by the City Manager.
- (b) Violation of this ordinance shall be prosecuted by the City Attorney as a municipal civil infraction pursuant to the provisions of the Revised Judicature Act of 1961, MCL 600.101, et seq.

(Ord. 882. Passed 10-4-10.)

#### 605.14 - Penalties.

- (a) A violation of any provision of this ordinance is a municipal civil infraction punishable by a fine of not more than \$500.00, plus all costs of the action. The court may issue and enforce any

judgment, writ, or order necessary to enforce this ordinance. This may include reinstatement, payment of lost wages, hiring and promotion, sale, exchange, lease or sublease of real property, admission to a place of public accommodation, and other relief deemed appropriate.

- (b) Nothing contained in this ordinance shall be construed to limit in any way the remedies, legal or equitable, which are available to the City or any person for the prevention or correction of discrimination.

(Ord. 882. Passed 10-4-10.)

#### 605.15 - Repealer.

All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are repealed.

(Ord. 882. Passed 10-4-10.)

#### 605.16 - Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

(Ord. 882. Passed 10-4-10.)

## **SECTION 2**

### **Zoning & Land Use**

- a. Fact Sheet: Fair Housing, Zoning & Land Use
- b. Fact Sheet: Introduction to Fair Housing, Housing Development, & NIMBYism
- c. HUD & DOJ Joint Statement: State and Local Land Use Laws and Practices and the Application of the Fair Housing Act



# FACT SHEET: FAIR HOUSING, ZONING & LAND USE

## What is fair housing?

Fair housing is the right to choose housing free from unlawful discrimination. The federal Fair Housing Act (FHA) and Michigan laws protect people from discrimination in housing based on the following *protected classes*: race, skin color, national origin, religion, sex, familial status, disability, marital status, age, sexual orientation, gender identity or expression, and source of income (source of income in rental housing only). Discrimination is illegal in housing transactions such as rentals, sales, lending, and insurance. Fair Housing laws also apply to zoning and planning practices.

## How does the Fair Housing Act apply to zoning and land use?

The FHA prohibits municipalities and other local government entities from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against individuals protected by fair housing law, whether intentionally or by discriminatory effect. Discriminatory effect can be established by showing that an action, such as a zoning decision, while facially neutral, has either an adverse impact on a particular minority group or harm to the community generally by the perpetuation of segregation.

The FHA prohibits discrimination in a *dwelling* which means “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 is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof” (42 USC §3602(b)). Therefore, decisions related to the development or use of such land must comply with the FHA’s regulations and cannot be based upon the protected class (i.e. race, religion, disability, etc.) of the residents or prospective residents. The FHA also requires municipalities and local governments to make *reasonable accommodations* to zoning and land use rules, policies, practices and procedures as necessary to provide an individual with a disability equal housing access.

## What is a reasonable accommodation?

Reasonable accommodations, as defined by the FHA, are changes in rules, policies, or practices that are necessary to afford persons or groups of persons with disabilities equal opportunity to use and enjoy housing. The FHA requires municipalities to make reasonable accommodations in land use and zoning policies and procedures. Reasonable accommodations provide a means of requesting from the local government flexibility in the application of land use and zoning regulations, or, in some instances, even a waiver of certain restrictions or requirements.

**For example:** a zoning board grants an accommodation to designate a group of individuals with disabilities who intend to live together in a group or recovery home as a “family” so as to allow more unrelated adults in a single family home than normally permitted under zoning restrictions.

## Approving New Housing Developments

Placement of new or rehabilitated housing for lower-income people is one of the most controversial issues communities face. If fair housing objectives are to be achieved, the goal must be to avoid high concentrations of low-income housing and to approve housing developments that will promote integration. A municipality considering a proposal from an independent housing developer or provider to provide integrated housing within the municipality’s jurisdiction must **not** deny the housing without careful consideration of the need for new integrated housing opportunities in the vicinity of the developer’s proposed project and the degree of residential segregation in that community in light of the population demographics in the overall metropolitan area.



20 Hall Street SE  
Grand Rapids, MI 49507  
616-451-2980 phone  
616-451-2657 fax  
866-389-FAIR  
[fhcwm.org](http://fhcwm.org)

## Combatting NIMBYism

Whether the persons to be served are families with children, persons with disabilities, homeless persons, or lower-income minorities, many communities feel strongly that housing for these persons should be provided but “not in my back yard” (NIMBY). This attitude seriously affects the availability of housing for people in these groups and is one of the most difficult challenges jurisdictions encounter in promoting fair housing objectives. Discriminatory stereotypes, fears and comments about residents of prospective residents of a certain dwelling or area should **not** influence municipal zoning or land use decisions.

## Definition of “Family” and “Single-family” Residential Zones

Single-family residential zones allow family residential use by right, i.e., without any conditional or special use permit, and are not in and of themselves discriminatory. Local governments have their own definitions of “family”, and such definitions may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups regardless of race, religion, etc. However, they may be discriminatory when they exclude group homes for persons with disabilities, or if group homes are allowed only by conditional or special use permit. Further, policies that have a ceiling of 4, or fewer, unrelated adults in a household may be considered discriminatory if they have an adverse impact on minorities, families with children or people with disabilities. Further, in Michigan, a definition of family cannot be restrictive on the basis of marital status, and cannot define family as persons “related by blood, marriage or adoption”.

## Land Use Regulations

Zoning policies such as large minimum lot requirements, minimum multifamily zoning and age-restricted zoning may restrict and limit the ability for lower income families and families of color from moving into certain neighborhoods and suburbs. Such strict zoning restrictions limit the affordability and number of rental multifamily housing opportunities and should be carefully considered in light of fair housing laws.

## Suggested Fair Housing Strategies

### *Adopt a Reasonable Accommodation Policy*

This will provide a written procedure, especially for developers of housing for persons with disabilities, to follow when requesting reasonable accommodations in zoning and land use decisions in addition to guidelines for the Planning Commission to follow when considering requests.

### *Adopt an Inclusionary Zoning Policy*

Inclusionary zoning promotes mixed-income development and results in many benefits for communities, particularly the creation of affordable places to live in desirable neighborhoods. Neighborhoods which are ethnically and economically integrated provide greater opportunity for creating a diverse work force and more diverse and vibrant communities.

### *Affirmatively Furthering Fair Housing*

- Consider specific changes that should be made in zoning or building occupancy ordinances or regulations to foster inclusion of lower-income housing, including housing accessible to persons with disabilities and families with children in developments intended for households with higher incomes.
- Ensure that the ordinances and regulations do **not** contain special rules or restrictions for housing that only apply to individuals with physical or mental disabilities (i.e. requiring individuals with mental disabilities to show they had the capacity to live independently, or prohibiting a group of persons with mental illness from residing in an area where other groups of unrelated adults may reside)
- Consider specific changes that should be made in policies and procedures, other than those relating to zoning and building occupancy, to promote greater variation in the location of lower-income housing.

### *Regional Planning*

For jurisdictions located in metropolitan areas, serious consideration should be given to ways they can participate in cooperative, inter-jurisdictional planning for construction of assisted housing.

# FACT SHEET: INTRODUCTION TO FAIR HOUSING, HOUSING DEVELOPMENT, & NIMBYISM

## What is fair housing?

**Fair housing** means you can choose where you live free from illegal discrimination. Federal, state, and local fair housing laws protect people from discrimination in housing transactions such as rentals, sales, lending, appraisals, and insurance. Discrimination is also illegal in land use and zoning decisions.

Specifically, the federal Fair Housing Act and Michigan's Elliott-Larsen Civil Rights Act protect against housing discrimination based on the following protected classes: race, color, religion, national origin, sex, sexual orientation, gender identity or expression, familial status, disability, marital status, and age. Some communities in west Michigan also protect people from housing discrimination based on their source of income or other protected classes.



20 Hall Street SE  
Grand Rapids, MI 49507  
616-451-2980 phone  
616-451-2657 fax  
[fhcwm.org](http://fhcwm.org)

**Fair housing & housing development:** Many cities across the U.S. are experiencing severe housing shortages. There is not enough housing to accommodate a growing population, let alone affordable, attainable, or accessible housing. One approach to address this is for local governments to change or relax zoning policies to increase housing density, i.e. allowing multi-family developments in neighborhoods traditionally restricted to single-family homes or allowing homeowners to add a secondary housing unit on a single-family residential lot (an accessory dwelling unit or ADU). Attempts like these have sometimes been met with community opposition and NIMBYism.

## What is NIMBYism?

NIMBY, which stands for "not-in-my-backyard", is a term used to characterize community opposition to a housing development/project proposed in a neighborhood by the people who live there or nearby. Those with NIMBY attitudes often understand the necessity of specific developments but do not want those projects done in their community or backyard. NIMBY attitudes are common for projects focused on affordable housing, supportive housing for people with disabilities including those in recovery from substance abuse, and transitional housing for people experiencing homelessness. There are valid reasons for neighbors to express concern about a new development in their neighborhood. Neighbors may be concerned with traffic, available infrastructure, project design, potential rent increases, etc.

When decisions about proposed housing developments/projects are based on *who* is most likely or intended to live there, the risk of fair housing violations increases, especially if the *who* in question is a group(s) protected by fair housing laws. Stakeholders such as neighbors, community organizations, and elected or government officials may state their opposition to a proposed development based on the presumed characteristics or demographics of people they anticipate will live there. Examples of overtly biased statements may include:

- "We don't want those types of people to live here."
- "If we allow \_\_\_\_\_ people to live here, they will bring drugs, crime, and violence."
- "This project will attract the wrong kinds of people to our neighborhood."

Sometimes the words people use to express their opposition may be covert or disguised, like expressing concerns about increased traffic or parking problems, without evidence of actual impact. The concern sounds valid on its face, but it might be driven by and/or disguising an intent to discriminate against members of a protected class. A common argument against new housing is based upon maintaining the character of the neighborhood or keeping it as it is. This closes the door to being an inclusive community with opportunity for all. If a decision about the future of the housing development considers NIMBY attitudes or discriminates against any of the protected classes noted above, that violates fair housing law. This includes decisions made by land use, planning, and zoning professionals as well as government officials/representatives. Actions by community members and/or neighbors may also be covered by fair housing law. See also FHCWM's Fact Sheet on Harassment on our website.

## **Fair Housing & NIMBYism**

It is against the law for land use and zoning decisions to consider neighbors' fears that a dwelling would be occupied by members of a protected class. Under the Fair Housing Act, a dwelling is 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 is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof. Zoning ordinances may not contain provisions that treat uses such as affordable housing, supportive housing, or group homes for people with disabilities differently than other similar uses. Municipalities may not enforce ordinances more strictly against housing occupied by members of the protected classes.

### ***Disparate Impact***

Discrimination in zoning and land use may occur when a facially neutral ordinance has a disparate impact, or causes disproportional harm, to members of a protected class. Land use policies such as density or design requirements that make residential development prohibitively expensive, prohibitions on multi-family housing, or a cap of a set number or fewer unrelated adults in a household may be considered discriminatory if it can be proven that these policies have a disproportionate impact on persons of color, families with children, people with disabilities, and others.

### ***Reasonable Accommodations***

Local officials are also required to consider reasonable accommodations to zoning, ordinances, or building codes. Reasonable accommodations are changes in any rule, policy, procedure, or service needed for a person with a disability to have equal access to and enjoyment of their home. Fair housing laws also require municipalities and local governments to make reasonable accommodations to zoning and land use rules, policies, practices, and procedures as necessary to provide an individual with a disability equal housing access. An example of a reasonable accommodation in land use and zoning is when a zoning board grants an accommodation to designate a group of individuals with disabilities who intend to live together in a group or recovery home as a "family" to allow more unrelated adults in a single-family home than normally allowed under local zoning law.

### ***Examples of Prohibited Activities***

- An affordable housing development is denied in response to neighbors' fears that the housing will be occupied by racial minorities.
- A city imposes spacing requirements on group homes for persons with disabilities.
- Additional studies or procedural steps are added or unnecessary delays in decision-making are made when considering a development that may be occupied by members of protected classes.

## **Resources**

For more information on fair housing and NIMBY-ism, see the resources below:

- Department of Justice & HUD—Joint Statement on State and Local Land Use Laws and Practices and the Application of the Fair Housing Act (11/10/2016)
- Department of Justice & HUD—Group Homes, Local Land Use, and the Fair Housing Act (8/18/1999)
- HUD Exchange, NIMBY Risk Assessment and Decision Tree Tool
- FHCWM Fact Sheet: Fair Housing, Zoning & Land Use



**Learn more**

## **Where can I find more information?**

If you have questions or would like resource materials, contact us at **616-451-2980**. You can also visit our website, <https://www.fhcwm.org> for more information and resources.

**\* Please note that this fact sheet is not intended to be used as legal advice \***



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



**U.S. DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION**

*Washington, D.C.  
November 10, 2016*

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**JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT AND THE DEPARTMENT OF JUSTICE**

**STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION  
OF THE FAIR HOUSING ACT**

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**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”),<sup>1</sup> which prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status (children under 18 living with a parent or guardian), or national origin.<sup>2</sup> The Act prohibits housing-related policies and practices that exclude or otherwise discriminate against individuals because of protected characteristics.

The regulation of land use and zoning is traditionally reserved to state and local governments, except to the extent that it conflicts with requirements imposed by the Fair Housing Act or other federal laws. This Joint Statement provides an overview of the Fair Housing Act’s requirements relating to state and local land use practices and zoning laws, including conduct related to group homes. It updates and expands upon DOJ’s and HUD’s Joint

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<sup>1</sup> The Fair Housing Act is codified at 42 U.S.C. §§ 3601–19.

<sup>2</sup> The Act uses the term “handicap” instead of “disability.” Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of “disability” in the Americans with Disabilities Act

Statement on Group Homes, Local Land Use, and the Fair Housing Act, issued on August 18, 1999. The first section of the Joint Statement, Questions 1–6, describes generally the Act’s requirements as they pertain to land use and zoning. The second and third sections, Questions 7–25, discuss more specifically how the Act applies to land use and zoning laws affecting housing for persons with disabilities, including guidance on regulating group homes and the requirement to provide reasonable accommodations. The fourth section, Questions 26–27, addresses HUD’s and DOJ’s enforcement of the Act in the land use and zoning context.

This Joint Statement focuses on the Fair Housing Act, not on other federal civil rights laws that prohibit state and local governments from adopting or implementing land use and zoning practices that discriminate based on a protected characteristic, such as Title II of the Americans with Disabilities Act (“ADA”),<sup>3</sup> Section 504 of the Rehabilitation Act of 1973 (“Section 504”),<sup>4</sup> and Title VI of the Civil Rights Act of 1964.<sup>5</sup> In addition, the Joint Statement does not address a state or local government’s duty to affirmatively further fair housing, even though state and local governments that receive HUD assistance are subject to this duty. For additional information provided by DOJ and HUD regarding these issues, see the list of resources provided in the answer to Question 27.

## **Questions and Answers on the Fair Housing Act and State and Local Land Use Laws and Zoning**

### **1. How does the Fair Housing Act apply to state and local land use and zoning?**

The Fair Housing Act prohibits a broad range of housing practices that discriminate against individuals on the basis of race, color, religion, sex, disability, familial status, or national origin (commonly referred to as protected characteristics). As established by the Supremacy Clause of the U.S. Constitution, federal laws such as the Fair Housing Act take precedence over conflicting state and local laws. The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic. Housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.

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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.

<sup>3</sup> 42 U.S.C. § 12132.

<sup>4</sup> 29 U.S.C. § 794.

<sup>5</sup> 42 U.S.C. § 2000d.

## **2. What types of land use and zoning laws or practices violate the Fair Housing Act?**

Examples of state and local land use and zoning laws or practices that may violate the Act include:

- Prohibiting or restricting the development of housing based on the belief that the residents will be members of a particular protected class, such as race, disability, or familial status, by, for example, placing a moratorium on the development of multifamily housing because of concerns that the residents will include members of a particular protected class.
- Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes.
- Imposing restrictions on housing because of alleged public safety concerns that are based on stereotypes about the residents' or anticipated residents' membership in a protected class, by, for example, requiring a proposed development to provide additional security measures based on a belief that persons of a particular protected class are more likely to engage in criminal activity.
- Enforcing otherwise neutral laws or policies differently because of the residents' protected characteristics, by, for example, citing individuals who are members of a particular protected class for violating code requirements for property upkeep while not citing other residents for similar violations.
- Refusing to provide reasonable accommodations to land use or zoning policies when such accommodations may be necessary to allow persons with disabilities to have an equal opportunity to use and enjoy the housing, by, for example, denying a request to modify a setback requirement so an accessible sidewalk or ramp can be provided for one or more persons with mobility disabilities.

## **3. When does a land use or zoning practice constitute intentional discrimination in violation of the Fair Housing Act?**

Intentional discrimination is also referred to as disparate treatment, meaning that the action treats a person or group of persons differently because of race, color, religion, sex, disability, familial status, or national origin. A land use or zoning practice may be intentionally discriminatory even if there is no personal bias or animus on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias may be intentionally discriminatory, even if the officials themselves do not personally share such bias. (See Q&A 5.) Intentional discrimination does not require that the



decision-makers were hostile toward members of a particular protected class. Decisions motivated by a purported desire to benefit a particular group can also violate the Act if they result in differential treatment because of a protected characteristic.

A land use or zoning practice may be discriminatory on its face. For example, a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Act because it treats persons with disabilities differently based on their disability. Even a law that is seemingly neutral will still violate the Act if enacted with discriminatory intent. In that instance, the analysis of whether there is intentional discrimination will be based on a variety of factors, all of which need not be satisfied. These factors include, but are not limited to: (1) the “impact” of the municipal practice, such as whether an ordinance disproportionately impacts minority residents compared to white residents or whether the practice perpetuates segregation in a neighborhood or particular geographic area; (2) the “historical background” of the action, such as whether there is a history of segregation or discriminatory conduct by the municipality; (3) the “specific sequence of events,” such as whether the city adopted an ordinance or took action only after significant, racially-motivated community opposition to a housing development or changed course after learning that a development would include non-white residents; (4) departures from the “normal procedural sequence,” such as whether a municipality deviated from normal application or zoning requirements; (5) “substantive departures,” such as whether the factors usually considered important suggest that a state or local government should have reached a different result; and (6) the “legislative or administrative history,” such as any statements by members of the state or local decision-making body.<sup>6</sup>

#### **4. Can state and local land use and zoning laws or practices violate the Fair Housing Act if the state or locality did not intend to discriminate against persons on a prohibited basis?**

Yes. Even absent a discriminatory intent, state or local governments may be liable under the Act for any land use or zoning law or practice that has an unjustified discriminatory effect because of a protected characteristic. In 2015, the United States Supreme Court affirmed this interpretation of the Act in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*<sup>7</sup> The Court stated that “[t]hese unlawful practices include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification.”<sup>8</sup>

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<sup>6</sup> *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977).

<sup>7</sup> \_\_\_ U.S. \_\_\_, 135 S. Ct. 2507 (2015).

<sup>8</sup> *Id.* at 2521–22.

A land use or zoning practice results in a discriminatory effect if it caused or predictably will cause a disparate impact on a group of persons or if it creates, increases, reinforces, or perpetuates segregated housing patterns because of a protected characteristic. A state or local government still has the opportunity to show that the practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. These interests must be supported by evidence and may not be hypothetical or speculative. If these interests could not be served by another practice that has a less discriminatory effect, then the practice does not violate the Act. The standard for evaluating housing-related practices with a discriminatory effect are set forth in HUD's Discriminatory Effects Rule, 24 C.F.R. § 100.500.

Examples of land use practices that violate the Fair Housing Act under a discriminatory effects standard include minimum floor space or lot size requirements that increase the size and cost of housing if such an increase has the effect of excluding persons from a locality or neighborhood because of their membership in a protected class, without a legally sufficient justification. Similarly, prohibiting low-income or multifamily housing may have a discriminatory effect on persons because of their membership in a protected class and, if so, would violate the Act absent a legally sufficient justification.

**5. Does a state or local government violate the Fair Housing Act if it considers the fears or prejudices of community members when enacting or applying its zoning or land use laws respecting housing?**

When enacting or applying zoning or land use laws, state and local governments may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents' protected characteristics. Doing so violates the Act, even if the officials themselves do not personally share such bias. For example, a city may not deny zoning approval for a low-income housing development that meets all zoning and land use requirements because the development may house residents of a particular protected class or classes whose presence, the community fears, will increase crime and lower property values in the surrounding neighborhood. Similarly, a local government may not block a group home or deny a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities or a particular type of disability. Of course, a city council or zoning board is not bound by everything that is said by every person who speaks at a public hearing. It is the record as a whole that will be determinative.

**6. Can state and local governments violate the Fair Housing Act if they adopt or implement restrictions against children?**

Yes. State and local governments may not impose restrictions on where families with children may reside unless the restrictions are consistent with the “housing for older persons” exemption of the Act. The most common types of housing for older persons that may qualify for this exemption are: (1) housing intended for, and solely occupied by, persons 62 years of age or older; and (2) housing in which 80% of the occupied units have at least one person who is 55 years of age or older that publishes and adheres to policies and procedures demonstrating the intent to house older persons. These types of housing must meet all requirements of the exemption, including complying with HUD regulations applicable to such housing, such as verification procedures regarding the age of the occupants. A state or local government that zones an area to exclude families with children under 18 years of age must continually ensure that housing in that zone meets all requirements of the exemption. If all of the housing in that zone does not continue to meet all such requirements, that state or local government violates the Act.

**Questions and Answers on the Fair Housing Act and  
Local Land Use and Zoning Regulation of Group Homes**

**7. Who qualifies as a person with a disability under the Fair Housing Act?**

The Fair Housing 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 an impairment; and (3) individuals with a record of such an impairment.

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

The term “major life activity” includes activities such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, speaking, and working. This list of major life activities is not exhaustive.

Being regarded as having a disability means that the individual is treated as if he or she has a disability even though the individual may not have an impairment or may not have an impairment that substantially limits one or more major life activities. For example, if a landlord

refuses to rent to a person because the landlord believes the prospective tenant has a disability, then the landlord violates the Act's prohibition on discrimination on the basis of disability, even if the prospective tenant does not actually have a physical or mental impairment that substantially limits one or more major life activities.

Having a record of a disability means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

## **8. What is a group home within the meaning of the Fair Housing Act?**

The term "group home" does not have a specific legal meaning; land use and zoning officials and the courts, however, have referred to some residences for persons with disabilities as group homes. The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. A household where two or more persons with disabilities choose to live together, as a matter of association, may not be subjected to requirements or conditions that are not imposed on households consisting of persons without disabilities.

In this Statement, the term "group home" refers to a dwelling that is or will be occupied by unrelated persons with disabilities. Sometimes group homes serve individuals with a particular type of disability, and sometimes they serve individuals with a variety of disabilities. Some group homes provide residents with in-home support services of varying types, while others do not. The provision of support services is not required for a group home to be protected under the Fair Housing Act. Group homes, as discussed in this Statement, may be opened by individuals or by organizations, both for-profit and not-for-profit. Sometimes it is the group home operator or developer, rather than the individuals who live or are expected to live in the home, who interacts with a state or local government agency about developing or operating the group home, and sometimes there is no interaction among residents or operators and state or local governments.

In this Statement, the term "group home" includes homes occupied by persons in recovery from alcohol or substance abuse, who are persons with disabilities under the Act. Although a group home for persons in recovery may commonly be called a "sober home," the term does not have a specific legal meaning, and the Act treats persons with disabilities who reside in such homes no differently than persons with disabilities who reside in other types of group homes. Like other group homes, homes for persons in recovery are sometimes operated by individuals or organizations, both for-profit and not-for-profit, and support services or supervision are sometimes, but not always, provided. The Act does not require a person who resides in a home for persons in recovery to have participated in or be currently participating in a

substance abuse treatment program to be considered a person with a disability. The fact that a resident of a group home may currently be illegally using a controlled substance does not deprive the other residents of the protection of the Fair Housing Act.

## **9. In what ways does the Fair Housing Act apply to group homes?**

The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. State and local governments may not discriminate against persons with disabilities who live in group homes. Persons with disabilities who live in or seek to live in group homes are sometimes subjected to unlawful discrimination in a number of ways, including those discussed in the preceding Section of this Joint Statement. Discrimination may be intentional; for example, a locality might pass an ordinance prohibiting group homes in single-family neighborhoods or prohibiting group homes for persons with certain disabilities. These ordinances are facially discriminatory, in violation of the Act. In addition, as discussed more fully in Q&A 10 below, a state or local government may violate the Act by refusing to grant a reasonable accommodation to its zoning or land use ordinance when the requested accommodation may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling. For example, if a locality refuses to waive an ordinance that limits the number of unrelated persons who may live in a single-family home where such a waiver may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling, the locality violates the Act unless the locality can prove that the waiver would impose an undue financial and administrative burden on the local government or fundamentally alter the essential nature of the locality's zoning scheme. Furthermore, a state or local government may violate the Act by enacting an ordinance that has an unjustified discriminatory effect on persons with disabilities who seek to live in a group home in the community. Unlawful actions concerning group homes are discussed in more detail throughout this Statement.

## **10. What is a reasonable accommodation under the Fair Housing Act?**

The Fair Housing 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. 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 may sometimes deny them an equal opportunity to use and enjoy a dwelling.

Even if a zoning ordinance imposes on group homes the same restrictions that it imposes on housing for other groups of unrelated persons, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. What constitutes a reasonable accommodation is a case-by-case determination based on an individualized assessment. This topic is discussed in detail in Q&As 20–25 and in the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

#### **11. Does the Fair Housing Act protect persons with disabilities who pose a “direct threat” to others?**

The Act does not allow for the exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. Nevertheless, the Act does not protect an individual whose tenancy would constitute a “direct threat” to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others unless the threat or risk to property can be eliminated or significantly reduced by reasonable accommodation. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (for example, 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 or significantly reduce the direct threat. See Q&A 10 for a general discussion of reasonable accommodations. Consequently, in evaluating an individual’s recent history of overt acts, a state or local government must take into account whether the individual has received intervening treatment or medication that has eliminated or significantly reduced the direct threat (in other words, significant risk of substantial harm). In such a situation, the state or local government may request that the individual show how the circumstances have changed so that he or she no longer poses a direct threat. Any such request must be reasonable and limited to information necessary to assess whether circumstances have changed. Additionally, in such a situation, a state or local government may obtain satisfactory and reasonable assurances that the individual will not pose a direct threat during the tenancy. The state or local government must have reliable, objective evidence that the tenancy of a person with a disability poses a direct threat before excluding him or her from housing on that basis, and, in making that assessment, the state or local government may not ignore evidence showing that the individual’s tenancy would no longer pose a direct threat. Moreover, the fact that one individual may pose a direct threat does not mean that another individual with the same disability or other individuals in a group home may be denied housing.

**12. Can a state or local government enact laws that specifically limit group homes for individuals with specific types of disabilities?**

No. Just as it would be illegal to enact a law for the purpose of excluding or limiting group homes for individuals with disabilities, it is illegal under the Act for local land use and zoning laws to exclude or limit group homes for individuals with specific types of disabilities. For example, a government may not limit group homes for persons with mental illness to certain neighborhoods. The fact that the state or local government complies with the Act with regard to group homes for persons with some types of disabilities will not justify discrimination against individuals with another type of disability, such as mental illness.

**13. Can a state or local government limit the number of individuals who reside in a group home in a residential neighborhood?**

Neutral laws that govern groups of unrelated persons who live together do not violate the Act so long as (1) those laws do not intentionally discriminate against persons on the basis of disability (or other protected class), (2) those laws do not have an unjustified discriminatory effect on the basis of disability (or other protected class), and (3) state and local governments make reasonable accommodations when such accommodations may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to a certain number of unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act because it treats persons with disabilities less favorably than families and unrelated persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together without violating the Act as long as the restrictions are imposed on all such groups, including a group defined as a family. Thus, if the definition of a family includes up to a certain number of unrelated individuals, an ordinance would not, on its face, violate the Act if a group home for persons with disabilities with more than the permitted number for a family were not allowed to locate in a single-family-zoned neighborhood because any group of unrelated people without disabilities of that number would also be disallowed. A facially neutral ordinance, however, still may violate the Act if it is intentionally discriminatory (that is, enacted with discriminatory intent or applied in a discriminatory manner), or if it has an unjustified



discriminatory effect on persons with disabilities. For example, an ordinance that limits the number of unrelated persons who may constitute a family may violate the Act if it is enacted for the purpose of limiting the number of persons with disabilities who may live in a group home, or if it has the unjustified discriminatory effect of excluding or limiting group homes in the jurisdiction. Governments may also violate the Act if they enforce such restrictions more strictly against group homes than against groups of the same number of unrelated persons without disabilities who live together in housing. In addition, as discussed in detail below, because the Act prohibits the denial of reasonable accommodations to rules and policies for persons with disabilities, a group home that provides housing for a number of persons with disabilities that exceeds the number allowed under the family definition has the right to seek an exception or waiver. If the criteria for a reasonable accommodation are met, the permit must be given in that instance, but the ordinance would not be invalid.<sup>9</sup>

#### **14. How does the Supreme Court's ruling in *Olmstead* apply to the Fair Housing Act?**

In *Olmstead v. L.C.*,<sup>10</sup> the Supreme Court ruled that the Americans with Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community-based settings. An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. By contrast, a segregated setting includes congregate settings populated exclusively or primarily by individuals with disabilities. Although *Olmstead* did not interpret the Fair Housing Act, the objectives of the Fair Housing Act and the ADA, as interpreted in *Olmstead*, are consistent. The Fair Housing Act ensures that persons with disabilities have an equal opportunity to choose the housing where they wish to live. The ADA and *Olmstead* ensure that persons with disabilities also have the option to live and receive services in the most integrated setting appropriate to their needs. The integration mandate of the ADA and *Olmstead* can be implemented without impairing the rights protected by the Fair Housing Act. For example, state and local governments that provide or fund housing, health care, or support services must comply with the integration mandate by providing these programs, services, and activities in the most integrated setting appropriate to the needs of individuals with disabilities. State and local governments may comply with this requirement by adopting standards for the housing, health care, or support services they provide or fund that are reasonable, individualized, and specifically tailored to enable individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. Local governments should be aware that ordinances and policies that impose additional restrictions on housing or residential services for persons with disabilities that are not imposed on housing or

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<sup>9</sup> Laws that limit the number of occupants per unit do not violate the Act as long as they are reasonable, are applied to all occupants, and do not operate to discriminate on the basis of disability, familial status, or other characteristics protected by the Act.

<sup>10</sup> 527 U.S. 581 (1999).

residential services for persons without disabilities are likely to violate the Act. In addition, a locality would violate the Act and the integration mandate of the ADA and *Olmstead* if it required group homes to be concentrated in certain areas of the jurisdiction by, for example, restricting them from being located in other areas.

**15. Can a state or local government impose spacing requirements on the location of group homes for persons with disabilities?**

A “spacing” or “dispersal” requirement generally refers to a requirement that a group home for persons with disabilities must not be located within a specific distance of another group home. Sometimes a spacing requirement is designed so it applies only to group homes and sometimes a spacing requirement is framed more generally and applies to group homes and other types of uses such as boarding houses, student housing, or even certain types of businesses. In a community where a certain number of unrelated persons are permitted by local ordinance to reside together in a home, it would violate the Act for the local ordinance to impose a spacing requirement on group homes that do not exceed that permitted number of residents because the spacing requirement would be a condition imposed on persons with disabilities that is not imposed on persons without disabilities. In situations where a group home seeks a reasonable accommodation to exceed the number of unrelated persons who are permitted by local ordinance to reside together, the Fair Housing Act does not prevent state or local governments from taking into account concerns about the over-concentration of group homes that are located in close proximity to each other. Sometimes compliance with the integration mandate of the ADA and *Olmstead* requires government agencies responsible for licensing or providing housing for persons with disabilities to consider the location of other group homes when determining what housing will best meet the needs of the persons being served. Some courts, however, have found that spacing requirements violate the Fair Housing Act because they deny persons with disabilities an equal opportunity to choose where they will live. Because an across-the-board spacing requirement may discriminate against persons with disabilities in some residential areas, any standards that state or local governments adopt should evaluate the location of group homes for persons with disabilities on a case-by-case basis.

Where a jurisdiction has imposed a spacing requirement on the location of group homes for persons with disabilities, courts may analyze whether the requirement violates the Act under an intent, effects, or reasonable accommodation theory. In cases alleging intentional discrimination, courts look to a number of factors, including the effect of the requirement on housing for persons with disabilities; the jurisdiction’s intent behind the spacing requirement; the existence, size, and location of group homes in a given area; and whether there are methods other than a spacing requirement for accomplishing the jurisdiction’s stated purpose. A spacing requirement enacted with discriminatory intent, such as for the purpose of appeasing neighbors’ stereotypical fears about living near persons with disabilities, violates the Act. Further, a neutral

spacing requirement that applies to all housing for groups of unrelated persons may have an unjustified discriminatory effect on persons with disabilities, thus violating the Act. Jurisdictions must also consider, in compliance with the Act, requests for reasonable accommodations to any spacing requirements.

**16. Can a state or local government impose health and safety regulations on group home operators?**

Operators of group homes for persons with disabilities are subject to applicable state and local regulations addressing health and safety concerns unless those regulations are inconsistent with the Fair Housing Act or other federal law. Licensing and other regulatory requirements that may apply to some group homes must also be consistent with the Fair Housing Act. Such regulations must not be based on stereotypes about persons with disabilities or specific types of disabilities. State or local zoning and land use ordinances may not, consistent with the Fair Housing Act, require individuals with disabilities to receive medical, support, or other services or supervision that they do not need or want as a condition for allowing a group home to operate. State and local governments' enforcement of neutral requirements regarding safety, licensing, and other regulatory requirements governing group homes do not violate the Fair Housing Act so long as the ordinances are enforced in a neutral manner, they do not specifically target group homes, and they do not have an unjustified discriminatory effect on persons with disabilities who wish to reside in group homes.

Governments must also consider requests for reasonable accommodations to licensing and regulatory requirements and procedures, and grant them where they may be necessary to afford individuals with disabilities an equal opportunity to use and enjoy a dwelling, as required by the Act.

**17. Can a state or local government address suspected criminal activity or fraud and abuse at group homes for persons with disabilities?**

The Fair Housing Act does not prevent state and local governments from taking nondiscriminatory action in response to criminal activity, insurance fraud, Medicaid fraud, neglect or abuse of residents, or other illegal conduct occurring at group homes, including reporting complaints to the appropriate state or federal regulatory agency. States and localities must ensure that actions to enforce criminal or other laws are not taken to target group homes and are applied equally, regardless of whether the residents of housing are persons with disabilities. For example, persons with disabilities residing in group homes are entitled to the same constitutional protections against unreasonable search and seizure as those without disabilities.

**18. Does the Fair Housing Act permit a state or local government to implement strategies to integrate group homes for persons with disabilities in particular neighborhoods where they are not currently located?**

Yes. Some strategies a state or local government could use to further the integration of group housing for persons with disabilities, consistent with the Act, include affirmative marketing or offering incentives. For example, jurisdictions may engage in affirmative marketing or offer variances to providers of housing for persons with disabilities to locate future homes in neighborhoods where group homes for persons with disabilities are not currently located. But jurisdictions may not offer incentives for a discriminatory purpose or that have an unjustified discriminatory effect because of a protected characteristic.

**19. Can a local government consider the fears or prejudices of neighbors in deciding whether a group home can be located in a particular neighborhood?**

In the same way a local government would violate the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities (see Q&A 5), a local government violates the law if it blocks a group home or denies a reasonable accommodation request because of neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers themselves do not have biases against persons with disabilities.

Not all community opposition to requests by group homes is necessarily discriminatory. For example, when a group home seeks a reasonable accommodation to operate in an area and the area has limited on-street parking to serve existing residents, it is not a violation of the Fair Housing Act for neighbors and local government officials to raise concerns that the group home may create more demand for on-street parking than would a typical family and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the requested accommodation, if a similar dwelling that is not a group home or similarly situated use would ordinarily be denied a permit because of such parking concerns. If, however, the group home shows that the home will not create a need for more parking spaces than other dwellings or similarly-situated uses located nearby, or submits a plan to provide any needed off-street parking, then parking concerns would not support a decision to deny the home a permit.

## **Questions and Answers on the Fair Housing Act and Reasonable Accommodation Requests to Local Zoning and Land Use Laws**

### **20. When does a state or local government violate the Fair Housing Act by failing to grant a request for a reasonable accommodation?**

A state or local government violates the Fair Housing Act by failing to grant a reasonable accommodation request if (1) the persons requesting the accommodation or, in the case of a group home, persons residing in or expected to reside in the group home are persons with a disability under the Act; (2) the state or local government knows or should reasonably be expected to know of their disabilities; (3) an accommodation in the land use or zoning ordinance or other rules, policies, practices, or services of the state or locality was requested by or on behalf of persons with disabilities; (4) the requested accommodation may be necessary to afford one or more persons with a disability an equal opportunity to use and enjoy the dwelling; (5) the state or local government refused to grant, failed to act on, or unreasonably delayed the accommodation request; and (6) the state or local government cannot show that granting the accommodation would impose an undue financial and administrative burden on the local government or that it would fundamentally alter the local government's zoning scheme. A requested accommodation may be necessary if there is an identifiable relationship between the requested accommodation and the group home residents' disability. Further information is provided in Q&A 10 above and the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

### **21. Can a local government deny a group home's request for a reasonable accommodation without violating the Fair Housing Act?**

Yes, a local government may deny a group home's request for a reasonable accommodation if the request was not made by or on behalf of persons with disabilities (by, for example, the group home developer or operator) or if there is no disability-related need for the requested accommodation because there is no relationship between the requested accommodation and the disabilities of the residents or proposed residents.

In addition, a group home's request for a reasonable accommodation may be denied by a local government if providing the accommodation is not reasonable—in other words, if it would impose an undue financial and administrative burden on the local government or it would fundamentally alter the local government's zoning scheme. The determination of undue financial and administrative burden must be decided on a case-by-case basis involving various factors, such as the nature and extent of the administrative burden and the cost of the requested accommodation to the local government, the financial resources of the local government, and the benefits that the accommodation would provide to the persons with disabilities who will reside in the group home.

When a local government refuses an accommodation request because it would pose an undue financial and administrative burden, the local government should discuss with the requester whether there is an alternative accommodation that would effectively address the disability-related needs of the group home's residents without imposing an undue financial and administrative burden. This discussion is called an "interactive process." If an alternative accommodation would effectively meet the disability-related needs of the residents of the group home and is reasonable (that is, it would not impose an undue financial and administrative burden or fundamentally alter the local government's zoning scheme), the local government must grant the alternative accommodation. An interactive process in which the group home and the local government discuss the disability-related need for the requested accommodation and possible alternative accommodations is both required under the Act and helpful to all concerned, because it often results in an effective accommodation for the group home that does not pose an undue financial and administrative burden or fundamental alteration for the local government.

## **22. What is the procedure for requesting a reasonable accommodation?**

The reasonable accommodation must actually be requested by or on behalf of the individuals with disabilities who reside or are expected to reside in the group home. When the request is made, it is not necessary for the specific individuals who would be expected to live in the group home to be identified. The Act does not require that a request be made in a particular manner or at a particular time. The group home does not need to mention the Fair Housing Act or use the words "reasonable accommodation" when making a reasonable accommodation request. The group home must, however, make the request in a manner that a reasonable person would understand to be a disability-related request for an exception, change, or adjustment to a rule, policy, practice, or service. When making a request for an exception, change, or adjustment to a local land use or zoning regulation or policy, the group home should explain what type of accommodation is being requested and, if the need for the accommodation is not readily apparent or known by the local government, explain the relationship between the accommodation and the disabilities of the group home residents.

A request for a reasonable accommodation can be made either orally or in writing. It is often helpful for both the group home and the local government if the reasonable accommodation request is made in writing. This will help prevent misunderstandings regarding what is being requested or whether or when the request was made.

Where a local land use or zoning code contains specific procedures for seeking a departure from the general rule, courts have decided that these procedures should ordinarily be followed. If no procedure is specified, or if the procedure is unreasonably burdensome or intrusive or involves significant delays, a request for a reasonable accommodation may,



nevertheless, be made in some other way, and a local government is obligated to grant it if the requested accommodation meets the criteria discussed in Q&A 20, above.

Whether or not the local land use or zoning code contains a specific procedure for requesting a reasonable accommodation or other exception to a zoning regulation, if local government officials have previously made statements or otherwise indicated that an application for a reasonable accommodation would not receive fair consideration, or if the procedure itself is discriminatory, then persons with disabilities living in a group home, and/or its operator, have the right to file a Fair Housing Act complaint in court to request an order for a reasonable accommodation to the local zoning regulations.

### **23. Does the Fair Housing Act require local governments to adopt formal reasonable accommodation procedures?**

The Act does not require a local government to adopt formal procedures for processing requests for reasonable accommodations to local land use or zoning codes. DOJ and HUD nevertheless strongly encourage local governments to adopt formal procedures for identifying and processing reasonable accommodation requests and provide training for government officials and staff as to application of the procedures. Procedures for reviewing and acting on reasonable accommodation requests will help state and local governments meet their obligations under the Act to respond to reasonable accommodation requests and implement reasonable accommodations promptly. Local governments are also encouraged to ensure that the procedures to request a reasonable accommodation or other exception to local zoning regulations are well known throughout the community by, for example, posting them at a readily accessible location and in a digital format accessible to persons with disabilities on the government's website. If a jurisdiction chooses to adopt formal procedures for reasonable accommodation requests, the procedures cannot be onerous or require information beyond what is necessary to show that the individual has a disability and that the requested accommodation is related to that disability. For example, in most cases, an individual's medical record or detailed information about the nature of a person's disability is not necessary for this inquiry. In addition, officials and staff must be aware that any procedures for requesting a reasonable accommodation must also be flexible to accommodate the needs of the individual making a request, including accepting and considering requests that are not made through the official procedure. The adoption of a reasonable accommodation procedure, however, will not cure a zoning ordinance that treats group homes differently than other residential housing with the same number of unrelated persons.

**24. What if a local government fails to act promptly on a reasonable accommodation request?**

A local government has an obligation to provide prompt responses to reasonable accommodation requests, whether or not a formal reasonable accommodation procedure exists. A local government's undue delay in responding to a reasonable accommodation request may be deemed a failure to provide a reasonable accommodation.

**25. Can a local government enforce its zoning code against a group home that violates the zoning code but has not requested a reasonable accommodation?**

The Fair Housing Act does not prohibit a local government from enforcing its zoning code against a group home that has violated the local zoning code, as long as that code is not discriminatory or enforced in a discriminatory manner. If, however, the group home requests a reasonable accommodation when faced with enforcement by the locality, the locality still must consider the reasonable accommodation request. A request for a reasonable accommodation may be made at any time, so at that point, the local government must consider whether there is a relationship between the disabilities of the residents of the group home and the need for the requested accommodation. If so, the locality must grant the requested accommodation unless doing so would pose a fundamental alteration to the local government's zoning scheme or an undue financial and administrative burden to the local government.

**Questions and Answers on Fair Housing Act Enforcement of  
Complaints Involving Land Use and Zoning**

**26. How are Fair Housing Act complaints involving state and local land use laws and practices handled by HUD and DOJ?**

The Act gives HUD the power to receive, investigate, and conciliate complaints of discrimination, including complaints that a state or local government has discriminated in exercising its land use and zoning powers. HUD may not issue a charge of discrimination pertaining to "the legality of any State or local zoning or other land use law or ordinance." Rather, after investigating, HUD refers matters it believes may be meritorious to DOJ, which, in its discretion, may decide to bring suit against the state or locality within 18 months after the practice at issue occurred or terminated. DOJ may also bring suit by exercising its authority to initiate litigation alleging a pattern or practice of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

If HUD determines that there is no reasonable cause to believe that there may be a violation, it will close an investigation without referring the matter to DOJ. But a HUD or DOJ

decision not to proceed with a land use or zoning matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and DOJ encourage parties to land use disputes to explore reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation or conciliation of the HUD complaint. HUD attempts to conciliate all complaints under the Act that it receives, including those involving land use or zoning laws. In addition, it is DOJ's policy to offer prospective state or local governments the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

## **27. How can I find more information?**

For more information on reasonable accommodations and reasonable modifications under the Fair Housing Act:

- HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act, *available at* <https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0> or <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.
- HUD/DOJ Joint Statement on Reasonable Modifications under the Fair Housing Act, *available at* <https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0> or [http://www.hud.gov/offices/fheo/disabilities/reasonable\\_modifications\\_mar08.pdf](http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf).

For more information on state and local governments' obligations under Section 504:

- HUD website at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/sect504](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504).

For more information on state and local governments' obligations under the ADA and *Olmstead*:

- U.S. Department of Justice website, [www.ADA.gov](http://www.ADA.gov), or call the ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).
- Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*, *available at* [http://www.ada.gov/olmstead/q&a\\_olmstead.htm](http://www.ada.gov/olmstead/q&a_olmstead.htm).
- Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>.

For more information on the requirement to affirmatively further fair housing:

- Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, and 903).
- U.S. Department of Housing and Urban Development, Version 1, Affirmatively Furthering Fair Housing Rule Guidebook (2015), *available at* <https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf>.
- Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Vol. 1, Fair Housing Planning Guide (1996), *available at* <http://www.hud.gov/offices/fheo/images/fhpg.pdf>.

For more information on nuisance and crime-free ordinances:

- Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services (Sept. 13, 2016), *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf>.

## **SECTION 3**

### **Accessibility, Design & Construction**

- a. Fact Sheet: Fair Housing Design and Construction Requirements
- b. Guide: Fair Housing Act Design & Construction Requirements
- c. Accessible Parking Standards

# FACT SHEET: FAIR HOUSING DESIGN & CONSTRUCTION REQUIREMENTS

## A BRIEF OVERVIEW OF THE REQUIREMENTS OF THE FAIR HOUSING ACT

### What is fair housing?

**Fair housing** is the right to choose housing free from unlawful discrimination. Federal, state, and local fair housing laws protect people from discrimination in housing transactions such as rentals, sales, lending, and insurance. This includes how some housing is designed and built. Fair housing laws protect people against unfair treatment because of a protected class. Protected classes under federal and/or Michigan fair housing laws include race, skin color, national origin, religion, sex, familial status, disability, marital status, age, sexual orientation, gender identity or expression, and source of income (source of income in rental housing only).



Fair Housing Center  
of West Michigan

20 Hall Street SE  
Grand Rapids, MI 49507  
616-451-2980 phone  
616-451-2657 fax  
[fhcwm.org](http://fhcwm.org)

### When do the Fair Housing Act design requirements apply?

The federal Fair Housing Act (the “Act”) design and construction requirements apply to all multi-family housing designed and constructed for first occupancy after March 13, 1991. Multi-family housing is defined as a building with 4 or more units, including condominiums, apartment buildings, senior-housing complexes, assisted living facilities, and time-shares, among others.

### Units Covered by the Act:

- All dwelling units in buildings containing 4 or more units if the building has one or more elevators, AND
- All ground floor dwelling units in non-elevator buildings containing at least 4 units BUT,
- To be a covered unit, all of the finished living space must be on the same floor, if it is a multistory unit, part of the unit may still be covered by the Act. See the Fair Housing Act Design Manual for more information.

### Common Use Areas:

- Common use areas must be readily accessible for use by persons with disabilities
- Must comply with the ADA public accommodation requirements
- Includes rooms, spaces, or elements inside or outside of a building that are made available for the use of residents of a building or the guests

### Bathrooms:

2 options for bathroom in covered units:

- Option 1: All bathrooms must comply with a basic degree of maneuverability
- Option 2: Only 1 bathroom must comply with a strict degree of maneuverability, and all other bathrooms are still required to have usable doors, reinforced walls, accessible controls, and be on an accessible route

# SUMMARY OF THE 7 FAIR HOUSING ACT DESIGN REQUIREMENTS

## COMMON VIOLATIONS

### 1. Accessible Route & Accessible Entrance

- Accessible route must be a continuous, unobstructed path connecting spaces within a site that can be navigated safely by persons in wheelchairs and with other disabilities
- Accessible entrance must be connected by an accessible route to public transit stops, accessible parking, passenger loading zones, public streets, and sidewalks

### 2. Accessible Public & Common-Use Areas

- All parts of the housing outside individual units must be accessible by an individual in a wheelchair
- Examples: parking lots, storage areas, indoor and outdoor recreation areas, lobbies, mailrooms, and laundry areas

### 3. Usable Doors

- Must be wide enough to allow passage by persons using wheelchairs
- Minimum 32" clear opening

### 4. Accessible Routes Into & Through Housing Unit

- Interior must be maneuverable by an individual in a wheelchair

### 5. Accessible Light Switches, Outlets, & Other Environmental Controls

- Must be accessible by an individual in a wheelchair
- Outlets at least 15" above finished floor
- Switches and thermostats no higher than 48"

### 6. Reinforced Walls in Bathrooms

- Walls must be reinforced for later installation of grab bars

### 7. Usable Kitchens & Bathrooms

- Must be maneuverable by an individual in a wheelchair
- The Fair Housing Act provides two options for bathroom compliance

- Steps at the office or housing entrance without an alternative, accessible entrance
- Steep entrance walk
- No accessible connection between the building entrance and parking areas

- No curb cut or ramp from parking area
- Accessible route from parking area blocked by parked cars
- Stairs to laundry areas or mailroom

- Doorways with less than 32" opening
- Some, but not all doors, within the housing unit are accessible

- Step at primary entry door
- Exterior door threshold is too high for a wheelchair to pass over

- Switches or thermostat controls are placed too high
- Outlets are too low

- Walls are not reinforced during construction
- Grab bar reinforcement is less than 24" in diameter

- Kitchen lacks a 30" x 48" clear floor space in front of sink or stove
- Bathroom lacks a 30" x 48" clear floor space in front of sink

Note: Housing developers and providers should also ensure that the housing meets the requirements of the Americans with Disabilities Act (ADA), as well as other applicable laws and codes. The ADA requires that housing provided by public entities and also the public and common-use areas in housing developments be accessible. Learn more at [www.ada.gov](http://www.ada.gov).



Fair Housing Center of West Michigan

# Guide: Fair Housing Act Design & Construction Requirements

Source: U.S. Department of Housing and Urban Development,  
Fair Housing Act Design Manual



## INTRODUCTION:

The Fair Housing Center of West Michigan (FHCWM) is pleased to provide this guide as an overview of the seven (7) Design & Construction requirements of the federal Fair Housing Act, and as an introduction to other accessibility laws and associated resources. The FHCWM intends this guide to promote awareness of and compliance with fair housing accessibility requirements. In order to ensure equal access to fair housing choice, planning for accessibility should be an integral part of the housing design process.

**FAIR HOUSING** is the right of individuals to obtain the housing of their choice free from unlawful discrimination based upon race, color, religion, national origin, sex, disability, familial status, marital status, age, sexual orientation, gender identity or expression, and source of income (source of income in rental housing only), as guaranteed by Federal, State, and/or local fair housing laws. The rights of persons with disabilities under these laws include the right to accessible housing, as set forth by distinct requirements that ensure a standard level of accessibility. In particular, the federal Fair Housing Act sets forth seven (7) design and construction requirements for accessibility, which are detailed herein.

**THE SOURCE OF GUIDANCE** in this booklet is the Fair Housing Act Design Manual developed by the U.S. Department of Housing & Urban Development (HUD), unless otherwise noted. HUD produced the manual to assist builders and developers in understanding and conforming to the design requirements of the Fair Housing Act, and to explain the application of the Fair Housing Accessibility Guidelines to all aspects of multi-family housing projects. Although this guide focuses on the federal Fair Housing Act, the FHCWM strongly recommends that architects, builders and developers thoroughly research all laws and ordinances applicable to each unique property, with its unique design and development features, in order to ensure compliance from the project onset and to avoid the need for often costly and complex retro-fitting. Other federal laws that need to be considered include the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. See page 21 for more details on these and other laws. Furthermore, all U.S. states, and many cities and counties, have developed their own building codes for accessibility which also need to be considered.

## **FAIR HOUSING ACT DESIGN & CONSTRUCTION REQUIREMENTS:**

The federal Fair Housing Act (herein “the Act”), passed in 1968 and amended in 1988, prohibits discrimination in housing based upon race, color, religion, national origin, gender including sexual orientation and gender identity, disability and familial status. The Act defines discrimination against persons with disabilities to include a failure “to design and construct” certain new multi-family dwellings so that they are accessible to and usable by persons with disabilities, particularly people who use wheelchairs.

In order to ensure a standard level of accessibility, the Act establishes the following seven (7) requirements, known as the “design and construction requirements”, which apply to “covered multifamily dwellings” designed and constructed for first occupancy after March 13, 1991:

1. Accessible Building Entrance on an Accessible Route
2. Accessible & Usable Public & Common Use Areas
3. Usable Doors
4. Accessible Route into & through Covered Unit
5. Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in Accessible Locations
6. Reinforced Walls for Grab Bars
7. Usable Kitchens and Bathrooms

“Covered multi-family dwellings” include:

1. All dwelling units in buildings containing four or more dwelling units if the buildings have one or more elevators  
AND
2. All ground floor units in other buildings containing four or more units, without an elevator.

Covered multi-family dwellings include condominiums, apartment buildings, time-shares, dormitories, transitional housing, homeless shelters that are used as a residence, student housing, assisted living housing, and others. To be a fully covered unit, all of the finished living space must be on the same floor and it must be a single-story unit. If it is a multistory unit, part of the unit may still be covered by the Act. In particular, the entry floor of a multi-story unit will need to comply with Requirements 3 through 7 and contain a usable bathroom or powder room on the entry floor.

Following is an overview of each of the seven (7) design and construction requirements and their applicable specifications.

## 1. ACCESSIBLE ENTRANCE ON AN ACCESSIBLE ROUTE

According to the Fair Housing Act and the implementation regulations issued by HUD, "covered multi-family dwellings for first occupancy after March 31, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of terrain or unusual characteristics of the site."

Section 100.205 (a)

### **ACCESSIBLE ENTRANCE**

All buildings containing covered dwelling units, and separate buildings containing public and common use spaces, must have at least one accessible building entrance on an accessible route, unless it is impractical to do so.

Main factors which must be addressed are:

- minimum clear width of open doorway 32 inches,
- low or no threshold,
- clear maneuvering space inside and outside the door,
- force needed to open the door,
- accessible door hardware, and
- safe door closing speed.

The accessible (common use) entrance must be one which is typically used by residents and/or guests for the purpose of entering the building. Service doors or loading docks cannot serve as the only accessible entrance to buildings, even if residents occasionally use such a door for entering the building.

The Guidelines require that the accessible entrance be connected by an accessible route to public transportation stops, accessible parking spaces, accessible passenger loading zones, and public streets or sidewalks.

### **COMMON VIOLATIONS:**

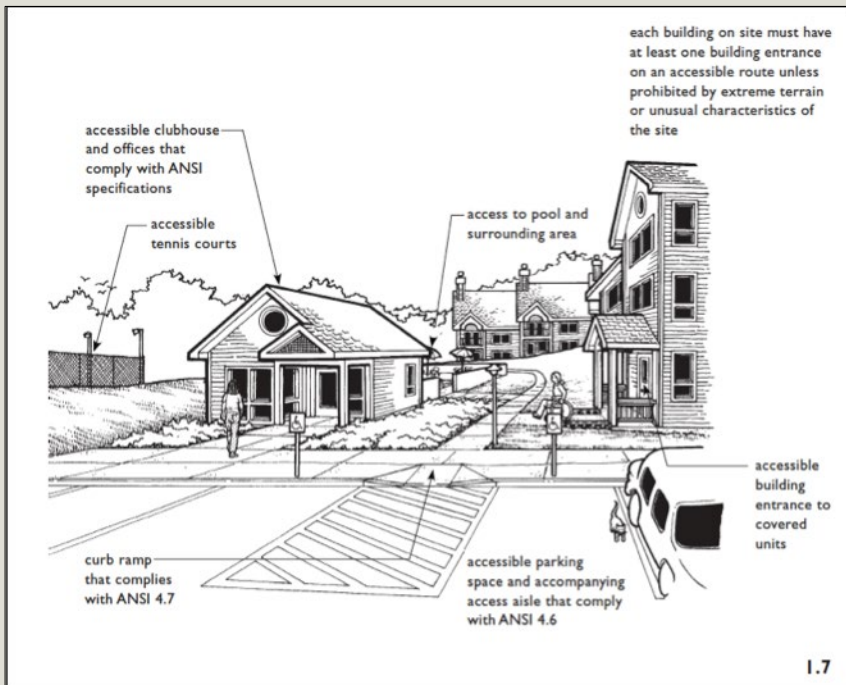
- Steps at the office or housing entrance without an alternative, accessible entrance
- Steep entrance walk
- No accessible connection between the building entrance and parking

## ACCESSIBLE ROUTE

An accessible route is a continuous, unobstructed path through sites and buildings that connects all accessible features, elements and spaces. It is a path that is at least 36 inches wide, smooth, as level as possible, and without hazards or obstructions.

In addition, the accessible route must connect accessible buildings with public and common use site amenities. Examples of amenities include parking areas, mailboxes, nature paths, garbage disposal areas, and swimming pools. The accessible route links all accessible elements and features on a site and within a building, making it possible for people with a wide range of disabilities to maneuver safely and use a facility successfully.

Stairs are not an acceptable component; if they are installed, there must be an alternative way to get between levels. Other factors that should be considered include: slope of the route, handrails, site arrival points, walks between buildings and facilities, and site facilities.



## 2. ACCESSIBLE PUBLIC & COMMON-USE AREAS:

Under the Fair Housing Act, public use areas are “interior or exterior rooms or spaces of a building that are made available to the general public.” Common use areas are rooms, spaces, or elements inside or outside of a building that are made available for the use of residents of a building or the guests.

Public and common use areas that must be accessible include, but are not limited to: selected on-site walks, parking, corridors, lobbies, drinking fountains and water coolers, swimming pool decks or aprons, playgrounds, rental offices, mailbox areas, trash rooms/refuse disposal areas, lounges, clubhouses, tennis courts, health spas, game rooms, toilet rooms and bathing facilities, laundries, community rooms, and portions of common use tenant storage.

The dwelling units of private multi-family housing developments generally are not required to meet the accessibility provisions of the Americans with Disabilities Act Accessibility Guidelines (ADAAG). However, rental and sales offices and other public and common use spaces are considered public accommodations under Title III of the ADA.

### **LAUNDRY FACILITIES**

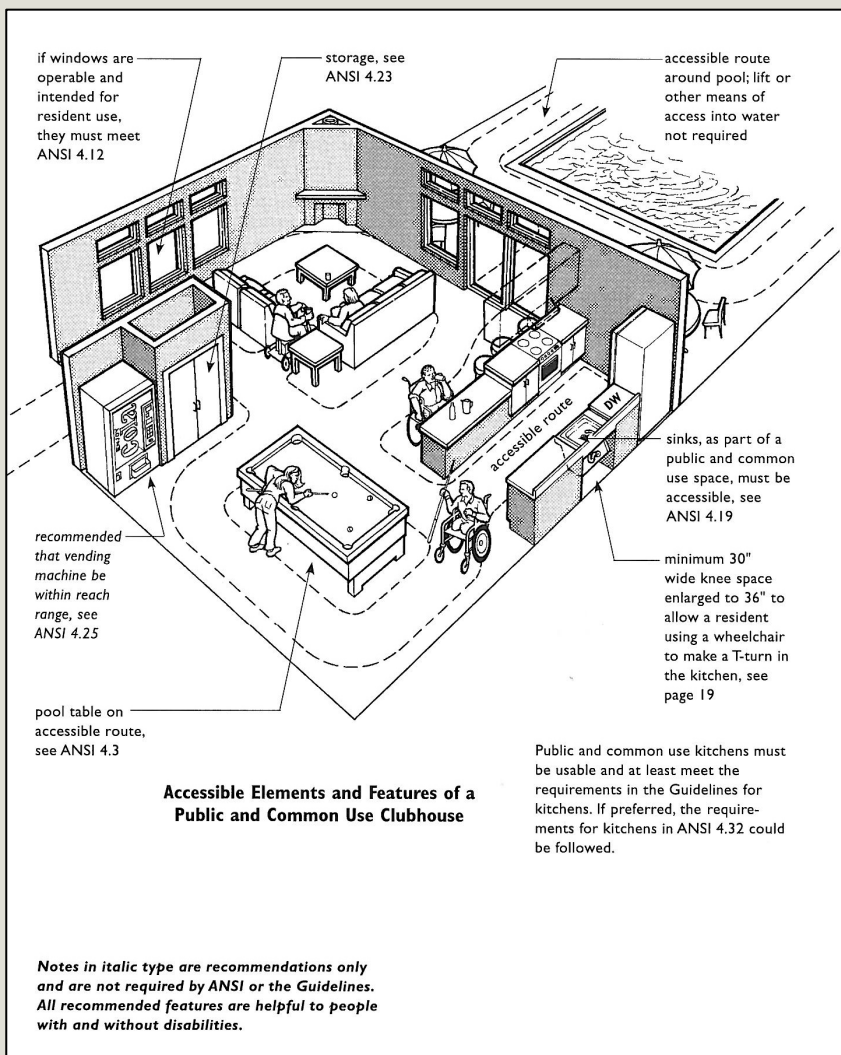
At least one of each type of appliance provided in each laundry area must be accessible and be on an accessible route.

### **RESTROOMS**

All toilet rooms and bathing facilities in all public and common use facilities must be on an accessible route and one of each fixture type in each room or space must be accessible.

### **PARKING**

When parking is provided on a residential site, accessible parking spaces on an accessible route must be provided for residents and visitors. Accessible parking spaces must meet the requirements for parking in ANSI 4.6 and be located on the shortest possible accessible route to an accessible entrance. At minimum, two percent of the parking spaces serving covered dwelling units must be made accessible and be located on an accessible route.



#### COMMON VIOLATIONS:

- No curb cut or ramp from parking area
- Accessible route from parking area blocked by parked cars
- Stairs to laundry areas or mailroom

### 3. USABLE DOORS

The Fair Housing Act and the Guidelines cover doors designed for passage into and within all premises. However, it should be noted that doors in public and common use areas and primary entry doors of dwelling units must meet more stringent requirements for accessibility than doors that are located inside a dwelling unit.

Public and Common Use Area Doors must meet the ANSI 4.13 requirements including:

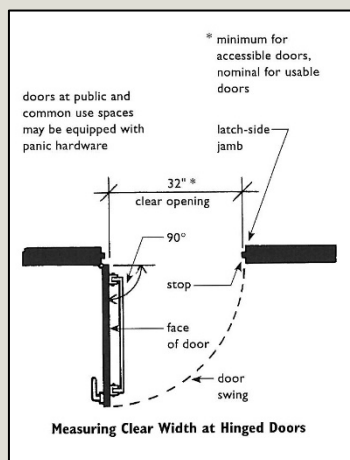
- 32" clear width
- maneuvering clearances
- low or non-existent thresholds
- accessible hardware, and
- limited amount of force required to open

Doors within a dwelling unit:

- not required to meet all ANSI 4.13 standards
- must have a 32" clear opening width and low thresholds

At hinged doors, the 32-inch opening is measured from the stop on the latch side jamb to the face of the door when standing in a 90-degree open position. In addition, the size of the main entry door must be wide enough so that, when open 90 degrees, it provides 32 inches minimum clear width.

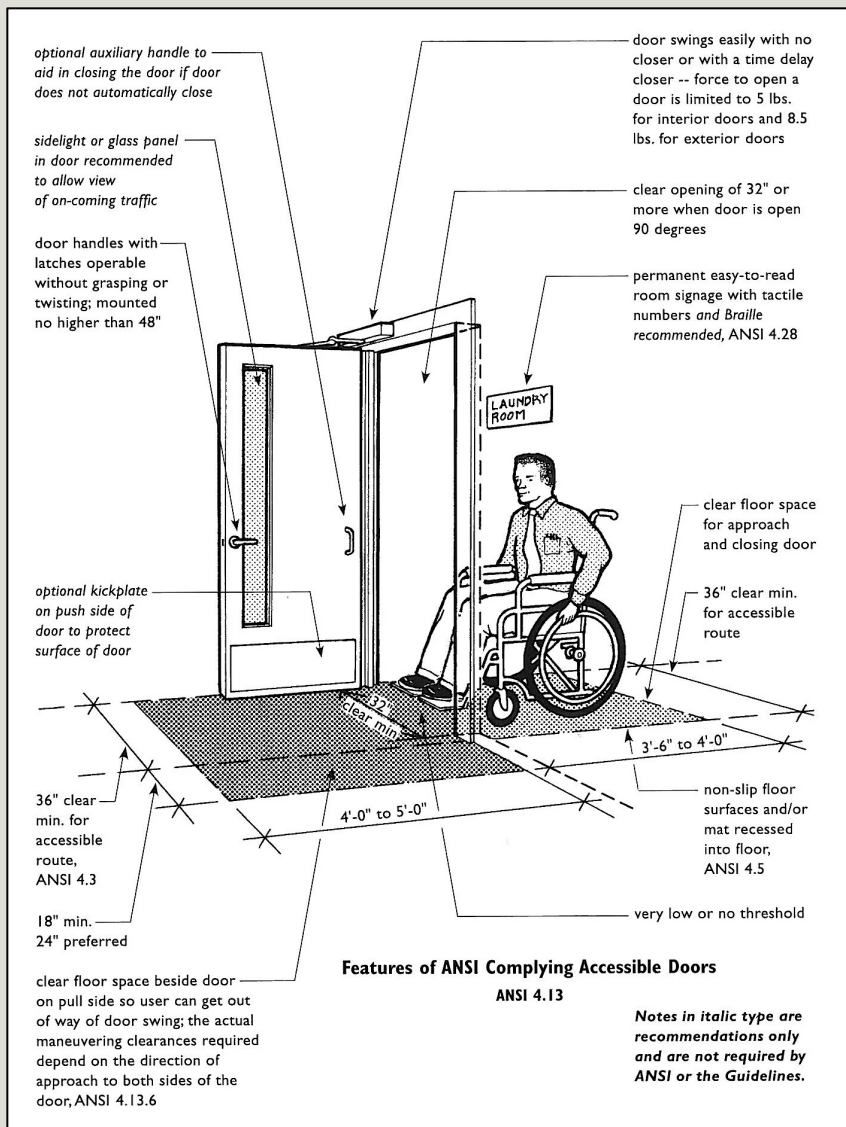
Within the dwelling unit, a 34-inch wide door, hung in the standard manner, is considered a usable door because it provides an 'acceptable' nominal 32-inch clear opening of at least  $31\frac{5}{8}$  inches clear.



To adapt the nominal 32-inch clear opening to create a wider and more usable doorway, residents or landlords must install offset or swing-clear hinges by removing the lower portion of the door stop.

#### COMMON VIOLATIONS:

- Doorways with less than 32" opening
- Some, but not all doors, within the housing unit are accessible





## 4. ACCESSIBLE ROUTE INTO & THROUGH COVERED UNIT

An accessible route must be provided into and throughout the entire covered dwelling unit. The accessible route must pass through the main entry door, continue through all rooms in the unit, adjoin required clear floor spaces at all kitchen appliances and all bathroom fixtures, as well as connect with all secondary exterior doors.

The design is not required to comply with ANSI standards; however, the Guidelines designate specific elements of an accessible route that must be provided. The accessible route must be:

1. sufficiently wide, and
2. lack abrupt changes in level so residents with disabilities (and/or their guests with disabilities) can safely use all rooms and spaces, including storage areas and, under most circumstances, exterior balconies and patios that may be part of their dwelling unit.

Width Requirements:

- 36" minimum wide route throughout the covered unit, except where a 32" opening is permitted for passing through doors
- while protruding objects are not addressed within the Guidelines, they should be avoided in all cases

Changes in Level Requirements:

- maximum level change is 1/4"
- if a tapered threshold is used, the maximum height is 1/2"

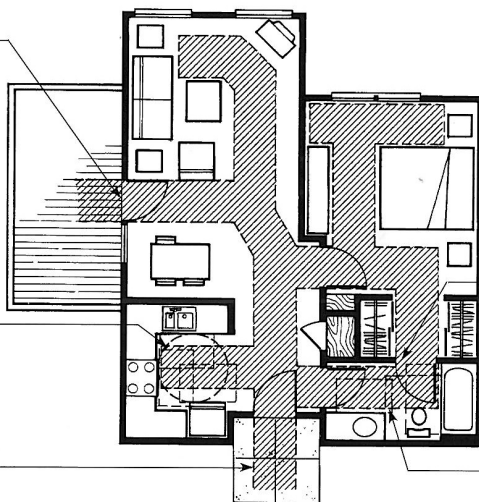
### COMMON VIOLATIONS:

- Step at primary entry door
- Exterior door threshold is too high for a wheelchair to pass over

wood deck with  
spaces: 1/2" max.  
change in level from  
interior to exterior  
(with 3/4" max.  
threshold, see pages  
4.12 and 4.14)

accessible route  
adjoining clear floor  
spaces at all fixtures  
and appliances

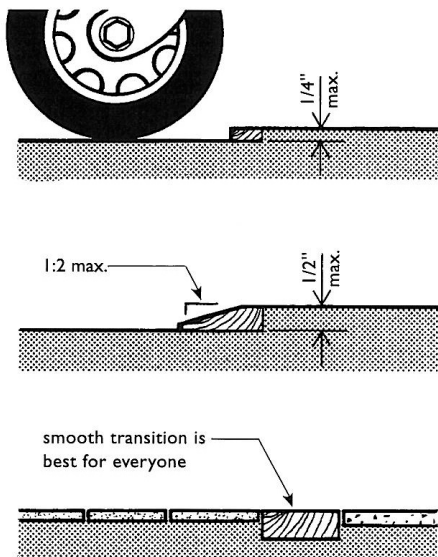
fully accessible route  
at accessible dwelling  
unit entrance



both doors into  
bathroom must be  
usable

accessible route  
adjoins all clear  
floor spaces at  
bathroom fixtures

**36-Inch Wide Minimum Accessible Route  
Through Dwelling Unit**



**Small Changes in Level Along  
Accessible Routes**

## 5. ACCESSIBLE ENVIRONMENTAL CONTROLS

The Fair Housing Accessibility Guidelines do not require controls to be fully accessible, but do specify that light switches, electrical outlets, thermostats and other environmental controls, which are operated on a regular or frequent basis in the daily use of a dwelling unit, must be placed in accessible locations. Outlets shall be mounted between 15" and 48" above the floor. Controls not covered under these guidelines include circuit breakers, appliance controls, and outlets dedicated to specific appliances.

The ANSI specifications for accessible controls and operating mechanisms require a clear floor space to allow an approach by a person using a wheelchair, specify the height of the operable portion of the control, and require little or no force be exerted to operate the control.

The Guidelines include specific requirements for mounting controls and switches so that a person using a wheelchair can execute the following:

### Forward Reach with No Obstruction:

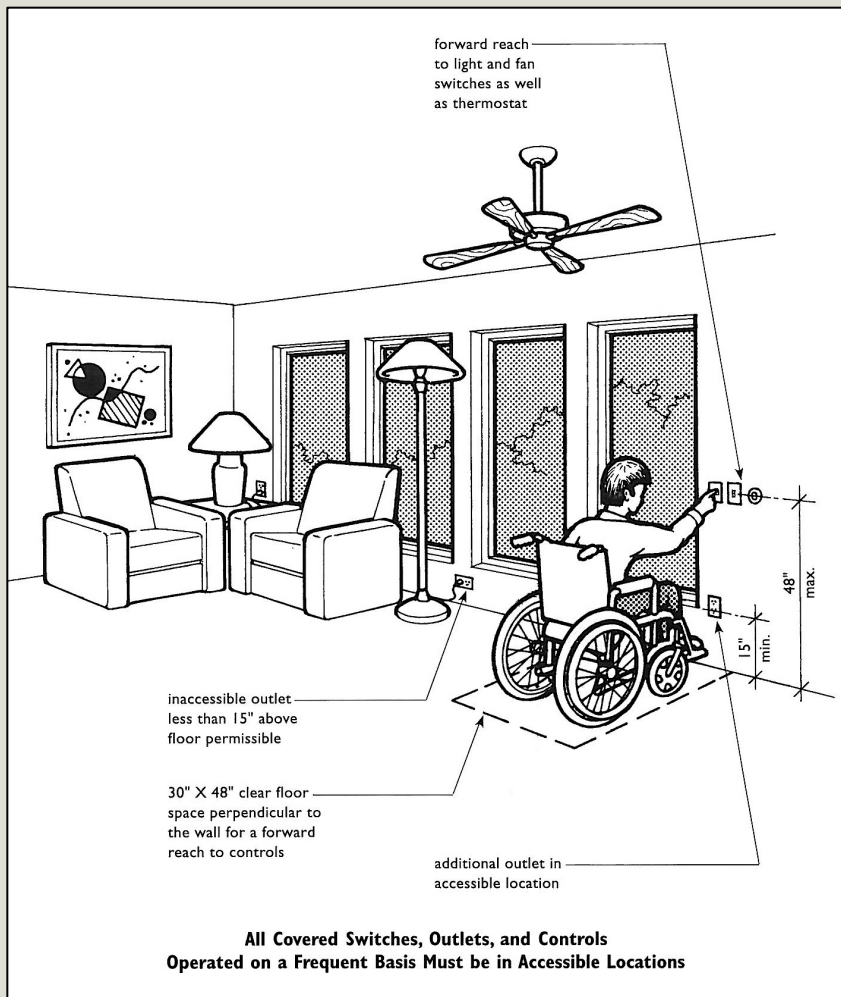
- controls and outlets may be mounted in a range from 15 to 48 inches above the floor
- clear floor space of 30 inches x 48 inches perpendicular to the wall
- adjoining a 36-inch wide accessible route

### Forward Reach Over an Obstruction:

- minimum 30-inch wide clear knee space as deep as the reach distance
- adjoining a 36-inch wide accessible route
- obstructions extending from 0 to 20 inches from the wall, maximum height for control is 48"
- obstructions extending from 20-25 inches from the wall, maximum height for control is 44"

### Side Reach Over an Obstruction:

- 30" x 48" clear floor space
- adjoining a 36inch wide minimum accessible route
- maximum height for control is 46" for reaches over a cabinet



**COMMON VIOLATIONS:**

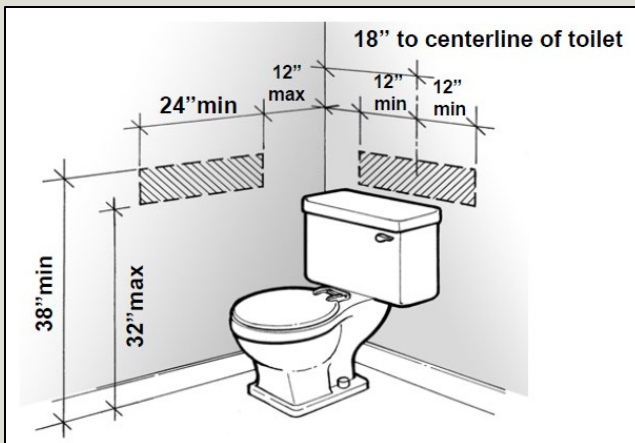
- Switches or thermostat controls are placed too high
- Outlets are too low

## 6. REINFORCED WALLS FOR GRAB BARS

Under the Fair Housing Act, it is not required that grab bars be installed in bathrooms, however, covered multifamily dwelling units must contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall, and shower seat, where such facilities are provided.

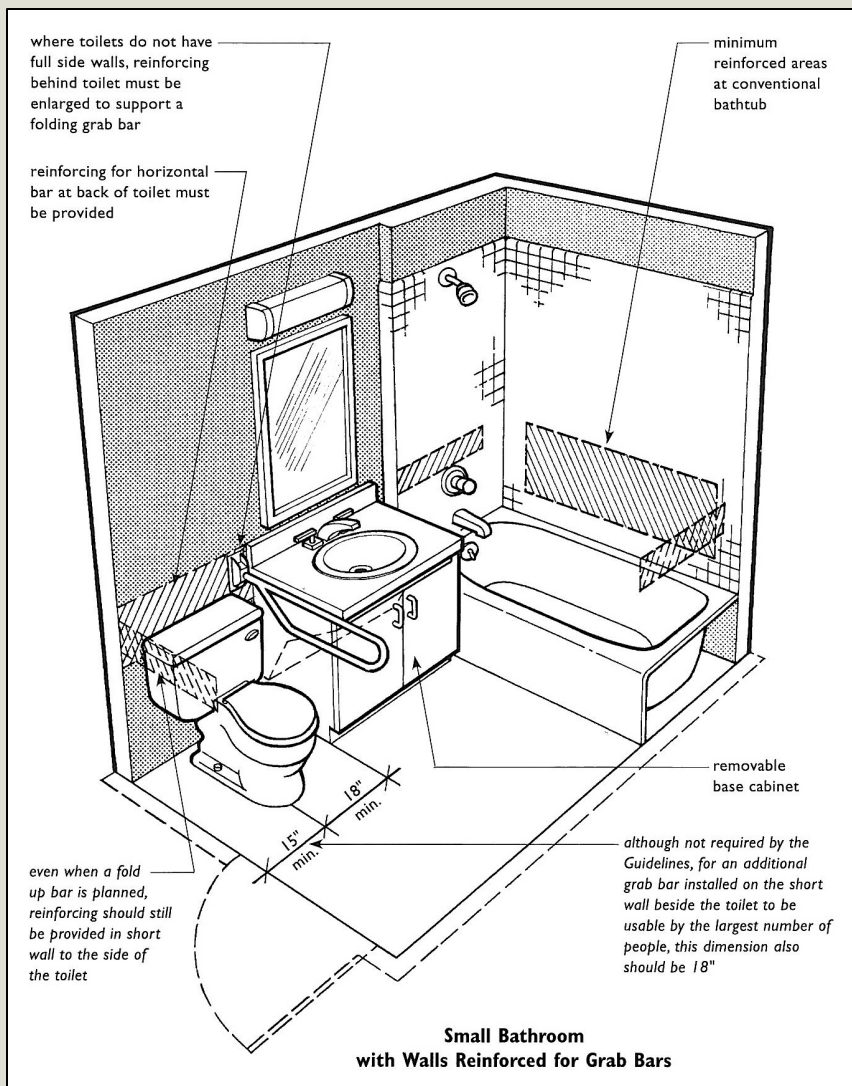
While there is not a specific standard to follow, builders are encouraged to look at the 1986 ANSI A117.1 Standard, or an equivalent or stricter standard, or their state or local building code, in planning for and selecting appropriate grab bars. In addition, folding and floor-mounted grab bars are permitted where it would not be possible to provide appropriate wall-mounted grab bars. However, it is recommended that builders provide a reinforcement that is 42" wide, instead of the required 24".

Reinforcement in walls at toilets, and in tubs and showers, is required from a maximum of 32" to a minimum of 38" above the floor. It is recommended that builders start reinforcement at 30" above the floor.



### COMMON VIOLATIONS:

- Walls are not reinforced during construction
- Grab bar reinforcement is less than 24" in diameter



## 7. USABLE KITCHENS AND BATHROOMS

### USABLE KITCHENS

It is not a requirement under the Fair Housing Act to provide a fully accessible kitchen, but the Guidelines require maneuvering space for a person who uses a wheelchair, scooter, or walker to approach and operate most appliances and fixtures within a kitchen.

#### Minimum Clear Floor Spaces at Fixtures and Appliances

- 30-inch x 48-inch clear floor space at each kitchen appliance or fixture
- clear floor space must be positioned perpendicular or parallel to and centered on the appliance or fixture

#### Minimum Clearance between Counters

- must be a clearance of at least 40" between all opposing base cabinets, countertops, appliances, and walls
- clearance is measured from any countertop or face of an appliance (excluding handles and controls) that projects into the kitchen to the opposing cabinet, countertop, appliance, or wall.
- in addition, appliance depths (excluding door handles) must be included when calculating the 40-inch clearance

#### Additional Specifications for a U-shaped Kitchen

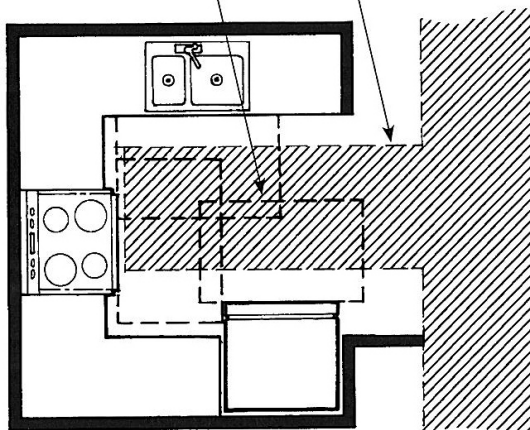
- 60-inch diameter turning circle is required with a sink, range, or cooktop at its base
- if a sink or cooktop is at the base of the U and if removable cabinets are placed under the sink or cooktop, a 40" clearance is permitted
- kitchen must be arranged with a 30-inch x 48-inch clear floor centered on the sink, range, or cooktop space for a parallel approach

#### **COMMON VIOLATIONS:**

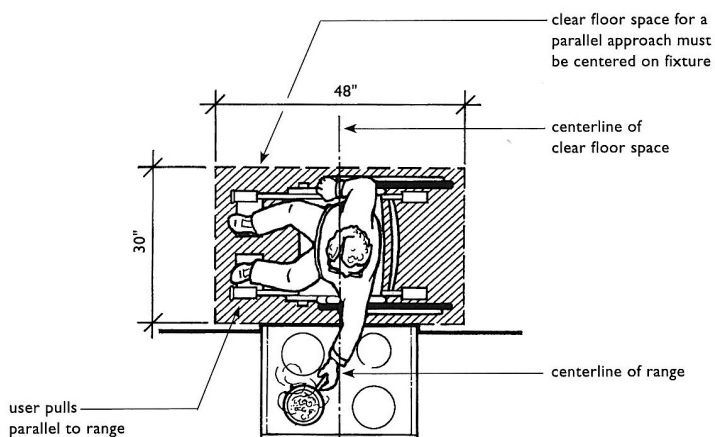
- Kitchen lacks a 30" x 48" clear floor space in front of sink or stove
- Bathroom lacks a 30" x 48" clear floor space in front of sink

one 30" X 48"  
clear floor space  
at each fixture  
and appliance (not  
required at sink if  
base cabinets are  
removable)

clear floor  
spaces adjoining  
accessible route  
into kitchen



**Overlapping Clear Floor Spaces and Accessible Route Provide Maneuvering Space**



**Space for Parallel Approach Required at Range and Cooktop**



## 7. USABLE KITCHENS AND BATHROOMS (CONTINUED)

### USABLE BATHROOMS

The Guidelines provide specifications for bathroom and powder room design that make it possible for individuals who use mobility aids to use conventional bathrooms in multi-family housing.

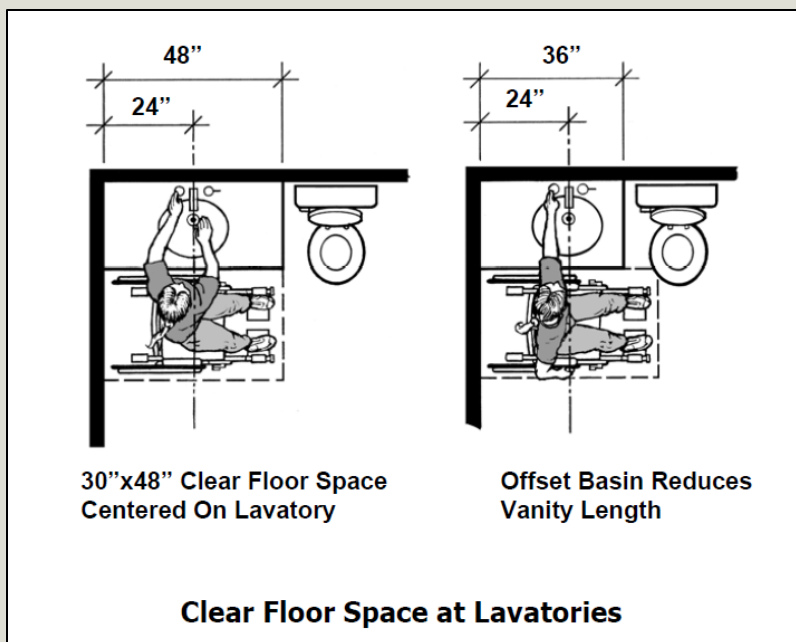
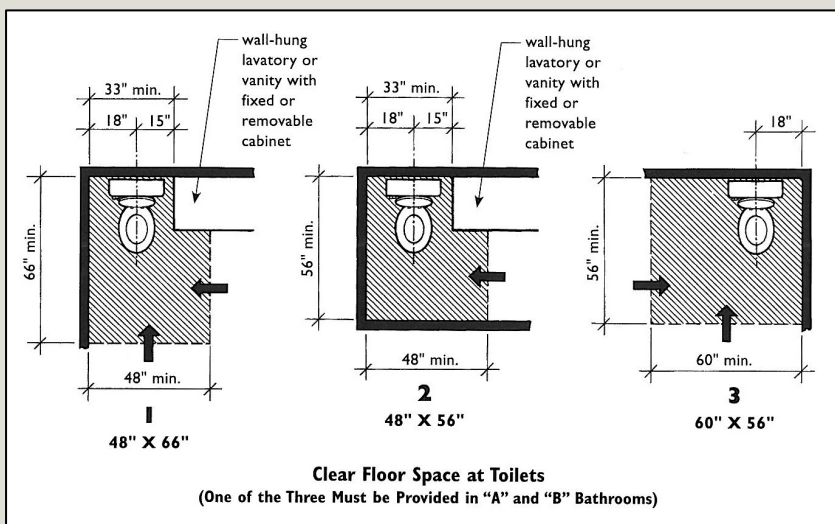
All bathrooms in a covered unit must:

- be on an accessible route;
- have 32-inch nominal clear width doorways;
- have switches, outlets, and controls in accessible locations;
- have reinforcing around toilets, tubs, and showers; and
- meet specification A or B.

**Specification A:** all bathrooms and all fixtures in those bathrooms must be usable.

**Specification B:** applies to one bathroom, and only one of each type of fixture must be usable; additional bathrooms are exempt from maneuvering and clear floor space requirements at fixtures. In addition, Specification B provides greater access to the bathtub.

Both specifications require a 30-inch x 48-inch clear floor space outside the swing of the door as it is being closed and one of the three options for a clear floor space in front of the toilet. See page 19 for more details.



See the Fair Housing Act Design Manual for more examples of bathrooms and powder rooms.

## ADDITIONAL CONSIDERATIONS:

### FAIR HOUSING ACT

Although the Act's design and construction requirements only apply to covered multi-family dwellings designed and constructed for first occupancy after March 13, 1991, the law does provide for **reasonable modifications** to allow for and encourage access for persons with disabilities to all housing.

A reasonable modification, as defined by the U.S. Department of Housing and Urban Development and the U.S. Department of Justice in the joint statement entitled, "Reasonable Modifications under the Fair Housing Act", is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. The Act makes it unlawful for a housing provider or homeowners' association to refuse to allow a reasonable modification to the premises when such a modification may be necessary to afford persons with disabilities full enjoyment of the premises.

Reasonable modifications can include structural changes to interiors and exteriors of dwellings, including the installation of grab bars, ramps, hand rails, etc., as well as changes made to public and common use areas, such as widening entrances to fitness centers or laundry rooms. A request for a reasonable modification may be made at any time during the tenancy, and, while the housing provider must permit the modification, the tenant is usually responsible for paying any associated costs.

In general, if the modifications do not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant cannot be required to restore the modifications to their prior state. The tenant must restore the dwelling *interior* only where "it is reasonable to do so" and where the housing provider has requested the restoration. The tenant is not responsible for expenses associated with reasonable wear and tear.

Under the Act, it is also unlawful for any person to refuse to make "reasonable accommodations" in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy the dwelling. Examples: designating a parking space where there is no assigned parking or permitting a service animal where there is a "no animals" policy.

The FHCWM assists with requests for reasonable accommodations and modifications. Please contact the FHCWM office for more information.

## **OTHER FEDERAL ACCESSIBILITY LAWS:**

### **Architectural Barriers Act (1968)**

The Architectural Barriers Act requires buildings and facilities designed, constructed, altered, or leased with certain federal funds after September 1969 to be accessible to and usable by persons with disabilities.

### **Americans with Disabilities Act (1990)**

The Americans with Disabilities Act (ADA) guarantees equal opportunity for individuals with disabilities, including accessibility, in employment, public accommodations, transportation, state and local government services, and telecommunications. Title III of the Act covers all private establishments and facilities considered “public accommodations.” Public accommodations include public and common use areas at housing developments when these areas are, by their nature, open to the general public (i.e. rental or sales office). Title II of the ADA applies to all programs, services, and activities provided or made available by public entities, including housing when it is provided or made available by public housing authorities, state or local government, or a state university campus.

### **ANSI Standard (1986)**

The Fair Housing Act, HUD’s implementing regulations and the final Fair Housing Accessibility Guidelines reference the 1986 American National Standards Institute (ANSI) A117.1 as an acceptable standard to meet when designing accessible elements, spaces, and features outside covered dwelling units. It is recommended that, if a designer or builder chooses to follow an accessibility standard other than the 1986 ANSI A117.1 Standard, or a more recent version of the ANSI A117.1, such as the 1992 CABO/ANSI, that care be taken to ensure the standard used is at least equivalent to or stricter than the 1986 ANSI A117.1 Standard.

### **Section 504 of the Rehabilitation Act (1973)**

Section 504 prohibits discrimination against otherwise qualified individuals with a disability in any program or activity receiving federal financial assistance. The purpose is to eliminate discriminatory behavior toward people with disabilities and provide physical accessibility. Program accessibility may be achieved by modifying an existing facility, moving the program to an accessible location, or making other accommodations, including construction of new buildings. HUD’s final regulation for Section 504 may be found at 24 CFR Part 8. Generally, the Uniform Federal Accessibility Standards (UFAS) is the design standard for providing physical accessibility, although other standards which provide equivalent or greater accessibility may be used.

## ONLINE RESOURCES:

### **FAIR HOUSING ACT DESIGN MANUAL:**

[www.huduser.gov/portal/publications/destech/fairhousing.html](http://www.huduser.gov/portal/publications/destech/fairhousing.html)

### **U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[www.hud.gov](http://www.hud.gov)

### **ARCHITECTURAL BARRIERS ACT**

[www.access-board.gov/aba/](http://www.access-board.gov/aba/)

### **UNIFORM FEDERAL ACCESSIBILITY STANDARDS (UFAS)**

[www.access-board.gov/aba/ufas.html](http://www.access-board.gov/aba/ufas.html)

### **AMERICANS WITH DISABILITIES ACT**

[www.ada.gov](http://www.ada.gov)

### **ADA STANDARDS FOR ACCESSIBLE DESIGN (1991)**

[www.ada.gov/2010ADASTandards\\_index.htm](http://www.ada.gov/2010ADASTandards_index.htm)

### **MICHIGAN BUILDING CODES**

[www.michigan.gov/lara/](http://www.michigan.gov/lara/)

### **FAIR HOUSING CENTER OF WEST MICHIGAN**

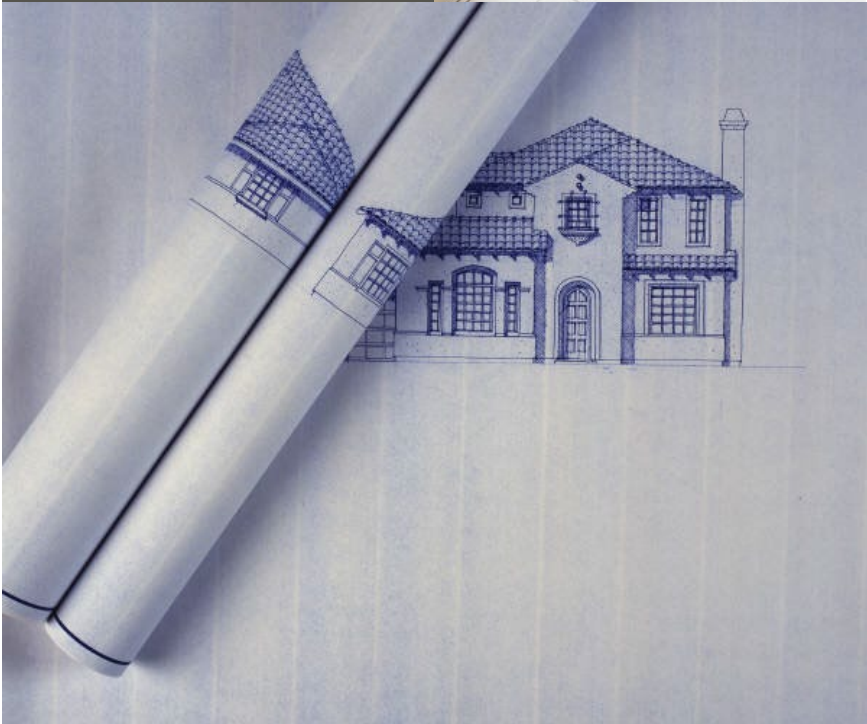
[www.fhcwm.org](http://www.fhcwm.org)

## NOTES:

**ABOUT THE FHCWM:** The Fair Housing Center of West Michigan (FHCWM) is a private, non-profit 501(c)3 organization established in 1980 to help ensure equal access to housing opportunity throughout west Michigan. The FHCWM seeks to advance fair housing knowledge and practices as well as to prevent housing discrimination through a variety of education, outreach and advocacy efforts.

## Mission:

To prevent and eliminate illegal housing discrimination, to ensure equal housing opportunity, and to promote inclusive communities.



### Fair Housing Center of West Michigan

20 Hall Street SE  
Grand Rapids, MI 49507

Phone: (616) 451-2980

Fax: (616) 451-2657

Email: [contact-us@fhcwm.org](mailto:contact-us@fhcwm.org)

Website: [www.fhcwm.org](http://www.fhcwm.org)

## **Accessible Parking Standards**

The Americans with Disabilities Act (ADA) - Standards for Accessible Design, mandate parking accessibility standards. The Standards were published in Appendix A to the Department of Justice's Title III regulations, 28 CFR Part 36, *Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*. Regulations amended on September 15, 2011, effective March 15, 2012. Assessments focus on the number of accessible spaces, parking space size, signage, access aisles, curb cuts, and miscellaneous infractions.

### **Accessible Spaces**

Section 4.1.2 (5) of the ADA Standards specifies the minimum number of accessible parking spaces required, including van-accessible parking spaces. One out of every six accessible spaces provided must be a van accessible space (Table 2.3). At least one accessible parking space is required for each residential dwelling unit. When only one accessible parking space is required per complex, that space must be designated as van accessible. For example, if the parking lot has 53 parking spaces, there should be a minimum of three accessible parking spaces and at least one van accessible. Van accessible spaces can serve vans and cars; they are not designated for vans only.



Each parking space should have its own sign. ADA specifies the sign content and symbol/field contrast (light-on-dark or dark-on-light), but not the color or size, which may be addressed by local jurisdictions. Therefore, signage does not have to be the traditional blue with white print as long as it is as large as the traditional signage and is easy to read.

Parking spaces for vans are required to have an additional sign that identifies the parking spaces as "Van-Accessible." The "Van-Accessible" designation is meant to be informative, not restrictive, in the use of van spaces. Additional signage can clarify this, which may be important in parking lots with only one accessible space since that space must be designated as van accessible.

### **Access Aisles**

Accessible parking spaces for cars have at least a 60-inch wide access aisle located adjacent to the designated parking space. The access aisle measures from outside of the striping. The access aisle is just wide enough to permit a person using a wheelchair to enter or exit the car. Two cars may share an access aisle.

Van-accessible parking spaces measure either 96 inches or 60 inches depending on the size of the parking space. Van accessible parking must be wider to accommodate a wheelchair lift. Two van accessible parking spaces may share an access aisle as well as a van and a car as long as the access aisle meets the required van accessible measurements.

The parking space for the vehicle and the entire access aisle must be level

(with a maximum slope of 1:50 in all directions), with firm, stable, and a non-slip surface. The access aisle must also be part of an accessible route to a facility or building entrance. There must be an access aisle, where a parking space is located adjacent to a sidewalk; the sidewalk is not considered an access aisle. Boundary of the access aisle must be marked. In addition, the access aisle must have well defined diagonal stripes or some type of filler to indicate it is an access aisle.

### **Curb Cuts**

Objects, such as, vehicles that extend into the accessible route, a curb, outdoor furniture, or shrubbery must not obstruct the accessible route. Accessible parking spaces must be located on the shortest route of travel to an accessible facility entrance. If an accessible route crosses a curb, a curb ramp must be used. Nonetheless, the built-up curb ramp is not considered an access aisle for an accessible parking space.

### **Parking standards for medical facilities are held to a higher standard.**

A parking lot with 175 parking spaces requires:

- Standard Regulations: 5 standard spaces (car) and 1 van space
- Outpatient Facilities 10% (higher standards): 15 standard spaces and 3 van
- Specialized Facilities 20% (highest standards): 30 standard spaces and 5 van

## **Minimum Number of Accessible Parking Spaces**

Lot Total	Standard Spaces	Van Spaces	Total Accessible
1 – 25	0	1	1
26 – 50	1	1	2
51 – 75	2	1	3
76 – 100	3	1	4
101 – 150	4	1	5
151 – 200	5	1	6
201 – 300	6	1	7
301 – 400	7	1	8
401 – 500	7	2	9
500 – 1000			2% of total
1001 and over			20, plus 1 for 100

### **Parking Space Size**

An accessible parking space for a car each measures 96 Inches with a 60 inches access aisle. A van requires a space measuring 96 inches with a 96 inch access aisle OR a 132 inch parking space with a 60 Inch access aisle. Parking spaces are measured on the stripes midline to midline. The stripes are generally blue in color; however, they do not have to be blue. Furthermore, there may be local jurisdictions regulations regarding color. All striping is to be well defined.

### **Signage**

Signs with the international symbol of accessibility are to be mounted 60 inches high from the ground or surface material to the bottom of the sign. The access symbol can be mounted on walls, posts, or from garage ceilings so that vehicles parked In the space do not obscure It.

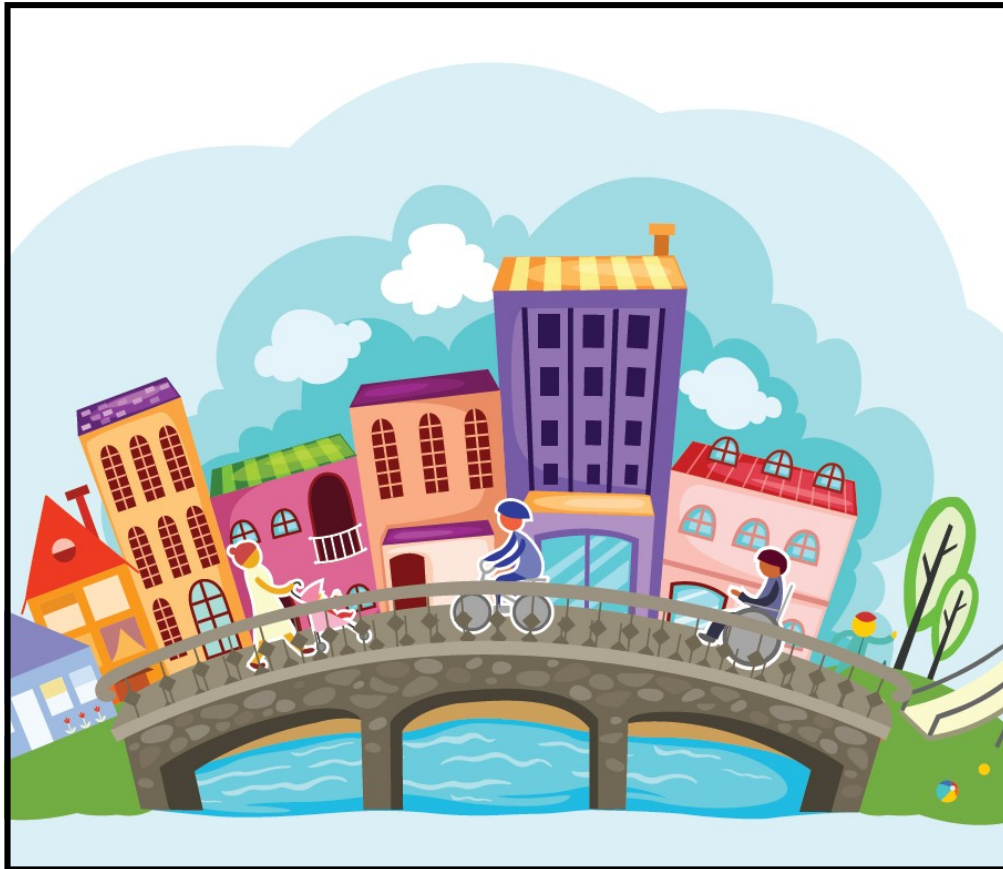
## **SECTION 4**

### **Accommodations & Modifications for Persons with Disabilities**

- a. Received a request for an assigned parking space or grab bar?  
Let us help! A Housing Professionals Guide  
to Reasonable Accommodations and Modifications  
Under the Fair Housing Act
- b. Requesting a parking space, grab bar, or other change to your  
housing? Let us help! A Guide to Requesting Reasonable  
Accommodations and Modifications  
Under the Fair Housing Act
- c. HUD & DOJ Joint Statement: Reasonable Accommodations  
Under the Fair Housing Act
- d. HUD & DOJ Joint Statement: Reasonable Modifications  
Under the Fair Housing Act

**Received a request for an  
assigned parking space or grab bar?**

**Let us help!**



**A Housing Professional's Guide to  
Reasonable Accommodations and Modifications  
Under the Fair Housing Act**

## **What is fair housing?**

Fair housing laws protect people from discrimination in housing based on protected classes. Protected classes under federal and/or Michigan fair housing laws include race, skin color, national origin, religion, sex, familial status, disability, marital status, age, sexual orientation, gender identity or expression, and source of income (source of income in rental housing only). Illegal discrimination includes a refusal to make a reasonable accommodation or a refusal to permit a reasonable modification if such would be necessary to afford a person with a disability equal use and full enjoyment of the premises.

The Fair Housing 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 an impairment; and (3) individuals with a record of such an impairment.



Major life activities include:

- Walking
- Breathing
- Communicating
- Seeing
- Hearing
- Caring for oneself
- Thinking
- Learning
- And beyond...

## **What is a reasonable accommodation or reasonable modification?**

Under the Fair Housing Act, a **reasonable accommodation** is a change or exception to any rule, policy, procedure or service needed in order for a person with a disability to be able to have equal access to and full enjoyment of their home, such as allowing an assistance animal where there is a “no pet” policy, or allowing a live-in caregiver when a housing policy states “no over-night guests”. A **reasonable modification** is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises, such as the installation of a ramp, grab bar or handrail. Reasonable accommodations and modifications enable independent living and equal access to housing for people with disabilities.

It is important to note that a **reasonable accommodation** or **reasonable modification** can be made during any part of a housing transaction or at any time during a resident’s tenancy. If a resident, applicant, or prospective applicant at your property makes a request, you are required to promptly respond and process the request.

**Disabilities include, but are not limited to:** Mental/emotional disabilities, developmental disabilities, cancer, auto-immune deficiencies such as HIV, autism, cerebral palsy, multiple sclerosis, heart disease, diabetes, asthma, paraplegia, major depression, recovery from an addiction, and many long-term medical conditions.

## **Who can make a request for a reasonable accommodation or modification?**

Persons with disabilities who reside at your property or belong to your condominium association may make such a request. Applicants or prospective applicants may also make reasonable accommodation requests. Caregivers, relatives, or an advocacy organization may also make a request on behalf of a person with a disability for a reasonable accommodation or reasonable modification. There is no limit on the number of requests a resident, applicant, or prospective applicant can make as sometimes multiple changes are necessary for equal access and enjoyment of the home or apartment.



## **What do I do if a request is made?**

Listen and take notes! A reasonable modification or accommodation request should trigger an “interactive process”, which is a call for meaningful dialogue and action. A housing provider may not ordinarily inquire as to the nature and severity of an individual’s disability.

However, once a request for a reasonable accommodation or modification is made, it is a good idea to meet with or contact the person who has made the request (whether the request was made independently or through an advocacy group) to discuss the request further and the disability-related need(s).

## **How should a reasonable accommodation or modification request be made?**

A request can be made verbally or in writing by the resident to any representative of the property at any time (i.e. before they move in, while they move in, or after many years of living in their home). 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. An individual requesting a reasonable accommodation does not need to mention the Fair Housing Act or use the words “reasonable accommodation or modification”. You can have a form for such a request, but you cannot require use of that form. You must give appropriate considerations to all requests, even if the request is made verbally or does not use your preferred forms or procedures.

**TIP:** If you receive a call from an operator calling on behalf a person who is hearing or speech impaired, follow your normal procedures and allow the caller and operator time to respond.

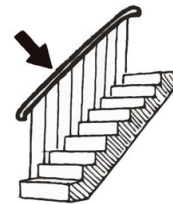
### **Examples of Reasonable Accommodations:**

- Assigning an accessible parking space near a unit
- Allowing a move to the ground floor due to changes in their ability to use stairs
- Waiving a “no pet” or pet fee policy to allow for an assistance animal\*

### **Examples of Reasonable Modifications:**

- Widening a doorway for a wheelchair
- Installing grab bars in a bathroom
- Installing a ramp to make a main entrance accessible
- Installing handrails in stairwell

*\*The FHCWM has additional guidance specific to assistance animals at [www.fhcwm.org/disability](http://www.fhcwm.org/disability).*



## **How do I process a request?**

You need to determine what type of information, if any, you need from the resident regarding their request. The amount of information that you can request depends on whether or not the individual’s disability is obvious or known, and whether or not the disability-related need is readily apparent or known to you.

If the disability and the disability-related need are readily apparent or otherwise known to you, you do not need any additional documentation to process the request. For example, an applicant with an obvious mobility impairment who uses a motorized scooter may ask for permission to install a ramp. Since the physical disability (difficulty walking) and the disability-related need (use of scooter) for the requested modification are readily apparent, you may not require any additional information about the disability or the need for the requested modification.

If the disability or disability-related need is not obvious or otherwise known to you, you may request verification of the disability and/or information establishing a disability-related need for the request. The person with a disability or their advocate can obtain supporting documentation from a doctor or other qualified medical professional, a peer support group, a non-medical service agency, a social worker, or a reliable third party who is in a position to know about the resident’s disability. The supporting document only needs to verify that the person:

- (1) **has a disability as defined by the Fair Housing Act (see P. 1) AND**
- (2) **has a disability-related need for the requested accommodation or modification.**

As the housing provider you do not need to know the details of the person’s disability, diagnosis, or health history; *only* that a disability is present and that the request is needed because of the disability.

**NOTE:** The amount of information that you can request depends on whether or not the individual’s disability is obvious or known, and whether or not the disability-related need is readily apparent or known.



It would be beneficial to designate one agency representative to handle such requests, but be sure that there is someone else who is able to address questions, handle the request process, and provide related updates if the designated person is out. It also would be helpful to consistently maintain a list of requests granted. Your role as the housing provider is to collect as much information as is necessary to understand the request being made and to follow up quickly and consistently. It is best to document every step of the process: the request, your response, and all communication related to the decisions and actions taken (see sample documentation on P. 6). **It is also important to keep all information confidential.**

### **What if there are costs involved?**

A reasonable accommodation is processed and completed with no cost to the resident with a disability. If the cost of the accommodation is found to be an undue financial and administrative burden, then you *must* discuss possible alternative accommodation methods with the resident or the advocate. Your role in processing the request is to maintain communication and to exhaust all possible alternatives before denying the request. The last resort alternative to an accommodation request may be a discussion about releasing the resident from their lease without penalty because the housing no longer meets their needs.

Reasonable modification costs are usually paid for by the person requesting a modification to their home or unit.\* A refusal to permit, at the expense of the person with a disability, the reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises is illegal discrimination. The approval or denial of such

**NOTE:** The approval or denial of requests depends on the circumstances presented and needs to be determined on a case-by-case basis.

a request depends on the circumstances presented and needs to be determined on a case-by-case basis. You may negotiate terms related to cost and restoration upon moving, so long as it allows the resident the ability to make the modification. Depending on the types of modifications made, as the housing provider, you could ask that the resident agree to pay into an escrow account so that the home or apartment may be restored after the property is vacated.

*\* The Rehabilitation Act of 1973 states that structural changes needed by a person with a disability in housing that receives federal financial assistance (i.e. HUD subsidized apartment buildings, USDA rural housing developments, and others) are considered reasonable accommodations; they must be paid for by the housing provider unless providing them would be an undue financial and administrative burden or a fundamental alteration of the program or unless the housing provider can accommodate the individual's needs through another means.*

### **When can a request be denied?**

A request for an accommodation or modification can be denied for the following reasons:

- (1) **a request for a reasonable accommodation or reasonable modification was not made by or on behalf of a person with a disability, or if there is no disability-related need for the request, and/or**
- (2) **if it would impose undue financial and administrative burden on the housing provider or would fundamentally alter the nature of the provider's operations.**

These determinations should be made on a case-by-case basis involving factors such as the cost of the request, financial resources, the benefit to the requester, and availability of alternative accommodations that would equally meet the requester's needs. If, for one or more of the reasons listed above, you deny a request, alternative methods to accommodate their needs or modify the home or apartment *must* be discussed. It is important that you communicate the different options available with the resident so that they are able to enjoy equal access to and full enjoyment of their home as well as the property.

**NOTE:** A resident is not obligated to accept an alternative accommodation suggested by the provider if they believe it will not meet their needs and her preferred request is reasonable.



## **What is an Assistance Animal?**

An assistance animal is not a pet. There are two types of assistance animals: (1) service animals (limited to dogs and in rare instances miniature horses) and (2) other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities (referred to by HUD as a “support animal”).

**NOTE:** A resident may request a reasonable accommodation either *before or after* acquiring the assistance animal.

Service dogs perform many disability-related functions, including guiding individuals who are blind or have low vision and alerting persons to impending seizures or the presence of allergens. Assistance animals may help by preventing or interrupting impulsive or destructive behaviors or providing emotional support that alleviates at least one identified symptom or effect of a physical or mental impairment.

As a best practice, you should make a determination promptly, generally *within 10 days* of receiving documentation.

Evaluating these requests on a case-by-case basis is an important best practice. According to HUD, you may not require a health care professional to use a specific form, to provide notarized statements, to make statements under penalty of perjury, or to provide detailed information about a person’s impairments.

The FHCWM has additional guidance on processing requests for assistance animals, as does HUD. These materials are available on the FHCWM website. As with all requests for reasonable accommodations, it is best to welcome the request, listen, and document everything that was disclosed or provided to you, and then follow up—consult existing policies, reference fair housing best practices, and keep in communication with the resident or applicant. Please note that pet fees and/or policies do not apply to assistance animals; breed or size limitations also do not apply. It might be helpful to adopt an Assistance Animal policy which can establish care and behavior guidelines and other expectations from all parties to assist with having an assistance animal in housing.

**NOTE:** Fair Housing law does not require that support animals be trained, certified or licensed, however, they must be under your control.

## **Additional Resources**

- ◇ Department of Justice & HUD—Joint Statement on Reasonable Accommodations (5/17/2004)
- ◇ Department of Justice & HUD—Joint Statement on Reasonable Modifications (3/5/2008)
- ◇ HUD Fair Housing and Equal Opportunity Notice on Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act (1/28/2020); includes *Guidance on Documenting an Individual’s Need for Assistance Animals in Housing*
- ◇ HUD Memo on Insurance Policy Restrictions as a Defense for Refusals to Make a Reasonable Accommodation (6/12/2006)
- ◇ FHCWM Guide to Requesting Reasonable Accommodations and Modifications Under the Fair Housing Act
- ◇ FHCWM Fact Sheet: Supporting Requests for Assistance Animals in Housing
- ◇ FHCWM Resource Guide: Assistance Animals in Housing
- ◇ FHCWM Sample Assistance Animal Policy

Please visit **[www.fhcwm.org/resources](http://www.fhcwm.org/resources)** to download these documents and other helpful information.

It is very important to take prompt action after receiving a request.  
Here are some commonly asked questions about addressing such requests.

### What do I do if...?

A resident made the request verbally and not in writing.	A manager needs to follow up regardless of how the request is made. If the resident needs assistance or alternative methods to communicate their needs to you, you will need to assist them in providing those means, such as large print materials, braille, electronic format, etc.
Someone made a request to maintenance staff but not to the front office staff or designated staff member.	Anyone who works for the property has the responsibility to ensure that such requests are referred to staff who can follow up with the person making the request. It is important that all staff are trained to report when a request is made (verbal or written) whether it be during the application process or during a routine maintenance repair.
A request has been made; can I ask for proof of their disability?	If the need or the disability is apparent, not always (see next question). Regardless, you can never ask for details about their diagnosis, health history, prognosis, etc.
What kind of information do I need to ask for when getting verification of a disability or disability-related need that is not obvious?	If the need or disability and/or need is not apparent, you can ask for reliable documentation that the resident has 1) a disability as <u>defined</u> by the Fair Housing Act AND/OR 2) a disability-related need for the requested accommodation or modification (see P. 2).
The resident or applicant says I cannot ask them anything about their disability after they make a request. What should I do?	You can refer them to the FHCWM for further information on how best they can work with you to request a reasonable accommodation or modification.

**TIP:** It is best to document the entire process: receipt of the request, all follow-up communication, dates, and all steps taken to address the request. This prevents any miscommunication and allows for questions/requests to be addressed promptly.

Consider using this response form to assist you in the process of responding to a request.

Dear *(name of requester)* on *(date)* you requested the following reasonable accommodation and/or modification:

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IN RESPONSE, WE HAVE:

☐ **Approved your request.**

☐ **Not approved your request**, because we need more information (check all that apply):

☐ Please provide verification that the person who needs the accommodation/modification has a disability (as defined by fair housing law). *You do not have to give a specific diagnosis or too many details about the disability.*

☐ Please provide more information or documentation (i.e. letter from medical professional, caseworker, service provider, peer support group, etc.) to explain the specific connection between the disability and the need for the requested accommodation or modification.

☐ Please provide a more detailed description of the proposed modification.

☐ Please provide assurance that the proposed modification will be done in a professional manner and that required building permits will be obtained.

☐ **Denied your request**, because (check all that apply):

☐ You were unable to verify that the person who needs the accommodation or modification has a disability covered fair housing laws.

☐ You were unable to demonstrate that the accommodation or modification is needed because of a disability.

☐ The accommodation you requested is not reasonable. **Please contact me immediately so that we can discuss whether there are other accommodations that would meet your needs.** Your request is not reasonable because:

☐ It would cost (fill in amount) \$\_\_\_\_\_ and \_\_\_\_\_ hours of staff time and this is an undue financial **and** administrative burden on our operations.

☐ It would fundamentally change the nature of our operations.

Additional comments:

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To discuss this further, please contact me:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The Fair Housing Act and/or other laws seek to end discrimination in housing based on race, color, religion, national origin, sex, familial status, disability, marital status, age, sexual orientation, gender identity or expression, and source of income (source of income in rental housing only) .

If you have questions,  
call the Fair Housing Center for help.



## Fair Housing Center of West Michigan

20 Hall Street SE • Grand Rapids, MI 49507

Phone: (616) 451-2980

Fax: (616) 451-2657 • E-mail: [contact-us@fhcwm.org](mailto:contact-us@fhcwm.org)

Website: [www.fhcwm.org](http://www.fhcwm.org)

*Please note that this guide book is not intended to be used as legal advice.*

*The work that provided the basis for this publication was supported by funding under a grant with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Federal Government.*

# Requesting a parking space, grab bar, or other change to your housing?

Let us help!



## A Guide to Requesting Reasonable Accommodations and Modifications Under the Fair Housing Act

## **What is fair housing?**

Fair housing laws protect people from discrimination in housing based on protected classes. Protected classes under federal and/or Michigan fair housing laws include race, skin color, national origin, religion, gender, familial status, disability, marital status, age, sexual orientation, gender identity, and source of income (source of income in rental housing only). Illegal discrimination includes a refusal to make a reasonable accommodation or a refusal to permit a reasonable modification if either would be necessary to afford a person with a disability equal access to and full enjoyment of the housing and property.

The Fair Housing 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 an impairment; and (3) individuals with a record of such an impairment.

Major life activities include:

- Walking
- Breathing
- Communicating
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- And beyond...

**Disabilities include, but are not limited to:** Mental/emotional disabilities, developmental disabilities, cancer, auto-immune deficiencies such as HIV, autism, cerebral palsy, multiple sclerosis, heart disease, diabetes, asthma, paraplegia, major depression, recovery from an addiction, and many long-term medical conditions.



## **What is a reasonable accommodation or reasonable modification?**

Under the Fair Housing Act, a **reasonable accommodation** is a change or exception to any rule, policy, procedure or service needed in order for a person with a disability to be able to have equal access to and full enjoyment of their home, such as allowing an assistance animal where there is a “no pet” policy, or allowing a live-in caregiver when a housing policy states “no over-night guests”. A **reasonable modification** is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford them full enjoyment of the premises, such as the installation of a ramp, grab bar or handrail. Reasonable accommodations and modifications enable independent living and equal access to housing for people with disabilities.

If you feel you need a **reasonable accommodation or modification** to your home or apartment based on a disability, there is a process you will need to go through to work with your housing provider. Reasonable accommodation requests should be evaluated on a case-by-case basis.

## **How do I make a request?**

If you are someone with a disability looking for a reasonable accommodation or modification to a home or apartment, you will need to submit a request (see sample request letter on P. 5) to the housing provider, landlord, manager, or your condominium association. Caregivers, relatives, or an advocacy organization may also make a request on behalf of a person with a disability.

A request can be made verbally, but 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. If your disability is not apparent or otherwise known, the housing provider or landlord may request verification of your disability and information establishing a disability-related need for the request. You can obtain supporting documentation from your doctor or other qualified medical professional, a peer support group, a non-medical service agency, a social worker, or a reliable third party who is in a position to know about your disability. The supporting documentation only needs to verify:

- (1) **that you have a disability, as defined by the Fair Housing Act**
- AND**
- (2) **your disability-related need for the requested accommodation or modification.**



Housing providers and landlords do not need to know the details related to the disability, diagnosis, or health history; only that a disability is present and that the request is needed because of that disability. When obtaining documentation words such as “necessary”, “essential”, and “prescribed” should be used to describe the need for a reasonable accommodation or reasonable modification (see sample support letter on P. 6).

You can make a request for a reasonable accommodation or modification at any time. Your request should not be a factor in your eligibility in obtaining housing.

#### **Examples of Reasonable Accommodation Requests:**

- Requesting an assigned, accessible parking space near a unit
- Requesting to waive a “no pet” or pet fee policy to allow for an assistance animal\*
- Requesting a move to the ground floor due to changes in ability to use stairs

#### **Examples of Reasonable Modifications:**

- Widening a doorway for a wheelchair
- Installing grab bars in a bathroom
- Installing a ramp to make a main entrance accessible
- Installing handrails in stairwell



*\*The FHCWM has additional guidance specific to assistance animals at [www.fhcwm.org/disability](http://www.fhcwm.org/disability).*

### **What if there are costs involved?**

A reasonable accommodation is usually processed and completed without cost to the resident. If the cost of the reasonable accommodation is an undue financial and administrative burden for the housing provider, they should meet or talk with you to evaluate and explore alternative reasonable accommodation methods.



For reasonable modifications, the tenant is responsible for paying the cost, while the housing provider must permit the modification.\* A housing provider may require that a reasonable modification request includes a description of the proposed modification both before changes are made to the dwelling and before granting the modification.

If you require a reasonable modification to the interior of your home, depending on your living situation, you may be asked by the housing provider or landlord to restore your home or apartment back to its original state. In some situations, the landlord or housing provider could ask you agree to pay into an escrow account so that the home or apartment may be restored after you vacate the property.

*\* The Rehabilitation Act of 1973 states that structural changes needed by a person with a disability in housing that receives federal financial assistance (i.e. HUD subsidized apartment buildings, USDA rural housing developments, and others) are considered reasonable accommodations; they must be paid for by the housing provider unless providing them would be an undue financial and administrative burden or a fundamental alteration of the program or unless the housing provider can accommodate the individual's needs through another means.*

### **Why can my request be denied?**

A request for a reasonable accommodation or modification can be denied for the following reasons:

**(1) The request for a reasonable accommodation or modification was not made by or on behalf of a person with a disability or if there is no disability-related need for the request,**

and/or

**(2) If it would impose undue financial and administrative burden on the housing provider or would fundamentally alter the nature of the provider's operations.**



Whether your request is approved, denied, or you are asked for more documentation, it is important to maintain communication with the housing provider. If your initial request is denied, alternative methods to accommodate or modify should be discussed. It is important that the housing provider continue to communicate with you as you both explore different options; note that you are not obligated to accept an alternative accommodation if you believe it will not meet your needs.

### **What is an Assistance Animal?**

An assistance animal is not a pet. There are two types of assistance animals: (1) service animals (limited to dogs and in rare instances miniature horses) and (2) other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities (referred to by HUD as a “support animal”).

**NOTE:** Pet fees and/or policies ***do not*** apply to assistance animals; breed or size limitations also do not apply.

**NOTE:** Fair Housing law does not require that support animals be trained, certified or licensed, however, they must be under your control.

Service dogs perform many disability-related functions, including guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, and alerting persons to impending seizures or the presence of allergens. Assistance animals may help by preventing or interrupting impulsive or destructive behaviors, assisting in dealing with disability-related stress or pain, or providing emotional support that alleviates at least one identified symptom or effect of a physical or mental impairment.

The FHCWM has additional guidance on processing requests for assistance animals, as does HUD. These are available on the FHCWM website. As with all requests for reasonable accommodations, it is best to document everything that you disclosed and when any communication occurs.

You should hear a determination promptly, generally within 10 days of submitting your documentation.

These requests should be evaluated on a case-by-case basis. According to HUD, housing providers may not require a health care professional to use a specific form, to provide notarized statements, to make statements under penalty of perjury, or to provide detailed information about your impairments.

### **Additional Resources**

- ◇ Department of Justice & HUD—Joint Statement on Reasonable Accommodations (5/17/2004)
- ◇ Department of Justice & HUD—Joint Statement on Reasonable Modifications (3/5/2008)
- ◇ HUD Fair Housing and Equal Opportunity Notice on Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act (1/28/2020); includes *Guidance on Documenting an Individual’s Need for Assistance Animals in Housing*
- ◇ HUD Memo on Insurance Policy Restrictions as a Defense for Refusals to Make a Reasonable Accommodation (6/12/2006)
- ◇ FHCWM A Housing Professional’s Guide to Reasonable Accommodations and Modifications Under the Fair Housing Act
- ◇ FHCWM Fact Sheet: Supporting Requests for Assistance Animals in Housing
- ◇ FHCWM Resource Guide: Assistance Animals in Housing
- ◇ FHCWM Sample Assistance Animal Policy

Please visit **[www.fhcwm.org/publications](http://www.fhcwm.org/publications)** to download these documents and other helpful information.



Here are some commonly asked questions as well as some ideas for action:

What do I do if...?	How you can find a solution!
Your verbal request prompted the housing provider to ask for a written request.	If possible, a written request is helpful for both parties. If you need assistance or alternative methods to communicate your needs, the housing provider will need to assist you in providing those means (ex: large print, braille, electronic format materials).
You are asked specifically what kind of disability you have.	You should tell your housing provider that you only need to verify the fact that you have a disability and how your request is related to your disability. <b><u>You do not need to state your disability or disclose details of your health history.</u></b>
You are asked for written documentation of your disability, even though your disability is apparent.	If you have a visible, obvious, or otherwise known disability, the housing provider does not need any documentation. Let them know that you do not need to provide additional documentation.
You are told your verification of your disability is not good enough.	Included in this guidebook is a form you can use to provide accurate and clear verification. (See pages 5 and 6 for sample request and support letters).
You made a request more than a week ago and you have heard nothing on your request.	Call the housing provider, ask who is taking care of your request, and what the status is. They should keep you updated.
You are told you can't have your assistance animal(s) due to the housing provider's insurance policy.	If a housing provider's insurance carrier would cancel, substantially increase the costs of the insurance policy, or adversely change the policy terms because of the presence of a certain breed of animal or a certain animal, this may impose an undue financial and administrative burden: they should try to secure comparable insurance without such restrictions.

If you experience delays, issues and/or a lack of communication,  
or if you feel you are being discriminated against,  
you may want to contact the Fair Housing Center for help.

**To aid you in the process of making a request, consider using language similar to these sample reasonable modification (top half) or reasonable accommodation (bottom half) request letters:**

**(Date)**

Dear **(Housing Provider)**;

**(My name is \_\_\_\_)** and I live at **(insert address)**. I am a person with a disability as defined by the Fair Housing Act. I am writing this letter to request a modification. I am requesting **(insert your need here, examples found below)**.

Example: permission to install handrails on the stairs OR permission to install a ramp for the front door of my unit.

With the approval of this request I will be able to **(explain how there is a need for your request, examples found below)**

Example: safely travel up and down the stairs, as my disability limits my ability to use stairs without the assistance of handrails OR enter the front door of my home with the use of my wheelchair.

With the approval of this request the effects of my disability will be assisted or alleviated.

Please provide documentation that you received this request and the status of my request. If further documentation of my disability is needed, let me know so that I can provide documentation about the disability-related need for my request.

Sincerely,

**(Your name)**

**(Date)**

Dear **(Housing Provider)**;

**(My name is \_\_\_\_)** and I live at **(insert address)**. I am a person with a disability as defined by the Fair Housing Act. I am writing this letter to request an accommodation. I am requesting **(insert your need here, example found below)**.

Example: to be provided with an assigned parking space closer to my unit

With the approval of this request I will be able to **(explain how there is a need for your request, example found below)**

Example: safely and easily get to my vehicle, as my disability limits my ability to walk long distances.

With the approval of this request the effects of my disability will be assisted or alleviated.

Please provide documentation that you received this request and the status of my request. If further documentation of my disability is needed, let me know so that I can provide documentation about the disability-related need for my request.

Sincerely,

**(Your name)**

Please visit [www.fhcwm.org/disability](http://www.fhcwm.org/disability) to download this document and other helpful documents.

**This sample reasonable accommodation or reasonable modification support letter can be used to aid your medical professional in providing verification of your request:**

- Should be on letterhead
- Should accomplish the following:
  1. Verify that the person meets the Fair Housing Act's definition of disability (need not mention specific diagnosis, but must be clear that the person's condition rises to the level of a disability)
  2. Show the relationship between the person's disability and the need for the requested accommodation/modification ("need" should be distinguished from "may benefit" or "is recommended")

*A support letter may be written by a doctor or other medical professional, peer support group, non-medical service agency, or reliable third party who is in a position to know about the individual's disability.*

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**Date**

Dear **(Housing Provider)**:

**TIP: USE  
OFFICE LOGO or LETTERHEAD**

**(Name of client)** is my client/patient, and has been under my professional care since **(date)** involving the provision of health care OR disability-related services and therefore I am familiar with his/her history and disability-related functional limitations. She/he has a physical or mental impairment that substantially limits at least one major life activity or major bodily function as defined by the Fair Housing Act.

To enhance his/her ability to live independently and to have full use and enjoyment of his/her dwelling, **(Name of client)** needs **(insert need)**

Example 1: a support dog, cat, bird, etc. (be as specific as possible about the kind of animal(s) needed and mention if the patient has the animal(s) already) that will assist **(name of client)** with the functional limitations associated with his/her disability.

Example 2: a parking space closer to **(name of client)**'s unit to assist with the functional limitations associated with his/her disability, i.e. walking long distances.

Specifically, **(please provide information demonstrating how the accommodation is needed or necessary to alleviate one or more identified symptoms or effects of an existing disability or how the disability will be exacerbated in the absence of the accommodation)**

Example 1: the support animal (dog, cat, bird, etc.) is necessary to prevent or interrupt impulsive or destructive behaviors OR calm a person with post-traumatic stress disorder (PTSD) during an anxiety attack OR assist in dealing with disability-related stress or pain OR assist to leave the isolation of home OR assist to interact with others OR provide a reason to live OR provide emotional support that alleviates at least one identified symptom or effect of a physical or mental impairment, etc. *(If animal is not a traditional domesticated animal, please justify the patient's need for the particular animal or type of animal(s))*

Example 2: the parking spot is necessary to alleviate symptoms of **(name of client)**'s disability, such as pain in joints and muscles.

While honoring HIPAA and/or other patient/client confidentiality laws, I am available to answer questions you may have concerning my verification of **(name of client)**'s request.

Sincerely,

Signature and Printed Name of Professional, Credentials

Please note there is additional guidance and information available regarding assistance animals, including service animals and support animals found at the link below.

Please visit [www.fhcwm.org/disability](http://www.fhcwm.org/disability) to download this document and other helpful documents.

The Fair Housing Act and other laws seek to end discrimination in housing based on race, color, religion, national origin, sex including sexual orientation and gender identity, familial status, disability, marital status, and age.

If you or someone you know feels they may have been or are victims of illegal housing discrimination, call the Fair Housing Center for help.



## Fair Housing Center of West Michigan

20 Hall Street SE • Grand Rapids, MI 49507

Phone: (616) 451-2980 or 1-866-389-FAIR (3247)

Fax: (616) 451-2657 • E-mail: [contact-us@fhcwm.org](mailto:contact-us@fhcwm.org)

Website: [www.fhcwm.org](http://www.fhcwm.org)

*Please note that this guide book is not intended to be used as legal advice.*

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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

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JOINT STATEMENT OF  
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
AND THE DEPARTMENT OF JUSTICE

*REASONABLE ACCOMMODATIONS UNDER THE  
FAIR HOUSING ACT*

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**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<sup>1</sup> (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.<sup>2</sup> 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.<sup>3</sup> 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

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<sup>1</sup> The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

<sup>2</sup> 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.

<sup>3</sup> 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.<sup>4</sup>

## **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<sup>5</sup> 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.”<sup>6</sup> 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

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<sup>4</sup> 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) ([www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf](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](http://www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118)).

<sup>5</sup> The Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). See also H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) (“The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”). *Accord*: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

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

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.<sup>7</sup> 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 (4<sup>th</sup> 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 an impairment; and (3) individuals with a record of such an 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.

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<sup>7</sup> 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.

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.<sup>8</sup> 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.<sup>9</sup> 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

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<sup>8</sup> 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).

<sup>9</sup> *See, e.g., United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4<sup>th</sup> Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").



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 a 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 staffperson 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<sup>10</sup> or a credible statement by the individual). A doctor or other

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<sup>10</sup> 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)

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: <http://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

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(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).

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.



**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.  
March 5, 2008*

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**JOINT STATEMENT OF  
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
AND THE DEPARTMENT OF JUSTICE**

***REASONABLE MODIFICATIONS UNDER THE  
FAIR HOUSING ACT***

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**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<sup>1</sup> (the “Act”), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.<sup>2</sup> One type of disability discrimination prohibited by the Act is a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises.<sup>3</sup> HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable modifications 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 modifications.<sup>4</sup>

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<sup>1</sup> The Fair Housing Act is codified at 42 U.S.C. §§ 3601-3619.

<sup>2</sup> The Act uses the term “handicap” instead of “disability.” Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the 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.

<sup>3</sup> 42 U.S.C. § 3604(f)(3)(A).

<sup>4</sup> This Statement does not address the principles relating to reasonable accommodations. For further information see the Joint Statement of the Department of Housing and Urban

This Statement is not intended to provide specific guidance regarding the Act's design and construction requirements for multifamily dwellings built for first occupancy after March 13, 1991. Some of the reasonable modifications discussed in this Statement are features of accessible design that are required for covered multifamily dwellings pursuant to the Act's design and construction requirements. As a result, people involved in the design and construction of multifamily dwellings are advised to consult the Act at 42 U.S.C. § 3604(f)(3)(c), the implementing regulations at 24 C.F.R. § 100.205, the Fair Housing Accessibility Guidelines, and the Fair Housing Act Design Manual. All of these are available on HUD's website at [www.hud.gov/offices/fheo/disabilities/index.cfm](http://www.hud.gov/offices/fheo/disabilities/index.cfm). Additional technical guidance on the design and construction requirements can also be found on HUD's website and the Fair Housing Accessibility FIRST website at: <http://www.fairhousingfirst.org>.

## **Questions and Answers**

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

The Act prohibits housing providers from discriminating against housing 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 makes it unlawful for any person to refuse "to permit, at the expense of the [disabled] person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted."<sup>5</sup> 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." The Act also prohibits housing providers from refusing residency to persons with disabilities, or, with some narrow exceptions<sup>6</sup>,

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Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act, dated May 17, 2004. This Joint Statement is available at [www.hud.gov/offices/fheo/disabilities/index.cfm](http://www.hud.gov/offices/fheo/disabilities/index.cfm) and [http://www.usdoj.gov/crt/housing/jointstatement\\_ra.htm](http://www.usdoj.gov/crt/housing/jointstatement_ra.htm). See also 42 U.S.C. § 3604(f)(3)(B).

This Statement also does not discuss in depth the obligations of housing providers who are recipients of federal financial assistance to make and pay for structural changes to units and common and public areas that are needed as a reasonable accommodation for a person's disability. See Question 31.

<sup>5</sup> 42 U.S.C. § 3604(f)(3)(A). HUD regulations pertaining to reasonable modifications may be found at 24 C.F.R. § 100.203.

<sup>6</sup> The Act contemplates certain limits to the receipt of reasonable accommodations or reasonable modifications. For example, a tenant may be required to deposit money into an interest bearing

placing conditions on their residency, because those persons may require reasonable modifications or reasonable accommodations.

## **2. What is a reasonable modification under the Fair Housing Act?**

A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas. A request for a reasonable modification may be made at any time during the tenancy. The Act makes it unlawful for a housing provider or homeowners' association to refuse to allow a reasonable modification to the premises when such a modification may be necessary to afford persons with disabilities full enjoyment of the premises.

To show that a requested modification may be necessary, there must be an identifiable relationship, or nexus, between the requested modification and the individual's disability. Further, the modification must be "reasonable." Examples of modifications that typically are reasonable include widening doorways to make rooms more accessible for persons in wheelchairs; installing grab bars in bathrooms; lowering kitchen cabinets to a height suitable for persons in wheelchairs; adding a ramp to make a primary entrance accessible for persons in wheelchairs; or altering a walkway to provide access to a public or common use area. These examples of reasonable modifications are not exhaustive.

## **3. Who is responsible for the expense of making a reasonable modification?**

The Fair Housing Act provides that while the housing provider must permit the modification, the tenant is responsible for paying the cost of the modification.

## **4. 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 an impairment; and (3) individuals with a record of such an 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

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account to ensure that funds are available to restore the interior of a dwelling to its previous state. See, e.g., Question 21 below. A reasonable accommodation can be conditioned on meeting reasonable safety requirements, such as requiring persons who use motorized wheelchairs to operate them in a manner that does not pose a risk to the safety of others or cause damage to other persons' property. See Joint Statement on Reasonable Accommodations, Question 11.

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. This list of major life activities is not exhaustive.

## **5. Who is entitled to a reasonable modification under the Fair Housing Act?**

Persons who meet the Fair Housing Act’s definition of “person with a disability” may be entitled to a reasonable modification under the Act. However, there must be an identifiable relationship, or nexus, between the requested modification and the individual’s disability. If no such nexus exists, then the housing provider may refuse to allow the requested modification.

**Example 1:** A tenant, whose arthritis impairs the use of her hands and causes her substantial difficulty in using the doorknobs in her apartment, wishes to replace the doorknobs with levers. Since there is a relationship between the tenant’s disability and the requested modification and the modification is reasonable, the housing provider must allow her to make the modification at the tenant’s expense.

**Example 2:** A homeowner with a mobility disability asks the condo association to permit him to change his roofing from shaker shingles to clay tiles and fiberglass shingles because he alleges that the shingles are less fireproof and put him at greater risk during a fire. There is no evidence that the shingles permitted by the homeowner’s association provide inadequate fire protection and the person with the disability has not identified a nexus between his disability and the need for clay tiles and fiberglass shingles. The homeowner’s association is not required to permit the homeowner’s modification because the homeowner’s request is not reasonable and there is no nexus between the request and the disability.

## **6. 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 reasonable modification?**

A housing provider may not ordinarily inquire as to the nature and severity of an individual’s disability. However, in response to a request for a reasonable modification, 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 modification, and (3) shows the relationship between the person’s disability and the need for the requested modification. 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 herself (e.g., proof that an individual under 65 years of age receives Supplemental Security

Income or Social Security Disability Insurance benefits<sup>8</sup> 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 modification 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 modification request or unless disclosure is required by law (e.g., a court-issued subpoena requiring disclosure).

**7. 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 modification?**

A housing provider is entitled to obtain information that is necessary to evaluate whether a requested reasonable modification may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the housing provider, and if the need for the requested modification 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 modification.

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

**Example 1:** An applicant with an obvious mobility impairment who uses a motorized scooter to move around asks the housing provider to permit her to install a ramp at the entrance of the apartment building. Since the physical disability (i.e., difficulty walking) and the disability-related need for the requested modification 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 modification.

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<sup>8</sup> Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Income ("SSDI") benefits in most cases meet the definition of a 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).



**Example 2:** A deaf tenant asks his housing provider to allow him to install extra electrical lines and a cable line so the tenant can use computer equipment that helps him communicate with others. If the tenant's disability is known, the housing provider may not require him to document his disability; however, since the need for the electrical and cable lines may not be apparent, the housing provider may request information that is necessary to support the disability-related need for the requested modification.

## **8. Who must comply with the Fair Housing Act's reasonable modification requirements?**

Any person or entity engaging in prohibited conduct – i.e., refusing to allow an individual to make reasonable modifications when such modifications may be necessary to afford a person with a disability full enjoyment of the premises – 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. 2d 703, 710 (D. Md. 2001), aff'd, 2002 WL 2012545 (4th Cir. 2002).

## **9. What is the difference between a *reasonable accommodation* and a *reasonable modification* under the Fair Housing Act?<sup>9</sup>**

Under the Fair Housing Act, a reasonable *modification* is a structural change made to the premises whereas a reasonable *accommodation* is a change, exception, or adjustment to a rule, policy, practice, or service. A person with a disability may need either a reasonable accommodation or a reasonable modification, or both, in order to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable accommodation unless it is an undue financial and administrative burden, while the tenant or someone acting on the tenant's behalf, is responsible for costs associated with a reasonable modification. See Reasonable Accommodation Statement, Questions 7 and 8.

**Example 1:** Because of a mobility disability, a tenant wants to install grab bars in the bathroom. This is a reasonable modification and must be permitted at the tenant's expense.

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<sup>9</sup> 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 obligate housing providers to make and pay for structural changes to facilities, if needed as a reasonable accommodation for applicants and tenants with disabilities, unless doing so poses an undue financial and administrative burden. See Question 31.

**Example 2:** Because of a hearing disability, a tenant wishes to install a peephole in her door so she can see who is at the door before she opens it. This is a reasonable modification and must be permitted at the tenant's expense.

**Example 3:** Because of a mobility disability, a tenant wants to install a ramp outside the building in a common area. This is a reasonable modification and must be permitted at the tenant's expense. See also Questions 19, 20 and 21.

**Example 4:** Because of a vision disability, a tenant requests permission to have a guide dog reside with her in her apartment. The housing provider has a "no-pets" policy. This is a request for a reasonable accommodation, and the housing provider must grant the accommodation.

**10. Are reasonable modifications restricted to the interior of a dwelling?**

No. Reasonable modifications are not limited to the interior of a dwelling. Reasonable modifications may also be made to public and common use areas such as widening entrances to fitness centers or laundry rooms, or for changes to exteriors of dwelling units such as installing a ramp at the entrance to a dwelling.

**11. Is a request for a parking space because of a physical disability a *reasonable accommodation* or a *reasonable modification*?**

Courts have treated requests for parking spaces as requests for a reasonable accommodation and have placed the responsibility for providing the parking space on the housing provider, even if provision of an accessible or assigned parking space results in some cost to the provider. For example, courts have required a housing provider to provide an assigned space even though the housing provider had a policy of not assigning parking spaces or had a waiting list for available parking. However, housing providers may not require persons with disabilities to pay extra fees as a condition of receiving accessible parking spaces.

Providing a parking accommodation could include creating signage, repainting markings, redistributing spaces, or creating curb cuts. This list is not exhaustive.

**12. What if the structural changes being requested by the tenant or applicant are in a building that is subject to the design and construction requirements of the Fair Housing Act and the requested structural changes are a feature of accessible design that should have already existed in the unit or common area, e.g., doorways wide enough to accommodate a wheelchair, or an accessible entryway to a unit.**

The Fair Housing Act provides that covered multifamily dwellings built for first occupancy after March 13, 1991, shall be designed and constructed to meet certain minimum accessibility and adaptability standards. If any of the structural changes needed by the tenant are ones that should have been included in the unit or public and common use area when constructed then the housing provider may be responsible for providing and paying for those requested structural changes. However, if the requested structural changes are not a feature of accessible design that should have already existed in the building pursuant to the design and construction requirements under the Act, then the tenant is responsible for paying for the cost of the structural changes as a reasonable modification.

Although the design and construction provisions only apply to certain multifamily dwellings built for first occupancy since 1991, a tenant may request reasonable modifications to housing built prior to that date. In such cases, the housing provider must allow the modifications, and the tenant is responsible for paying for the costs under the Fair Housing Act.

For a discussion of the design and construction requirements of the Act, and their applicability, see HUD's website at: [www.hud.gov/offices/fheo/disabilities/index.cfm](http://www.hud.gov/offices/fheo/disabilities/index.cfm) and the Fair Housing Accessibility FIRST website at: <http://www.fairhousingfirst.org>.

**Example 1:** A tenant with a disability who uses a wheelchair resides in a ground floor apartment in a non-elevator building that was built in 1995. Buildings built for first occupancy after March 13, 1991 are covered by the design and construction requirements of the Fair Housing Act. Because the building is a non-elevator building, all ground floor units must meet the minimum accessibility requirements of the Act. The doors in the apartment are not wide enough for passage using a wheelchair in violation of the design and construction requirements but can be made so through retrofitting. Under these circumstances, one federal court has held that the tenant may have a potential claim against the housing provider.

**Example 2:** A tenant with a disability resides in an apartment in a building that was built in 1987. The doors in the unit are not wide enough for passage using a wheelchair but can be made so through retrofitting. If the tenant meets the other requirements for obtaining a modification, the tenant may widen the doorways, at her own expense.

**Example 3:** A tenant with a disability resides in an apartment in a building that was built in 1993 in compliance with the design and construction requirements of the Fair Housing Act. The tenant wants to install grab bars in the bathroom because of her disability. Provided that the tenant meets the other requirements for obtaining a modification, the tenant may install the grab bars at her own expense.

### **13. Who is responsible for expenses associated with a reasonable modification, e.g., for upkeep or maintenance?**

The tenant is responsible for upkeep and maintenance of a modification that is used exclusively by her. If a modification is made to a common area that is normally maintained by the housing provider, then the housing provider is responsible for the upkeep and maintenance of the modification. If a modification is made to a common area that is not normally maintained by

the housing provider, then the housing provider has no responsibility under the Fair Housing Act to maintain the modification.

**Example 1:** Because of a mobility disability, a tenant, at her own expense, installs a lift inside her unit to allow her access to a second story. She is required to maintain the lift at her expense because it is not in a common area.

**Example 2:** Because of a mobility disability, a tenant installs a ramp in the lobby of a multifamily building at her own expense. The ramp is used by other tenants and the public as well as the tenant with the disability. The housing provider is responsible for maintaining the ramp.

**Example 3:** A tenant leases a detached, single-family home. Because of a mobility disability, the tenant installs a ramp at the outside entrance to the home. The housing provider provides no snow removal services, and the lease agreement specifically states that snow removal is the responsibility of the individual tenant. Under these circumstances, the housing provider has no responsibility under the Fair Housing Act to remove snow on the tenant's ramp. However, if the housing provider normally provides snow removal for the outside of the building and the common areas, the housing provider is responsible for removing the snow from the ramp as well.

**14. In addition to current residents, are prospective tenants and buyers of housing protected by the reasonable modification provisions of the Fair Housing Act?**

Yes. A person may make a request for a reasonable modification at any time. An individual may request a reasonable modification of the dwelling at the time that the potential tenancy or purchase is discussed. Under the Act, a housing provider cannot deny or restrict access to housing because a request for a reasonable modification is made. Such conduct would constitute discrimination. The modification does not have to be made, however, unless it is reasonable. See Questions 2, 16, 21 and 23.

**15. When and how should an individual request permission to make a modification?**

Under the Act, a resident or an applicant for housing makes a reasonable modification request whenever she makes clear to the housing provider that she is requesting permission to make a structural change to the premises because of her disability. She should explain that she has a disability, if not readily apparent or not known to the housing provider, the type of modification she is requesting, and the relationship between the requested modification and her disability.

An applicant or resident is not entitled to receive a reasonable modification 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 modification request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable modification request does

not need to mention the Act or use the words “reasonable modification.” However, the requester must make the request in a manner that a reasonable person would understand to be a request for permission to make a structural change because of a disability.

Although a reasonable modification 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 modification requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

**16. Does a person with a disability have to have the housing provider’s approval before making a reasonable modification to the dwelling?**

Yes. A person with a disability must have the housing provider’s approval before making the modification. However, if the person with a disability meets the requirements under the Act for a reasonable modification and provides the relevant documents and assurances, the housing provider cannot deny the request.

**17. What if the housing provider fails to act promptly on a reasonable modification request?**

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

**18. What if the housing provider proposes that the tenant move to a different unit in lieu of making a proposed modification?**

The housing provider cannot insist that a tenant move to a different unit in lieu of allowing the tenant to make a modification that complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. Housing providers should be aware that persons with disabilities typically have the most accurate knowledge regarding the functional limitations posed by their disability.

**Example:** As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes that in lieu of installing the ramp, the tenant move to a different unit in the building. The tenant is not obligated to accept the alternative proposed by the housing provider, as his request to modify his unit is reasonable and must be approved.

**19. What if the housing provider wants an alternative modification or alternative design for the proposed modification that does not cost more but that the housing provider considers more aesthetically pleasing?**

In general, the housing provider cannot insist on an alternative modification or an alternative design if the tenant complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. If the modification is to the interior of the unit and must be restored to its original condition when the tenant moves out, then the housing provider cannot require that its design be used instead of the tenant's design. However, if the modification is to a common area or an aspect of the interior of the unit that would not have to be restored because it would not be reasonable to do so, and if the housing provider's proposed design imposes no additional costs and still meets the tenant's needs, then the modification should be done in accordance with the housing provider's design. See Question 24 for a discussion of the restoration requirements.

**Example 1:** As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes an alternative design for a ramp but the alternative design costs more and does not meet the tenant's needs. The tenant is not obligated to accept the alternative modification, as his request to modify his unit is reasonable and must be approved.

**Example 2:** As a result of a mobility disability, a tenant requests permission to widen a doorway to allow passage with her wheelchair. All of the doorways in the unit are trimmed with a decorative trim molding that does not cost any more than the standard trim molding. Because in usual circumstances it would not be reasonable to require that the doorway be restored at the end of the tenancy, the tenant should use the decorative trim when he widens the doorway.

**20. What if the housing provider wants a more costly design for the requested modification?**

If the housing provider wishes a modification to be made with more costly materials, in order to satisfy the landlord's aesthetic standards, the tenant must agree only if the housing provider pays those additional costs. Further, as discussed in Questions 21 and 23 below, housing providers may require that the tenant obtain all necessary building permits and may require that the work be performed in a workmanlike manner. If the housing provider requires more costly materials be used to satisfy her workmanship preferences beyond the requirements of the applicable local codes, the tenant must agree only if the housing provider pays for those additional costs as well. In such a case, however, the housing provider's design must still meet the tenant's needs.

**21. What types of documents and assurances may a housing provider require regarding the modification before granting the reasonable modification?**

A housing provider may require that a request for a reasonable modification include a description of the proposed modification both before changes are made to the dwelling and before granting the modification. A description of the modification to be made may be provided to a housing provider either orally or in writing depending on the extent and nature of the proposed modification. A housing provider may also require that the tenant obtain any building permits needed to make the modifications, and that the work be performed in a workmanlike manner.

The regulations implementing the Fair Housing Act state that housing providers generally cannot impose conditions on a proposed reasonable modification. For example, a housing provider cannot require that the tenant obtain additional insurance or increase the security deposit as a condition that must be met before the modification will be allowed. However, the Preamble to the Final Regulations also indicates that there are some conditions that can be placed on a tenant requesting a reasonable modification. For example, in certain limited and narrow circumstances, a housing provider may require that the tenant deposit money into an interest bearing account to ensure that funds are available to restore the interior of a dwelling to its previous state, ordinary wear and tear excepted. Imposing conditions not contemplated by the Fair Housing Act and its implementing regulations may be the same as an illegal refusal to permit the modification.

**22. May a housing provider or homeowner's association condition approval of the requested modification on the requester obtaining special liability insurance?**

No. Imposition of such a requirement would constitute a violation of the Fair Housing Act.

**Example:** Because of a mobility disability, a tenant wants to install a ramp outside his unit. The housing provider informs the tenant that the ramp may be installed, but only after the tenant obtains separate liability insurance for the ramp out of concern for the housing provider's potential liability. The housing provider may not impose a requirement of liability insurance as a condition of approval of the ramp.

**23. Once the housing provider has agreed to a reasonable modification, may she insist that a particular contractor be used to perform the work?**

No. The housing provider cannot insist that a particular contractor do the work. The housing provider may only require that whoever does the work is reasonably able to complete the work in a workmanlike manner and obtain all necessary building permits.

**24. If a person with a disability has made reasonable modifications to the interior of the dwelling, must she restore *all* of them when she moves out?**

The tenant is obligated to restore those portions of the interior of the dwelling to their previous condition only where "it is reasonable to do so" and where the housing provider has requested the restoration. The tenant is not responsible for expenses associated with reasonable

wear and tear. In general, if the modifications do not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant cannot be required to restore the modifications to their prior state. A housing provider may choose to keep the modifications in place at the end of the tenancy. See also Question 28.

**Example 1:** Because the tenant uses a wheelchair, she obtained permission from her housing provider to remove the base cabinets and lower the kitchen sink to provide for greater accessibility. It is reasonable for the housing provider to ask the tenant to replace the cabinets and raise the sink back to its original height.

**Example 2:** Because of a mobility disability, a tenant obtained approval from the housing provider to install grab bars in the bathroom. As part of the installation, the contractor had to construct reinforcements on the underside of the wall. These reinforcements are not visible and do not detract from the use of the apartment. It is reasonable for the housing provider to require the tenant to remove the grab bars, but it is not reasonable for the housing provider to require the tenant to remove the reinforcements.

**Example 3:** Because of a mobility disability, a tenant obtained approval from the housing provider to widen doorways to allow him to maneuver in his wheelchair. In usual circumstances, it is not reasonable for the housing provider to require him to restore the doorways to their prior width.

**25. Of the reasonable modifications made to the interior of a dwelling that must be restored, must the person with a disability pay to make those restorations when she moves out?**

Yes. Reasonable restorations of the dwelling required as a result of modifications made to the interior of the dwelling must be paid for by the tenant unless the next occupant of the dwelling wants to retain the reasonable modifications and where it is reasonable to do so, the next occupant is willing to establish a new interest bearing escrow account. The subsequent tenant would have to restore the modifications to the prior condition at the end of his tenancy if it is reasonable to do so and if requested by the housing provider. See also Question 24.

**26. If a person with a disability has made a reasonable modification to the exterior of the dwelling, or a common area, must she restore it to its original condition when she moves out?**

No. The Fair Housing Act expressly provides that housing providers may only require restoration of modifications made to interiors of the dwelling at the end of the tenancy. Reasonable modifications such as ramps to the front door of the dwelling or modifications made to laundry rooms or building entrances are not required to be restored.

**27. May a housing provider increase or require a person with a disability to pay a security deposit if she requests a reasonable modification?**



No. The housing provider may not require an increased security deposit as the result of a request for a reasonable modification, nor may a housing provider require a tenant to pay a security deposit when one is not customarily required. However, a housing provider may be able to take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy. See Questions 21 and 28.

**28. May a housing provider take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy?**

Where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the housing provider may negotiate with the tenant as part of a restoration agreement a provision that requires the tenant to make payments into an interest-bearing escrow account. A housing provider may not routinely require that tenants place money in escrow accounts when a modification is sought. Both the amount and the terms of the escrow payment are subject to negotiation between the housing provider and the tenant.

Simply because an individual has a disability does not mean that she is less creditworthy than an individual without a disability. The decision to require that money be placed in an escrow account should be based on the following factors: 1) the extent and nature of the proposed modifications; 2) the expected duration of the lease; 3) the credit and tenancy history of the individual tenant; and 4) other information that may bear on the risk to the housing provider that the premises will not be restored.

If the housing provider decides to require payment into an escrow account, the amount of money to be placed in the account cannot exceed the cost of restoring the modifications, and the period of time during which the tenant makes payment into the escrow account must be reasonable. Although a housing provider may require that funds be placed in escrow, it does not automatically mean that the full amount of money needed to make the future restorations can be required to be paid at the time that the modifications are sought. In addition, it is important to note that interest from the account accrues to the benefit of the tenant. If an escrow account is established, and the housing provider later decides not to have the unit restored, then all funds in the account, including the interest, must be promptly returned to the tenant.

**Example 1:** Because of a mobility disability, a tenant requests a reasonable modification. The modification includes installation of grab bars in the bathroom. The tenant has an excellent credit history and has lived in the apartment for five years before becoming disabled. Under these circumstances, it may not be reasonable to require payment into an escrow account.

**Example 2:** Because of a mobility disability, a new tenant with a poor credit history wants to lower the kitchen cabinets to a more accessible height. It may be reasonable for the housing provider to require payment into an interest bearing escrow account to ensure that funds are available for restoration.

**Example 3:** A housing provider requires all tenants with disabilities to pay a set sum into an interest bearing escrow account before approving any request for a reasonable modification. The amount required by the housing provider has no relationship to the actual cost of the restoration. This type of requirement violates the Fair Housing Act.

**29. What if a person with a disability moves into a rental unit and wants the carpet taken up because her wheelchair does not move easily across carpeting? Is that a reasonable accommodation or modification?**

Depending on the circumstances, removal of carpeting may be either a reasonable accommodation or a reasonable modification.

**Example 1:** If the housing provider has a practice of not permitting a tenant to change flooring in a unit and there is a smooth, finished floor underneath the carpeting, generally, allowing the tenant to remove the carpet would be a reasonable accommodation.

**Example 2:** If there is no finished flooring underneath the carpeting, generally, removing the carpeting and installing a finished floor would be a reasonable modification that would have to be done at the tenant's expense. If the finished floor installed by the tenant does not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant would not have to restore the carpeting at the conclusion of the tenancy. See Questions 24 and 25.

**Example 3:** If the housing provider has a practice of replacing the carpeting before a new tenant moves in, and there is an existing smooth, finished floor underneath, then it would be a reasonable accommodation of his normal practice of installing new carpeting for the housing provider to just take up the old carpeting and wait until the tenant with a mobility disability moves out to put new carpeting down.

**30. Who is responsible for paying for the costs of structural changes to a dwelling unit that has not yet been constructed if a purchaser with a disability needs different or additional features to make the unit meet her disability-related needs?**

If the dwelling unit is not subject to the design and construction requirements (i.e., a detached single family home or a multi-story townhouse without an elevator), then the purchaser is responsible for the additional costs associated with the structural changes. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

If the unit being purchased is subject to the design and construction requirements of the Fair Housing Act, then all costs associated with incorporating the features required by the Act are borne by the builder. If a purchaser with a disability needs different or additional features added to a unit under construction or about to be constructed beyond those already required by the Act, and it would cost the builder more to provide the requested features, the structural changes would be considered a reasonable modification and the additional costs would have to

be borne by the purchaser. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

**Example 1:** A buyer with a mobility disability is purchasing a single family dwelling under construction and asks for a bathroom sink with a floorless base cabinet with retractable doors that allows the buyer to position his wheelchair under the sink. If the cabinet costs more than the standard vanity cabinet provided by the builder, the buyer is responsible for the additional cost, not the full cost of the requested cabinet. If, however, the alternative cabinet requested by the buyer costs less than or the same as the one normally provided by the builder, and the installation costs are also the same or less, then the builder should install the requested cabinet without any additional cost to the buyer.

**Example 2:** A buyer with a mobility disability is purchasing a ground floor unit in a detached townhouse that is designed with a concrete step at the front door. The buyer requests that the builder grade the entrance to eliminate the need for the step. If the cost of providing the at-grade entrance is no greater than the cost of building the concrete step, then the builder would have to provide the at-grade entrance without additional charge to the purchaser.

**Example 3:** A buyer with a mobility disability is purchasing a unit that is subject to the design and construction requirements of the Fair Housing Act. The buyer wishes to have grab bars installed in the unit as a reasonable modification to the bathroom. The builder is responsible for installing and paying for the wall reinforcements for the grab bars because these reinforcements are required under the design and construction provisions of the Act. The buyer is responsible for the costs of installing and paying for the grab bars.

**31. Are the rules the same if a person with a disability lives in housing that receives federal financial assistance and the needed structural changes to the unit or common area are the result of the tenant having a disability?**

Housing that receives federal financial assistance is covered by both the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. Under regulations implementing Section 504, structural changes needed by an applicant or resident with a disability in housing receiving federal financial assistance are considered reasonable accommodations. They must be paid for by the housing provider unless providing them would be an undue financial and administrative burden or a fundamental alteration of the program or unless the housing provider can accommodate the individual's needs through other means. Housing that receives federal financial assistance and that is provided by state or local entities may also be covered by Title II of the Americans with Disabilities Act.

**Example 1:** A tenant who uses a wheelchair and who lives in privately owned housing needs a roll-in shower in order to bathe independently. Under the Fair Housing Act the tenant would be responsible for the costs of installing the roll-in shower as a reasonable modification to his unit.

**Example 2:** A tenant who uses a wheelchair and who lives in housing that receives federal financial assistance needs a roll-in shower in order to bathe independently. Under Section 504 of the Rehabilitation Act of 1973, the housing provider would be obligated to pay for and install the roll-in shower as a reasonable accommodation to the tenant unless doing so was an undue financial and administrative burden or unless the housing provider could meet the tenant's disability-related needs by transferring the tenant to another appropriate unit that contains a roll-in shower.

HUD has provided more detailed information about Section 504's requirements. See [www.hud.gov/offices/fheo/disabilities/sect504.cfm](http://www.hud.gov/offices/fheo/disabilities/sect504.cfm).

**32. If a person believes that she has been unlawfully denied a reasonable modification, what should that person do if she wants 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 a reasonable modification, 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, 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: <http://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

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.

## **SECTION 5**

### **Advertising**

- a. Fair Housing & Advertising
- b. Fact Sheet: Affirmative Fair Housing Marketing Plans
- c. Fact Sheet: Fair Housing for Students
- d. Sec. 804. [U.S.C. 3604] Overview
- e. HUD Memo: Guidance Regarding Advertisements Under §804(c) of the Fair Housing Act (Achtenberg Memo)



## Fair Housing & Advertising



Fair housing is the right of individuals to obtain the housing of their choice (rent an apartment, buy a home, obtain a mortgage, buy homeowners' insurance, etc.), free from discrimination based upon classes protected by law. The federal Fair Housing Act and/or Michigan state law protect against housing discrimination based upon the following protected classes: **race, color, national origin, religion, sex, familial status, disability, marital status, age, sexual orientation, gender identity or expression, and source of income** (source of income in rental housing only). In addition, communities across the state have added protected classes at the local level, such as education. Under law, housing discrimination includes discriminatory advertising.

Both the federal and state fair housing laws prohibit discriminatory advertising by making it illegal to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on one or more of the protected classes. Affirmatively, the federal law also states that all advertising for the sale, rental or financing of residential real estate should contain the Equal Housing Opportunity slogan, logo or statement. These indicate to the public that the property is available to everyone under the provisions of the Fair Housing Act.

Here are a few fair housing ideas for advertisers, provided by the Fair Housing Center of West Michigan:

- Advertisements should be free of words, phrases, symbols or visual aids which indicate or convey any preference, limitation or discrimination based upon any of the above protected classes. Protected classes under local fair housing ordinances also need to be considered.
  - Advertisements should **not** contain phrases such as, "No wheelchairs," "Prefer white male," "Singles or couples only," "Not for Christians," etc.
- Advertisements should **not** describe people (i.e. prospective/preferred tenants or buyers), but rather only the property and its amenities.
  - Advertisers should avoid using phrases such as, "Perfect for," "Looking for," "Ideal for," "Suited for," "Great for," etc. in conjunction with personal descriptions as the resulting phrase may be exclusionary and/or imply an unlawful discriminatory preference.
  - Advertisements should **not** contain phrases such as, "Married couple preferred," "Looking for two adults," "Great for females," "Ideal for Hispanics," etc.
- Advertisements should be free of any reference to landmarks or areas that could imply an unlawful discriminatory preference.
- Advertisements should be free of discounts or promotions that include an unlawful discriminatory preference.
- Any logos used in advertisements should be free of unlawful discriminatory preference and include Equal Housing logos.
- Advertisements should use models and model graphics in a nondiscriminatory way.
  - All protected classes should be adequately represented in reasonable proportion to their population in the metropolitan area and should be used for all, and not just some, of the properties advertised.
  - The model and model graphics should be clearly definable as representing minority and majority populations and should be represented in equal social settings.
- The advertisements should include an equal housing opportunity logo, statement or slogan. Equal Housing Opportunity logos are available in a variety of sizes and formats at <https://www.hud.gov/contactus/hudgraphics>.

The Fair Housing Center of West Michigan is a private, non-profit organization established in 1980 to ensure equal housing opportunity as guaranteed under federal, state, and local fair housing laws. Please call 616-451-2980 for more information and training opportunities. You can also visit our website at [www.fhewm.org](http://www.fhewm.org).

# FACT SHEET: AFFIRMATIVE FAIR HOUSING MARKETING PLAN

## What is fair housing?

Fair housing is the right to choose housing free from unlawful discrimination. The federal Fair Housing Act and Michigan laws protect people from discrimination in housing based on race, color, religion, sex, national origin, familial status, disability, marital status, age, sexual orientation, gender identity or expression, and source of income (source of income in rental housing only). Discrimination is illegal in housing transactions such as rentals, sales, lending, and insurance.



## What is an Affirmative Fair Housing Marketing (AFHM) Plan?

Many federal or state funded, insured or assisted housing programs in Michigan have an obligation to create and implement an Affirmatively Fair Housing Marketing (AFHM) Plan. The AFHM Plan is a marketing strategy designed to attract buyers and renters of all majority and minority groups, regardless of sex, handicap, familial status, etc. to assisted and insured rental projects and sales dwellings which are being marketed. The Plan describes initial advertising, outreach (community contacts) and other marketing activities which inform potential buyers and renters of the existence of the units. No applications for applicable HUD-assisted programs may be funded without an approved AFHM Plan.

20 Hall Street SE  
Grand Rapids, MI 49507  
616-451-2980 phone  
616-451-2657 fax  
[fhcwm.org](http://fhcwm.org)

## Who should create an Affirmative Fair Housing Marketing Plan? – Federal Housing Programs

All applicants for subsidized and unsubsidized multifamily projects, mobile home parks and single-family subdivisions of five or more units, spaces or lots which are funded or insured under certain HUD programs are subject to program requirements which carry an obligation to create an AFHM Plan. Applicants may include Public Housing Authorities, non-profit developers or housing providers, and other HUD program participants. Examples of HUD programs which require an AFHM Plan include:

- Section 221 (d)(2) Homeownership Assistance and 221(d)(3) Below-Market Interest Rate
- Sections 235 and 236
- Sections 232, 234(c) and 213 - Condominium and Cooperative Housing
- Section 232 - Nursing Homes and Intermediate Care Facilities
- Section 207 - Mobile Home Courts
- Sections 207, 220, 221(d)(3) and (4) – Multifamily Rental Housing
- Rental Assistance Payment (RAP) and Rent Supplement
- Section 8 Project-Based Assistance
  - Section 202 Projects with Section 8 Assistance
  - Rural Housing Section 515 Projects with Section 8 Assistance
  - Loan Management Set Aside (LMSA)
  - Property Disposition Set-Aside (PDSA)
- Section 202 with 162 Assistance – Project Assistance Grants (Section 202 PACs)
- Section 202 with Project Rental Assistance Contracts (Section 202 PRACs)
- Section 202 without Assistance (Income Limits Only)
- Section 203(b) and (1) - One-to-Four-Family Mortgage Insurance for Homeowners
- Section 811 with Project Rental Assistance Contracts (Section 811 PRACs)

**State Housing Programs** - The Michigan State Housing Development Authority (MSHDA) requires that all MSHDA financed developments maintain a current approved AFHM plan on-site.



## Creating an Affirmative Fair Housing Market Plan

Both the U.S. Department of Housing and Urban Development (HUD) and the Michigan State Housing Development Authority (MSHDA) have AFHM forms which must be completed when either initially applying for funding or when the AFHM Plan is updated (HUD Form HUD-935.2A and MSHDA AM Form).

In formulating the Affirmative Marketing Program, the applicant must do the following:

- A. *Targeting*. Identify the segments of the eligible population which are least likely to apply for housing without special outreach efforts.
  - a. Consider the current racial and ethnic composition of the residential area.
  - b. Also consider language barriers and income eligibility requirements.
- B. *Outreach*. Outline an outreach program which includes special measures designed to attract those groups identified as least likely to apply and other efforts designed to attract persons from the total eligible population.
  - a. *Community Contacts*. The housing provider must list at least one community organization that serves each group determined to be least likely to apply and who has agreed to help the provider in their marketing efforts. In the plan include the name of the contact person, contact information, experience working with the target population as well as the number and language of materials to be provided to such agencies.
  - b. *Media*. The housing provider should specify the particular means of advertising to reach a target group and the reasoning behind the particular type of advertising. Advertisements should include the fair housing logo.
  - c. If the immediate housing market area is not demographically diverse enough to draw applicants considered “least likely to apply” then an expanded housing market area should be used.
- C. *Indicators*. State the indicators to be used to measure the success of the marketing program.
  - a. Recording information on how an individual heard about the housing and why they decided to apply will provide useful data for the evaluation process.
  - b. In addition, comparing the number of units now occupied by persons previously determined to be “least likely to apply” and the number of people least likely to apply on the waiting list prior to and after the marketing process is a good starting place for the evaluation.
- D. *Staff Training*. Demonstrate the capacity to provide training and information on fair housing laws and objectives to sales or rental staff.

## How long does the AFMH Plan last and how often does it need to be updated?

The AFHM Plan remains in force throughout the life of a multifamily project mortgage and/or the period for which the HUD or MSHDA subsidy is provided. For single-family dwellings located in subdivisions of five or more units, the Plan remains in effect until all the dwelling units are sold. AFHM Plans must be reviewed at least every five years or when the local Community Development jurisdiction’s Consolidated Plan is updated, or when there are significant changes in the demographics of the project or the local housing market area.

## Where can I find more information?

If you have additional questions about fair housing law or creating an AFHM plan, please contact the Fair Housing Center office, or view HUD’s website at [www.hud.gov](http://www.hud.gov) for AFHM forms and guidelines.

## Common AFHM Plan Mistakes

- Incomplete information , i.e.: number of units, price of units, marketing area not provided
- Insufficient research, i.e. all ethnic groups are considered “least likely to apply”
- Failure to advertise in places used by people who have been deemed “least likely to apply”
- Lack of follow-up with community contacts to ensure the housing opportunities have been advertised
- No standards to ensure the marketing plan was effective
- Lack of current staff training on fair housing laws

# FACT SHEET: FAIR HOUSING FOR STUDENTS

## What is fair housing?

Fair housing is the right to choose housing free from unlawful discrimination. Federal, state and local fair housing laws protect people from discrimination in housing transactions such as rentals, sales, lending, and insurance. Fair housing laws protect people from discrimination in housing based on protected classes. Protected classes under federal and/or Michigan fair housing laws include:

- Race
- Color
- Religion
- Sex
- National origin
- Familial status
- Disability
- Marital status
- Age
- Sexual orientation
- Gender identity
- Gender expression
- Source of Income (rental housing only)



20 Hall Street SE  
Grand Rapids, MI 49507  
616-451-2980 phone  
616-451-2657 fax  
866-389-FAIR  
[fhcwm.org](http://fhcwm.org)

## What rights do students have under fair housing laws?

Any student in the process of seeking housing, whether on or off campus, is protected by fair housing laws and has the right to inquire about, apply for, and obtain housing free from discrimination because of their race, age, disability, etc. Fair housing laws cover most housing, including apartment complexes, single-family homes, condominiums, dormitories, manufactured homes and others. Students with disabilities also have the right to request reasonable accommodations in order to provide equal access and enjoyment to housing opportunity. It is also important to note that in university sponsored housing certain exemptions may allow for limitations on the basis of marital status (i.e. "married housing").

Colleges and universities that offer student housing must comply with the Fair Housing Act (FHA), the Michigan Elliott-Larsen Civil Rights Act, and any applicable fair housing ordinances at the local level. Further, public and private colleges and universities supported by federal grants and funding programs must comply with Section 504 of the Rehabilitation Act of 1973. Common areas in student housing may further be covered by the Americans with Disabilities Act (ADA).

## Are student specials or policies stating "no students" allowed under fair housing laws?

"Students" in and of themselves do not represent a "protected class" under federal or Michigan fair housing laws, however they might be protected under local laws. This means that a housing provider might be able to have a preference for students, like offering a "student special" or stating "students only", or, on the contrary, in very limited circumstances might be able to discriminate against students (i.e. "no students". Note: We do not support policies limiting or prohibiting students as they very likely may have discriminatory results). A housing provider could only operate a policy or practice specifically for/against students, so long as it is applied equally to ALL students regardless of their age, familial status, marital status, etc. and so long as it does not result in discrimination against a certain protected class. For example, a housing provider cannot operate a policy of "no students" in an effort to discriminate against younger individuals, or if the policy primarily limits younger individuals. As another example, a housing provider who operates a "student special" should make the special available to all students (i.e. persons with a student ID, enrollment letter or other verification of student status) including students with children, married students, and older adult students.

## Why should students be aware of fair housing rights?

It is imperative for the growth, vibrancy and sustainability of our community that students understand and have access to their fair rights. When students feel welcomed in the community, they make themselves at home, invest their resources back into the community, and in turn make it an appealing place for diverse and talented people to come. It is also very important to be aware of fair housing rights to identify and report real or potential fair housing violations in order to ensure that such practices can be addressed.

*Continued on other side...*

## Local Fair Housing Laws and Ordinances

A local ordinance in west Michigan prohibits housing discrimination on the basis of education, specifically in the City of Holland. Other cities in Michigan have student or education protections. Always consult your local law as protections can change.

## Protections for students with disabilities

The FHAct 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 an impairment; and (3) individuals with a record of such an impairment. Major life activities include walking, breathing, communicating, seeing, hearing, caring for oneself, thinking, learning and beyond.

If a student with a disability as defined by the FHAct (see above) is seeking a *reasonable accommodation* (a change or exception to any rule, policy, procedure or service needed in order for a person with a disability to be able to have equal access to and full enjoyment of their home) or *reasonable modification* (structural changes made to existing premises, occupied or to be occupied by a person with a disability, in order to have full enjoyment of the premises) to student housing, they need to submit a request to their housing provider or the student housing administrators who oversee the housing offered by the college or university. Caregivers, relatives, or an advocacy organization may also make a request on behalf of a student with a disability.

Many disabilities are not obvious to an outside observer. If a disability is not apparent or otherwise known, the student housing administrator or housing provider may request verification of the student's disability and information establishing a disability-related need for the request. A letter of supporting documentation can be obtained from a doctor or other qualified medical professional, a peer support group, a non-medical service agency, a social worker, or a reliable third party who is in a position to know about your disability. The supporting documentation only needs to verify:

- (1) **that you have a disability, as defined by the Fair Housing Act AND**
- (2) **your disability-related need for the requested accommodation or modification.**

Student housing staff and housing providers do not need to know the details related to a student's disability, diagnosis, or health history; only that a disability is present and that the request is needed because of that disability.

## Assistance Animals

An assistance animal is not a pet. There are two types of assistance animals: (1) service animals (limited to dogs and in rare instances miniature horses) and (2) other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities (referred to by HUD as a "support animal"). Service dogs perform many disability-related functions, including guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, and alerting persons to impending seizures or the presence of allergens. Assistance animals may help by preventing or interrupting impulsive or destructive behaviors, assisting in dealing with disability-related stress or pain, or providing emotional support that alleviates at least one identified symptom or effect of a physical or mental impairment. These requests should be evaluated on a case-by-case basis. The FHCWM has additional guidance on processing requests for assistance animals, as does HUD. These are available on the FHCWM website ([www.fhcwm.org/disability](http://www.fhcwm.org/disability)).

## SIGNS OF POSSIBLE DISCRIMINATION AGAINST STUDENTS

- Refusing to rent or sell because of a student's age
- Charging extra fees or higher rent to students with children
- Imposing or enforcing rules more strictly against students
- Telling a student that the neighborhood is not "right" for them

**Sec. 804. [42 U.S.C. 3604]  
Discrimination in sale or  
rental of housing and other  
prohibited practices**

**...it shall be unlawful--**

(c) to make, print or publish, or cause to be made, printed or published any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410-2000

January 9, 1995

OFFICE OF THE ASSISTANT SECRETARY  
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

MEMORANDUM FOR: FHEO, Office Directors, Enforcement Directors, Staff,  
Office of Investigations, Field Assistant General  
Counsel

FROM: Roberta Achtenberg, Assistant Secretary for Fair Housing and Equal  
Opportunity, E

SUBJECT: Guidance Regarding Advertisements Under §804(c) of the Fair  
Housing Act

The purpose of this memorandum is to provide guidance on the procedures for the acceptance and investigation of allegations of discrimination under Section 804(c) of the Fair Housing Act (the Act) involving the publication of real estate advertisements.<sup>1</sup>

Recently, the number of inquiries involving whether or not potential violations of the Act occur through use of certain words or phrases has increased, and these issues cannot, in some situations, be answered by referring to decided cases alone. In some circumstances, the Advertising Guidelines, published at 24 C.F.R. Part 109, have been interpreted (usually by persons outside of HUD) to extend the liability for advertisements to circumstances which are unreasonable.

This guidance is meant to advise you of the Department's position on several of these issues.

Previous guidance already requires that Intake staff review a potential complaint, gather preliminary information to ascertain whether the complaint states a claim under the Act, and consult with counsel on any legally questionable matters before the complaint is filed. Likewise, jurisdictional issues such as standing and timeliness should also be established prior to filing.

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<sup>1</sup> This memorandum does not address fair housing issues associated with the publication of advertisements containing human models, and does not address 804(c) liability for making discriminatory statements.

If the Advertising Guidelines, this memorandum, or a judicial decision clearly indicate that the language used in the advertisement is a potential violation of Section 804(c) and the criteria for establishing jurisdiction are met, the complaint should be filed and processed. Any complaint concerning an advertisement which requires an assessment of whether the usage of particular words or phrases in context is discriminatory, requires the approval of Headquarters FHEO before a complaint is filed. If the advertisement appears to be discriminatory, but the Advertising Guidelines, this memorandum, or a judicial decision do not explicitly address the language in question, supervisory staff must also obtain approval of Headquarters FHEO before the complaint is filed. Potential complaints regarding advertisements which do not meet the above descriptions should not be filed.

Where there is a question about whether a particular real estate advertising complaint should be filed, relevant information regarding the factual and/or legal issues involved in the complaint should be gathered, and counsel should be consulted prior to contacting the potential respondent publisher. The matter should then be referred to the Office of Investigations for review. Such referrals may take the form of a short memo, reciting the applicable advertisement language, and any factual or legal analysis which is appropriate.

Section 804(c) of the Act prohibits the making, printing and publishing of advertisements which state a preference, limitation or discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin. The prohibition applies to publishers, such as newspapers and directories, as well as to persons and entities who place real estate advertisements. It also applies to advertisements where the underlying property may be exempt from the provisions of the Act, but where the advertisement itself violates the Act. See 42 U.S.C. 3603(b).

Publishers and advertisers are responsible under the Act for making, printing, or publishing an advertisement that violates the Act on its face. Thus, they should not publish or cause to be published an advertisement that on its face expresses a preference, limitation or discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin. To the extent that either the Advertising Guidelines or the case law do not state that particular terms or phrases (or closely comparable terms) may violate the Act, a publisher is not liable under the Act for advertisements which, in the context of the usage in a particular advertisement, might indicate a preference, limitation or discrimination, but where such a preference is not readily apparent to an ordinary reader. Therefore, complaints will not be accepted against publishers concerning advertisements where the language might or might not be viewed as being used in a discriminatory context.

For example, Intake staff should not accept a complaint against a newspaper for running an advertisement which includes the phrase **female roommate wanted** because the advertisement does not indicate whether the requirements for the shared living exception have been met. Publishers can rely on the representations of the individual placing the ad that shared living arrangements apply to the property in question. Persons placing such

advertisements, however, are responsible for satisfying the conditions for the exemption. Thus, an ad for a female roommate could result in liability for the person placing the ad if the housing being advertised is actually a separate dwelling unit without shared living spaces. See 24 CFR 109.20.

Similarly, Intake staff should not file a familial status complaint against a publisher of an advertisement if the advertisement indicates on its face that it is housing for older persons. While an owner-respondent may be held responsible for running an advertisement indicating an exclusion of families with children if his or her property does not meet the "housing for older persons" exemption, a publisher is entitled to rely on the owner's assurance that the property is exempt.

The following is policy guidance on certain advertising issues which have arisen recently. We are currently reviewing past guidance from this office and from the Office of General Counsel and will update our guidance as appropriate.

1. **Race, color, national origin.** Real estate advertisements should state no discriminatory preference or limitation on account of race, color, or national origin. Use of words describing the housing, the current or potential residents, or the neighbors or neighborhood in racial or ethnic terms (i.e., **white family home, no Irish**) will create liability under this section.

However, advertisements which are facially neutral will not create liability. Thus, complaints over use of phrases such as **master bedroom, rare find, or desirable neighborhood** should not be filed.

2. **Religion.** Advertisements should not contain an explicit preference, limitation or discrimination on account of religion (i.e., **no Jews, Christian home**). Advertisements which use the legal name of an entity which contains a religious reference (for example, **Roselawn Catholic Home**), or those which contain a religious symbol, (such as **a cross**), standing alone, may indicate a religious preference. However, if such an advertisement includes a disclaimer (such as the statement "This Home does not discriminate on the basis of race, color, religion, national origin, sex, handicap or familial status") it will not violate the Act. Advertisements containing descriptions of properties (**apartment complex with chapel**), or services (**kosher meals available**) do not on their face state a preference for persons likely to make use of those facilities, and are not violations of the Act.

The use of secularized terms or symbols relating to religious holidays such as **Santa Claus, Easter Bunny or St. Valentine's Day** images, or phrases such as **"Merry Christmas", "Happy Easter"**, or the like does not constitute a violation of the Act.

3. **Sex.** Advertisements for single family dwellings or separate units in a multi-family dwelling should contain no explicit preference, limitation or

discrimination based on sex. Use of the term **master bedroom** does not constitute a violation of either the sex

4

discrimination provisions or the race discrimination provisions. Terms such as "**mother-in-law suite**" and "**bachelor apartment**" are commonly used as physical descriptions of housing units and do not violate the Act.

4. **Handicap.** Real estate advertisements should not contain explicit exclusions, limitations, or other indications of discrimination based on handicap (i.e., **no wheelchairs**). Advertisements containing descriptions of properties (**great view, fourth-floor walk-up, walk-in closets**), services or facilities (**jogging trails**), or neighborhoods (**walk to bus-stop**) do not violate the Act. Advertisements describing the conduct required of residents ("**non-smoking**", "**sober**") do not violate the Act. Advertisements containing descriptions of accessibility features are lawful (**wheelchair ramp**).

5. **Familial status.** Advertisements may not state an explicit preference, limitation or discrimination based on familial status. Advertisements may not contain limitations on the number or ages of children, or state a preference for adults, couples or singles. Advertisements describing the properties (**two bedroom, cozy, family room**), services and facilities (**no bicycles allowed**) or neighborhoods (**quiet streets**) are not facially discriminatory and do not violate the Act.



## **SECTION 6**

### **Occupancy Standards**

- a. Fact Sheet: Fair Housing & Occupancy Standards
- b. A Guide for Determining Occupancy Limits based on  
Local Restrictions
- c. Federal Register: Fair Housing Enforcement –  
Occupancy Standards
- d. HUD Memo: Fair Housing Enforcement Policy –  
Occupancy Cases (Keating Memo)

# FACT SHEET: FAIR HOUSING & OCCUPANCY STANDARDS

## What is fair housing?

Fair housing means you can choose where you live free from illegal discrimination. The Fair Housing Act and/or Michigan laws protect people from discrimination in housing based on race, color, religion, sex, national origin, familial status, disability, marital status, age, sexual orientation, gender identity or expression, and source of income (source of income in rental housing only). Fair housing laws protect you when you are looking to rent or buy a home or getting homeowners' or renters' insurance. Fair housing laws protect you after you have housing too.



Fair Housing Center  
of West Michigan

## Occupancy Standards & Familial Status

Landlords, property managers, and condo associations often set rules about how many people can live in a home to protect health, safety, and space; but they need to be careful when making these rules. Fair housing laws protect families with children under 18, and strict occupancy rules can unfairly affect them and illegally limit housing choice. The Fair Housing Act protects against occupancy rules and restrictions that unreasonably keep families with kids from finding a place to live.

Many landlords use the rule “two people per bedroom” or “two heartbeats per room”, but these rules may not always follow fair housing laws. Some 2-bedroom homes can safely fit more than 4 people, depending on their size and layout. The “two people per bedroom” rule has been successfully challenged in some fair housing cases. That’s housing providers should check their rules, policies and practices to make sure that they’re fair and legal.

## What is considered a reasonable occupancy standard?

The Fair Housing Act specifically allows housing providers to adhere to reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling (42 U.S.C. 3607(b)(1)). Such restrictions may include property maintenance codes, zoning codes, minimum floor area requirements, or other similar provisions. These occupancy restrictions often consider the number and size of habitable rooms and/or the overall size and configuration of the unit. If a housing provider allows fewer occupants than would be allowed under the applicable code, then it may be challenged as discrimination against families with children.

## How do I evaluate or set a reasonable occupancy standard?

Occupancy standards should not be more restrictive than local health and safety standards or other restrictions that limit the number of occupants in a dwelling. Occupancy limits are usually based on the size of the unit, focusing on the square footage (SF) of the bedrooms and living areas. These requirements can often be found in the “Property Maintenance Code” or other similar code of the city or township where the property is located. Many cities and townships have adopted the International Property Maintenance Code (IPMC). The chart below details the relevant area requirements under the 2024 IPMC.

**Best practice is to document the source and basis for your occupancy standard.**

### Minimum Area Requirements under the 2024 IPMC Section 404 “Occupancy Limitations”

Space	1-2 occupants	3-5 occupants	6 or more occupants
Living Room	120 SF	120 SF	150 SF
Dining Room	No requirement	80 SF	100 SF
Bedrooms	Every habitable room must be 70 SF minimum and every bedroom occupied by more than 1 person must have 50 SF of floor area for each occupant.		

## What if there is no local occupancy restriction or guidance?

If you confirm with your municipality that there is no relevant local code, then a housing provider could consider the most recent International Property Maintenance Code’s “Occupancy Limits”.

| Please note that this fact sheet is not intended to be used as legal advice. |

# FACT SHEET: FAIR HOUSING & OCCUPANCY STANDARDS

## **Can a housing provider prohibit siblings of different genders from sharing a bedroom?**

No. Under fair housing laws, a housing provider cannot restrict a family based on someone's gender.

## **Can a housing provider tell a single parent that they can't share a bedroom with their child?**

No. A housing provider cannot restrict families based on age or gender, but they may inform the family if any bedrooms can only legally hold one person based on an existing local, State, or Federal restriction.

## **Can a housing provider limit the number of adults that can live together?**

Maybe. In general, a housing provider should not deny applicants based on the number of adults or children in the household. However, a definition of family in an applicable zoning code might limit the number of **unrelated** adults that can live together in a single-family unit. Check your local code.

## **Should a landlord immediately give a Notice to Quit to a family in a 2-bedroom unit just because they had a third child and now have 5 people in the home?**

No. The home may be able to accommodate 5 people. If the home can only legally accommodate 4 people, then it is usually reasonable to give the family at least through the end of their lease, and even up until the child's 2<sup>nd</sup> birthday, to vacate the premises.

### **Resources:**

Fair Housing Enforcement Occupancy Standards; Statement of Policy (Keating Memo), Guide, Calculator  
[www.fhcwm.org/resources](http://www.fhcwm.org/resources)  
[www.fhcwm.org/publications](http://www.fhcwm.org/publications)

The Fair Housing Center acknowledges that this may be a complex area for housing providers; therefore, please feel free to contact us with any questions.

## **FAIR HOUSING BEST PRACTICES IN OCCUPANCY STANDARDS**

- **Regularly review** rules, bylaws, policies or procedures, to ensure compliance with all applicable fair housing laws. Amend as necessary and **communicate** changes with all staff and residents.
- **Ensure that use and occupancy restrictions do not contain any unlawful preference or limitation**, and do not contain limits on the number of children or ages of children (unless otherwise exempt under Housing for Older Persons Act (HOPA)).
- Any **definition of family, or restriction on single family use, should be consistent with fair housing law**, specifically with the Fair Housing Act's definition of familial status and Michigan's Elliott Larsen Civil Rights Act's protections based on marital status and sexual orientation.
- **Limits on the number of allowable occupants should be implemented with caution.** Occupancy standards can be consistent with local health and safety standards or other reasonable governmental restrictions that limit the maximum number of occupants within a dwelling. If a property is not subject to a local or state code, a housing provider may adhere to the International Property Maintenance Code, or the code of a comparable jurisdiction. Document the basis for the standard.
- **The bylaws, policies and procedures should be applied equally** to all persons regardless of race, religion, sex, disability status, etc., and all persons should consistently receive the same quality of treatment.



# **A Guide for Determining Occupancy Limits based on Local Restrictions**



*Produced by the Fair Housing Center of West Michigan*

*Subject to change - Information current as of June 2025*

## **Introduction**

The Fair Housing Center of West Michigan developed this guide to assist condominium associations, landlords, property owners and managers, and others in determining how to set occupancy limitations with consideration of fair housing laws. While health, safety, and capacity concerns influence landlords, property managers, and condominium associations to implement limits on the number of people that can live together, these limits must be implemented in an objective manner that does not unlawfully limit housing for families with children.

This guide has been primarily based on the requirements of the International Property Maintenance Code® (IPMC). The IPMC, a widely used standard, establishes minimum requirements for the maintenance of existing buildings through model code regulations that contain clear and specific property maintenance and property improvement provisions. Chapter 4 "Light, Ventilation and Occupancy Limitations" sets forth requirements to establish the minimum environment for occupiable and habitable buildings by establishing the minimum criteria for light and ventilation and identifying occupancy limitations including minimum room width and area, minimum ceiling height, and restrictions to prevent overcrowding.

*This guide does not constitute legal advice, and does not substitute for contacting the appropriate governing municipality to confirm any applicable occupancy restrictions or regulations.*

## **How do occupancy standards relate to the Fair Housing Act?**

The federal Fair Housing Act and/or Michigan laws protect people from discrimination in housing based on race, color, religion, sex, national origin, familial status, disability, marital status, age, sexual orientation, gender identity or expression, and source of income (source of income in rental housing only). The Fair Housing Act's protections against discrimination on the basis of familial status prohibit restrictive occupancy standards that are used to exclude families with children or that unreasonably limit the ability of families with children to obtain housing.

Many housing providers have employed a general rule occupancy standard of "two people per bedroom", but there is no existing law or guidance that guarantees that such a standard complies with fair housing laws in all circumstances. In fact, in many circumstances, a 2-bedroom unit can accommodate more than 4 people based on its size and layout. The outdated "two people per bedroom" standard has come under heightened scrutiny and has been successfully challenged in an increasing number of cases.

## **What is considered a reasonable occupancy standard?**

The Fair Housing Act specifically allows housing providers to adhere to reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling (42 U.S.C. 3607(b)(1)). These restrictions often appear in property maintenance codes, and take into account factors such as the number and size of habitable rooms, living rooms, and dining rooms, and/or the overall configuration of the unit. If a housing provider allows fewer occupants than would be allowed under the applicable code without just cause, then it could be challenged as discrimination against families with children.

# Step-by-step Guide for Determining Occupancy Limits based on Local Restrictions

## Step 1: Determine which local unit of government covers your property.

In which city, township, village, county, etc. is your property located?

*Note:* The city on a property's mailing address may not actually be the local unit of government. For example, many mailing addresses that include "Grand Rapids, MI" may not actually be located within the Grand Rapids city limits, and in fact have a legal property (parcel) address that is located in a neighboring township, such as Plainfield Township, Alpine Township, Grand Rapids Township, Cascade Township, etc.

*Not sure?* Many county websites have an online Property Search that will identify the unit of government for a specific address. This information often comes from data provided by the County's Treasurer, Assessor, and/or Equalization office. Call your local government to confirm.

## Step 2: Determine whether the local unit of government has a property maintenance code or other code limiting occupancy of a residential home or building.

Contact your local unit of government to inquire about any codes that may limit occupancy. You may also check the government's Code of Ordinances for a property maintenance code.

## Step 3: Review requirements of relevant property maintenance or occupancy codes.

In the absence of a specific code adopted by a government unit, the FHCWM recommends consideration of the "Occupancy Limitations" of the International Property Maintenance Code.

See Appendix A for a guide to the square footage requirements of common property maintenance codes. *Please note:* Appendix A does not address the requirements for efficiency units, which can be found in the applicable code.

## Step 4: Calculate the square footage of the relevant room(s) within each floor plan of the home or building.

Visit <https://fhcwm.org/resources> for a Square Footage Calculator Tool (Set Topic to Occupancy Standards).

## Step 5: Use the square footage information and applicable code information to determine appropriate occupancy limitations.

See Appendix B for examples of floor plan and occupancy calculations.

## Step 6: Document, document, document!

Keep record of all your efforts, documents and contacts to determine and implement an occupancy limit.

## Appendix A

### Minimum Required Floor Area in Square Feet

Area	Bedroom				Living Room			Dining Room**			Kitchen		
# of occupants	1	2	3	4	1-2	3-5	6+	1-2	3-5	6+	1-2	3-5	6+
<b>Code</b>													
<b>2024 IPMC</b>	70	100	150	200	120	120	150	none	80	100	none	none	none
<b>2021 IPMC</b>	70	100	150	200	120	120	150	none	80	100	none	none	none
<b>2018 IPMC</b>	70	100	150	200	120	120	150	none	80	100	none	none	none
<b>2015 IPMC</b>	70	100	150	200	120	120	150	none	80	100	none	none	none
<b>2012 IPMC</b>	70	100	150	200	120	120	150	none	80	100	none	none	none
<b>2009 IPMC*</b>	70	70	70	70	120	120	120	none	none	none	none	none	none
<b>2006 IPMC*</b>	70	70	70	70	120	120	120	none	none	none	none	none	none
<b>2003 IPMC</b>	70	100	150	200	none	120	150	none	80	100	none	none	none
<b>2000 IPMC</b>	70	100	150	200	none	120	150	none	80	100	50	50	60
<b>1996 BOCA</b>	70	100	150	200	none	120	150	none	80	100	50	50	60
<b>1993 BOCA</b>	70	100	150	200	none	120	150	none	80	100	50	50	60
<b>City of Walker</b>	70	100	150	200	150	200	300	50	80	150	none	none	none

#### KEY:

**IPMC** International Property Maintenance Code

**BOCA** BOCA National Property Maintenance Code

**NOTE: Sleeping area.** Under the IPMC, sleeping areas shall comply with Section 404.4. The minimum occupancy area required for living rooms and dining rooms shall not be included as sleeping area in determining the minimum occupancy area for sleeping purposes; which may infer that any floor area in excess of the required minimum may be counted as sleeping area if it also meets the requirements for sleeping areas. Check with your code official for a determination on whether or not there is additional sleeping area in a living room, dining room or den.

**\*Code official discretion:** The 2006 and 2009 IPMCs establish baseline minimum room area requirements for bedrooms and living rooms regardless of the number of occupants, but do not specify per person area requirements. Instead, these versions of the IPMC state the following regarding overcrowding: the number of persons occupying a dwelling unit shall not create conditions that, in the opinion of the code official, endanger the life, health, safety or welfare of the occupants.

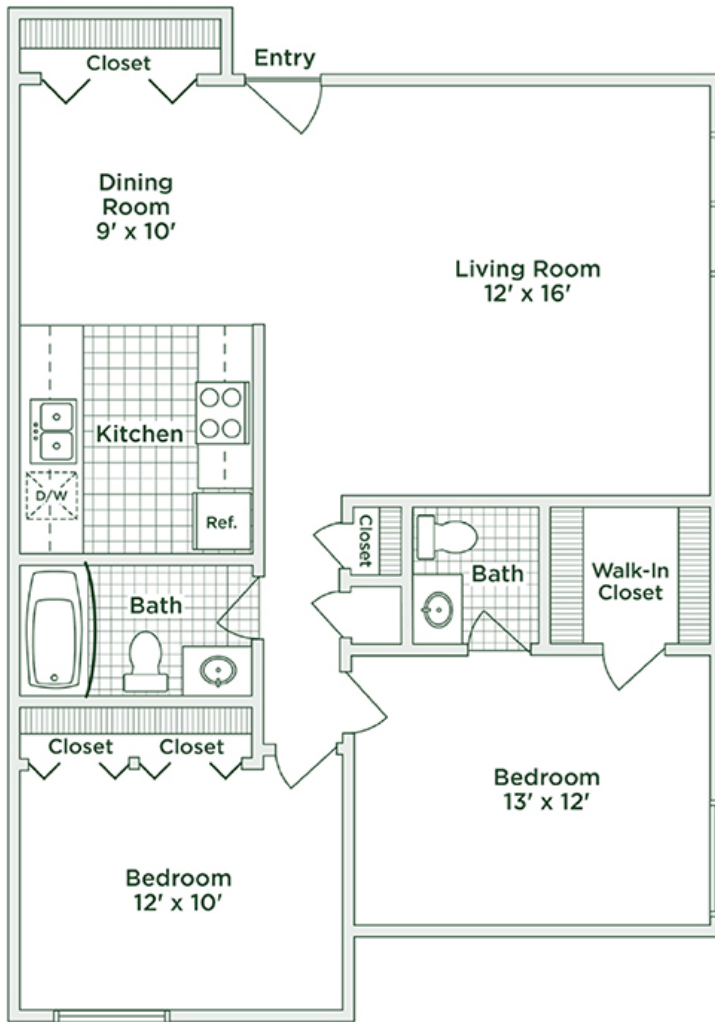
**\*\*Combined spaces.** Combined living room and dining room spaces shall comply with the requirements of this table if the total area is equal to that required for separate rooms and if the space is located so as to function as a combination living room/dining room (1993 BOCA, 1996 BOCA, 2000 IPMC, 2003 IPMC, 2012 IPMC, 2015 IPMC, 2018 IPMC, 2021 IPMC, 2024 IPMC).

For example, this means that under the 2024 IPMC a combined living room/dining room would need to be at least 200 square feet (120 square feet + 80 square feet) for 3 - 5 occupants.

## Appendix B

### Example 1: Two Bedroom Unit with Separate Living Room and Dining Room

**Applicable Code:** 2024 International Property Maintenance Code



#### Square Footage Calculations:

Room	Dimensions	Square Footage	Allowable Occupants
Bedroom	12' x 10'	120 sq. ft.	2
Bedroom	13' x 12'	156 sq. ft.	3
Dining Room	9' x 10'	90 sq. ft.	3 - 5
Living Room	12' x 16'	192 sq. ft.	6 or more

#### Determination of Occupancy Limit:

5 occupants

**Explanation:** while the living room is large enough to accommodate 6 or more occupants, there is only sufficient sleeping area for 5 occupants (2 occupants in the first bedroom and 3 occupants in the second bedroom) and there is also only sufficient dining room space for up to 5 occupants.



## Appendix B

### Example 2: One Bedroom Unit with Combined Living Room and Dining Room

**Applicable Code:** 2024 International Property Maintenance Code



#### Square Footage Calculations:

Room	Dimensions	Square Footage	Allowable Occupants
Bedroom	11'7" x 13'10"	160 sq. ft.	3
Combined Living Room/Dining Room (Great Room)	19'7" x 13'	254 sq. ft.	6 or more

#### Determination of Occupancy Limit:

3 occupants

**Explanation:** while the living room/dining room is large enough to accommodate 6 or more occupants, there is only sufficient sleeping area for 3 occupants.

*Preventing and eliminating illegal housing discrimination, ensuring equal housing opportunity, and promoting inclusive communities through education, outreach, research, advocacy, and enforcement.*



## Fair Housing Center of West Michigan

**20 Hall Street SE**

**Grand Rapids, MI 49507**

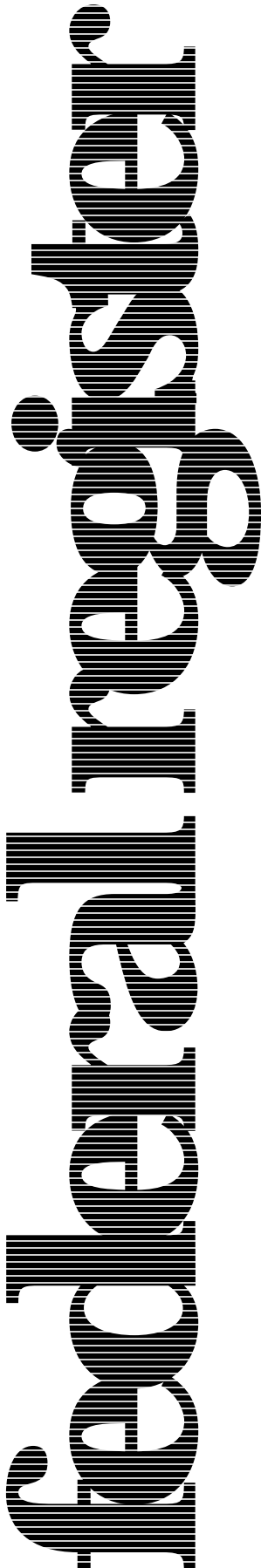
**Tel: (616) 451-2980**

**Fax: (616) 451-2657**

**E-mail: [contact-us@fhcwm.org](mailto:contact-us@fhcwm.org)**

**Website: [www.fhcwm.org](http://www.fhcwm.org)**

*Please note that this guide book is not intended to be used as legal advice and does not substitute for contacting the appropriate governing municipality to confirm any applicable occupancy restrictions or regulations.*



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Friday  
December 18, 1998

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**Part IV**

**Department of  
Housing and Urban  
Development**

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**Fair Housing Enforcement—Occupancy  
Standards Statement of Policy; Notice**

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4405-N-01]

## Fair Housing Enforcement—Occupancy Standards Notice of Statement of Policy

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice of statement of policy.

**SUMMARY:** This statement of policy advises the public of the factors that HUD will consider when evaluating a housing provider's occupancy policies to determine whether actions under the provider's policies may constitute discriminatory conduct under the Fair Housing Act on the basis of familial status (the presence of children in a family). Publication of this notice meets the requirements of the Quality Housing and Work Responsibility Act of 1998.

**DATES:** Effective date: December 18, 1998.

**FOR FURTHER INFORMATION CONTACT:** Sara Pratt, Director, Office of Investigations, Office of Fair Housing and Equal Opportunity, Room 5204, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-2290 (not a toll-free number). For hearing- and speech-impaired persons, this telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339 (toll-free).

### SUPPLEMENTARY INFORMATION:

#### Statutory and Regulatory Background

Section 589 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, 112 Stat. 2461, approved October 21, 1998, "QHWRA") requires HUD to publish a notice in the **Federal Register** that advises the public of the occupancy standards that HUD uses for enforcement purposes under the Fair Housing Act (42 U.S.C. 3601-3619). Section 589 requires HUD to publish this notice within 60 days of enactment of the QHWRA, and states that the notice will be effective upon publication. Specifically, section 589 states, in relevant part, that:

[T]he specific and unmodified standards provided in the March 20, 1991, Memorandum from the General Counsel of [HUD] to all Regional Counsel shall be the policy of [HUD] with respect to complaints of discrimination under the Fair Housing Act . . . on the basis of familial status which involve an occupancy standard established by a housing provider.

The Fair Housing Act prohibits discrimination in any aspect of the sale,

rental, financing or advertising of dwellings on the basis of race, color, religion, national origin, sex or familial status (the presence of children in the family). The Fair Housing Act also provides that nothing in the Act "limits the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." The Fair Housing Act gave HUD responsibility for implementation and enforcement of the Act's requirements. The Fair Housing Act authorizes HUD to receive complaints alleging discrimination in violation of the Act, to investigate these complaints, and to engage in efforts to resolve informally matters raised in the complaint. In cases where the complaint is not resolved, the Fair Housing Act authorizes HUD to make a determination of whether or not there is reasonable cause to believe that discrimination has occurred. HUD's regulations, implementing the Fair Housing Act (42 U.S.C. 3614) are found in 24 CFR part 100.

In 1991, HUD's General Counsel, Frank Keating, determined that some confusion existed because of the absence of more detailed guidance regarding what occupancy restrictions are reasonable under the Act. To address this confusion, General Counsel Keating issued internal guidance to HUD Regional Counsel on factors that they should consider when examining complaints filed with HUD under the Fair Housing Act, to determine whether or not there is reasonable cause to believe discrimination has occurred.

#### This Notice

Through this notice HUD implements section 589 of the QHWRA by adopting as its policy on occupancy standards, for purposes of enforcement actions under the Fair Housing Act, the standards provided in the Memorandum of General Counsel Frank Keating to Regional Counsel dated March 20, 1991, attached as Appendix A.

**Authority:** 42 U.S.C. 3535(d), 112 Stat. 2461.

Dated: December 14, 1998.

**Eva M. Plaza,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

#### Appendix A.

March 20, 1991.

MEMORANDUM FOR: All Regional Counsel  
FROM: Frank Keating, G  
SUBJECT: Fair Housing Enforcement Policy:  
Occupancy Cases

On February 21, 1991, I issued a memorandum designed to facilitate your review of cases involving occupancy policies under the Fair Housing Act. The

memorandum was based on my review of a significant number of such cases and was intended to constitute internal guidance to be used by Regional Counsel in reviewing cases involving occupancy restrictions. It was not intended to create a definitive test for whether a landlord or manager would be liable in a particular case, nor was it intended to establish occupancy policies or requirements for any particular type of housing.

However, in discussions within the Department, and with the Department of Justice and the public, it is clear that the February 21 memorandum has resulted in a significant misunderstanding of the Department's position on the question of occupancy policies which would be reasonable under the Fair Housing Act. In this respect, many people mistakenly viewed the February 21 memorandum as indicating that the Department was establishing an occupancy policy which it would consider reasonable in any fair housing case, rather than providing guidance to Regional Counsel on the evaluation of evidence in familial status cases which involve the use of an occupancy policy adopted by a housing provider.

For example, there is a HUD Handbook provision regarding the size of the unit needed for public housing tenants. See Handbook 7465.1 REV-2, Public Housing Occupancy Handbook: Admission, revised section 5-1 (issued February 12, 1991). While that Handbook provision states that HUD does not specify the number of persons who may live in public housing units of various sizes, it provides guidance about the factors public housing agencies may consider in establishing reasonable occupancy policies. Neither this memorandum nor the memorandum of February 21, 1991 overrides the guidance that Handbook provides about program requirements.

As you know, assuring Fair Housing for all is one of Secretary Kemp's top priorities. Prompt and vigorous enforcement of all the provisions of the Fair Housing Act, including the protections in the Act for families with children, is a critical responsibility of mine and every person in the Office of General Counsel. I expect Headquarters and Regional Office staff to continue their vigilant efforts to proceed to formal enforcement in all cases in which there is reasonable cause to believe that a discriminatory housing practice under the Act has occurred or is about to occur. This is particularly important in cases where occupancy restrictions are used to exclude families with children or to unreasonably limit the ability of families with children to obtain housing.

In order to assure that the Department's position in the area of occupancy policies is fully understood, I believe that it is imperative to articulate more fully the Department's position on reasonable occupancy policies and to describe the approach that the Department takes in its review of occupancy cases.

Specifically, the Department believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act. The Department of Justice has advised us that this is the

general policy it has incorporated in consent decrees and proposed orders, and such a general policy also is consistent with the guidance provided to housing providers in the HUD handbook referenced above.

However, the reasonableness of any occupancy policy is rebuttable, and neither the February 21 memorandum nor this memorandum implies that the Department will determine compliance with the Fair Housing Act based *solely* on the number of people permitted in each bedroom. Indeed, as we stated in the final rule implementing the Fair Housing Amendments Act of 1988, the Department's position is as follows:

[T]here is nothing in the legislative history which indicates any intent on the part of Congress to provide for the development of a national occupancy code. \* \* \*

On the other hand, there is no basis to conclude that Congress intended that an owner or manager of dwellings would be unable to restrict the number of occupants who could reside in a dwelling. Thus, the Department believes that in appropriate circumstances, owners and managers may develop and implement reasonable occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit. In this regard, it must be noted that, in connection with a complaint alleging discrimination on the basis of familial status, the Department will carefully examine any such nongovernmental restriction to determine whether it operates unreasonably to limit or exclude families with children.

24 C.F.R. Chapter I, Subchapter A. Appendix I at 566-67 (1990).

Thus, in reviewing occupancy cases, HUD will consider the size and number of bedrooms and other special circumstances. The following principles and hypothetical examples should assist you in determining whether the size of the bedrooms or special circumstances would make an occupancy policy unreasonable.

#### *Size of bedrooms and unit*

Consider two theoretical situations in which a housing provider refused to permit a family of five to rent a two-bedroom dwelling based on a "two people per bedroom" policy. In the first, the complainants are a family of five who applied to rent an apartment with two large bedrooms and spacious living areas. In the second, the complainants are a family of five who applied to rent a mobile home space on

which they planned to live in a small two-bedroom mobile home. Depending on the other facts, issuance of a charge might be warranted in the first situation, but not in the second.

The size of the bedrooms also can be a factor suggesting that a determination of no reasonable cause is appropriate. For example, if a mobile home is advertised as a "two-bedroom" home, but one bedroom is extremely small, depending on all the facts, it could be reasonable for the park manager to limit occupancy of the home of two people.

#### *Age of children*

The following hypotheticals involving two housing providers who refused to permit three people to share a bedroom illustrate this principle. In the first, the complainants are two adult parents who applied to rent a one-bedroom apartment with their infant child, and both the bedroom and the apartment were large. In the second, the complainants are a family of two adult parents and one teenager who applied to rent a one-bedroom apartment. Depending on the other facts, issuance of a charge might be warranted in the first hypothetical, but not in the second.

#### *Configuration of unit*

The following imaginary situations illustrate special circumstances involving unit configuration. Two condominium associations each reject a purchase by a family of two adults and three children based on a rule limiting sales to buyers who satisfy a "two people per bedroom" occupancy policy. The first association manages a building in which the family of the five sought to purchase a unit consisting of two bedrooms plus a den or study. The second manages a building in which the family of five sought to purchase a two-bedroom unit which did not have a study or den. Depending on the other facts, a charge might be warranted in the first situation, but not in the second.

#### *Other physical limitations of housing*

In addition to physical considerations such as the size of each bedroom and the overall size and configuration of the dwelling, the Department will consider limiting factors identified by housing providers, such as the capacity of the septic, sewer, or other building systems.

#### *State and local law*

If a dwelling is governed by State or local governmental occupancy requirements, and the housing provider's occupancy policies reflect those requirements, HUD would consider the governmental requirements as a special circumstance tending to indicate that the housing provider's occupancy policies are reasonable.

#### *Other relevant factors*

Other relevant factors supporting a reasonable cause recommendation based on the conclusion that the occupancy policies are pretextual would include evidence that the housing provider has: (1) made discriminatory statements; (2) adopted discriminatory rules governing the use of common facilities; (3) taken other steps to discourage families with children from living in its housing; or (4) enforced its occupancy policies only against families with children. For example, the fact that a development was previously marketed as an "adults only" development would militate in favor of issuing a charge. This is an especially strong factor if there is other evidence suggesting that the occupancy policies are a pretext for excluding families with children.

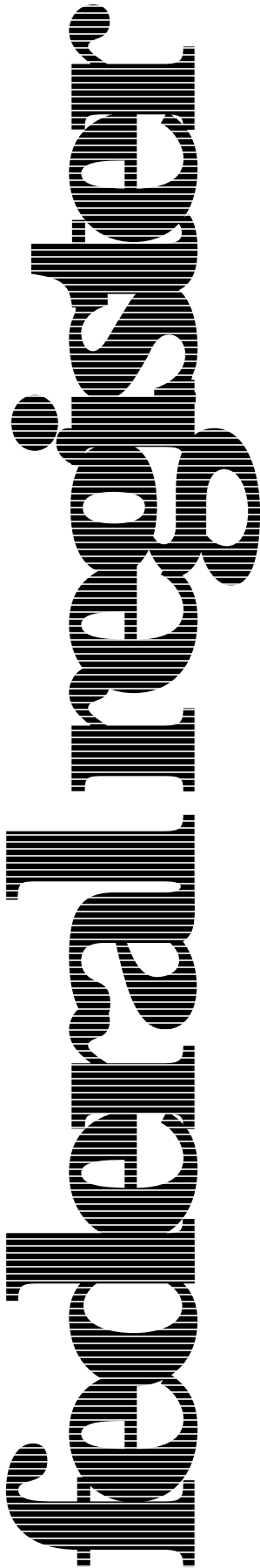
An occupancy policy which limits the number of *children* per unit is less likely to be reasonable than one which limits the number of *people* per unit.

Special circumstances also may be found where the housing provider limits the total number of dwellings he or she is willing to rent to families with children. For example, assume a landlord owns a building of two-bedroom units, in which a policy of four people per unit is reasonable. If the landlord adopts a four person per unit policy, but refuses to rent to a family of two adults and two children because twenty of the thirty units already are occupied by families with children, a reasonable cause recommendation would be warranted.

If your review of the evidence indicates that these or other special circumstances are present, making application of a "two people per bedroom" policy unreasonably restrictive, you should prepare a reasonable cause determination. The Executive Summary should explain the special circumstances which support your recommendation.

[FR Doc. 98-33568 Filed 12-17-98; 8:45 am]

BILLING CODE 4210-28-M



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Tuesday  
December 22, 1998

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**Part V**

**Department of  
Housing and Urban  
Development**

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Fair Housing Enforcement—Occupancy  
Standards; Statement of Policy; Notice;  
Republication

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**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

[Docket No. FR-4405-N-01]

**Fair Housing Enforcement—  
Occupancy Standards; Notice of  
Statement of Policy**

**Note:** This document, FR Doc. 98-33568, was originally published on December 18, 1998 at 63 FR 70256-70257. It is being republished to reproduce the camera copy of the appendix furnished by the agency.

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice of Statement of Policy.

**SUMMARY:** This statement of policy advises the public of the factors that HUD will consider when evaluating a housing provider's occupancy policies to determine whether actions under the provider's policies may constitute discriminatory conduct under the Fair Housing Act on the basis of familial status (the presence of children in a family). Publication of this notice meets the requirements of the Quality Housing and Work Responsibility Act of 1998.

**DATES:** Effective date: December 18, 1998.

**FOR FURTHER INFORMATION CONTACT:** Sara Pratt, Director, Office of Investigations, Office of Fair Housing and Equal Opportunity, Room 5204, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-2290 (not a toll-free number). For hearing- and speech-impaired persons, this telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339 (toll-free).

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[T]he specific and unmodified standards provided in the March 20, 1991, Memorandum from the General Counsel of [HUD] to all Regional Counsel shall be the policy of [HUD] with respect to complaints of discrimination under the Fair Housing Act \* \* \* on the basis of familial status which involve an occupancy standard established by a housing provider.

The Fair Housing Act prohibits discrimination in any aspect of the sale, rental, financing or advertising of dwellings on the basis of race, color, religion, national origin, sex or familial status (the presence of children in the family). The Fair Housing Act also provides that nothing in the Act "limits the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." The Fair Housing Act gave HUD responsibility for implementation and enforcement of the Act's requirements. The Fair Housing Act authorizes HUD to receive complaints alleging discrimination in violation of the Act, to

investigate these complaints, and to engage in efforts to resolve informally matters raised in the complaint. In cases where the complaint is not resolved, the Fair Housing Act authorizes HUD to make a determination of whether or not there is reasonable cause to believe that discrimination has occurred. HUD's regulations, implementing the Fair Housing Act (42 U.S.C. 3614) are found in 24 CFR part 100.

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**Authority:** 42 U.S.C. 3535(d), 112 Stat. 2461.

Dated: December 14, 1998.

**Eva M. Plaza,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

**BILLING CODE 4210-28-P**



U. S. Department of Housing and Urban Development  
Washington, D.C. 20410-0500

## APPENDIX A

March 20, 1991

OFFICE OF GENERAL COUNSEL

MEMORANDUM FOR: All Regional Counsel

FROM: /s/ Frank Keating, G

SUBJECT: Fair Housing Enforcement Policy: Occupancy Cases

On February 21, 1991, I issued a memorandum designed to facilitate your review of cases involving occupancy policies under the Fair Housing Act. The memorandum was based on my review of a significant number of such cases and was intended to constitute internal guidance to be used by Regional Counsel in reviewing cases involving occupancy restrictions. It was not intended to create a definitive test for whether a landlord or manager would be liable in a particular case, nor was it intended to establish occupancy policies or requirements for any particular type of housing.

However, in discussions within the Department, and with the Department of Justice and the public, it is clear that the February 21 memorandum has resulted in a significant misunderstanding of the Department's position on the question of occupancy policies which would be reasonable under the Fair Housing Act. In this respect, many people mistakenly viewed the February 21 memorandum as indicating that the Department was establishing an occupancy policy which it would consider reasonable in any fair housing case, rather than providing guidance to Regional Counsel on the evaluation of evidence in familial status cases which involve the use of an occupancy policy adopted by a housing provider.

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For example, there is a HUD Handbook provision regarding the size of the unit needed for public housing tenants. See Handbook 7465.1 REV-2, Public Housing Occupancy Handbook: Admission, revised section 5-1 (issued February 12, 1991). While that Handbook provision states that HUD does not specify the number of persons who may live in public housing units of various sizes, it provides guidance about the factors public housing agencies may consider in establishing reasonable occupancy policies. Neither this memorandum nor the memorandum of February 21, 1991 overrides the guidance that Handbook provides about program requirements.



As you know, assuring Fair Housing for all is one of Secretary Kemp's top priorities. Prompt and vigorous enforcement of all the provisions of the Fair Housing Act, including the protections in the Act for families with children, is a critical responsibility of mine and every person in the Office of General Counsel. I expect Headquarters and Regional Office staff to continue their vigilant efforts to proceed to formal enforcement in all cases in which there is reasonable cause to believe that a discriminatory housing practice under the Act has occurred or is about to occur. This is particularly important in cases where occupancy restrictions are used to exclude families with children or to unreasonably limit the ability of families with children to obtain housing.

In order to assure that the Department's position in the area of occupancy policies is fully understood, I believe that it is imperative to articulate more fully the Department's position on reasonable occupancy policies and to describe the approach that the Department takes in its review of occupancy cases.

Specifically, the Department believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act. The Department of Justice has advised us that this is the general policy it has incorporated in consent decrees and proposed orders, and such a general policy also is consistent with the guidance provided to housing providers in the HUD handbook referenced above. However, the reasonableness of any occupancy policy is rebuttable, and neither the February 21 memorandum nor this memorandum implies that the Department will determine compliance with the Fair Housing Act based solely on the number of people permitted in each bedroom. Indeed, as we stated in the final rule implementing the Fair Housing Amendments Act of 1988, the Department's position is as follows:

[T]here is nothing in the legislative history which indicates any intent on the part of Congress to provide for the development of a national occupancy code. . . .

On the other hand, there is no basis to conclude that Congress intended that an owner or manager of dwellings would be unable to restrict the number of occupants who could reside in a dwelling. Thus, the Department believes that in appropriate circumstances, owners and managers may develop and implement reasonable occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit. In this regard, it must be noted that, in connection with a complaint alleging discrimination on the basis of familial status, the Department will carefully examine any such

nongovernmental restriction to determine whether it operates unreasonably to limit or exclude families with children.

24 C.F.R. Chapter I, Subchapter A. Appendix I at 566-67 (1990).

Thus, in reviewing occupancy cases, HUD will consider the size and number of bedrooms and other special circumstances. The following principles and hypothetical examples should assist you in determining whether the size of the bedrooms or special circumstances would make an occupancy policy unreasonable.

#### Size of bedrooms and unit

Consider two theoretical situations in which a housing provider refused to permit a family of five to rent a two-bedroom dwelling based on a "two people per bedroom" policy. In the first, the complainants are a family of five who applied to rent an apartment with two large bedrooms and spacious living areas. In the second, the complainants are a family of five who applied to rent a mobile home space on which they planned to live in a small two-bedroom mobile home. Depending on the other facts, issuance of a charge might be warranted in the first situation, but not in the second.

The size of the bedrooms also can be a factor suggesting that a determination of no reasonable cause is appropriate. For example, if a mobile home is advertised as a "two-bedroom" home, but one bedroom is extremely small, depending on all the facts, it could be reasonable for the park manager to limit occupancy of the home to two people.

#### Age of children

The following hypotheticals involving two housing providers who refused to permit three people to share a bedroom illustrate this principle. In the first, the complainants are two adult parents who applied to rent a one-bedroom apartment with their infant child, and both the bedroom and the apartment were large. In the second, the complainants are a family of two adult parents and one teenager who applied to rent a one-bedroom apartment. Depending on the other facts, issuance of a charge might be warranted in the first hypothetical, but not in the second.

#### Configuration of unit

The following imaginary situations illustrate special circumstances involving unit configuration. Two condominium associations each reject a purchase by a family of two adults and three children based on a rule limiting sales to buyers who satisfy a "two people per bedroom" occupancy policy. The first association manages a building in which the family of the five sought to purchase a unit consisting of two bedrooms plus a den or

study. The second manages a building in which the family of five sought to purchase a two-bedroom unit which did not have a study or den. Depending on the other facts, a charge might be warranted in the first situation, but not in the second.

#### Other physical limitations of housing

In addition to physical considerations such as the size of each bedroom and the overall size and configuration of the dwelling, the Department will consider limiting factors identified by housing providers, such as the capacity of the septic, sewer, or other building systems.

#### State and local law

If a dwelling is governed by State or local governmental occupancy requirements, and the housing provider's occupancy policies reflect those requirements, HUD would consider the governmental requirements as a special circumstance tending to indicate that the housing provider's occupancy policies are reasonable.

#### Other relevant factors

Other relevant factors supporting a reasonable cause recommendation based on the conclusion that the occupancy policies are pretextual would include evidence that the housing provider has: (1) made discriminatory statements; (2) adopted discriminatory rules governing the use of common facilities; (3) taken other steps to discourage families with children from living in its housing; or (4) enforced its occupancy policies only against families with children. For example, the fact that a development was previously marketed as an "adults only" development would militate in favor of issuing a charge. This is an especially strong factor if there is other evidence suggesting that the occupancy policies are a pretext for excluding families with children.

An occupancy policy which limits the number of children per unit is less likely to be reasonable than one which limits the number of people per unit.

Special circumstances also may be found where the housing provider limits the total number of dwellings he or she is willing to rent to families with children. For example, assume a landlord owns a building of two-bedroom units, in which a policy of four people per unit is reasonable. If the landlord adopts a four person per unit policy, but refuses to rent to a family of two adults and two children because twenty of the thirty units already are occupied by families with children, a reasonable cause recommendation would be warranted.

If your review of the evidence indicates that these or other special circumstances are present, making application of a "two people per bedroom" policy unreasonably restrictive, you should prepare a reasonable cause determination. The Executive Summary should explain the special circumstances which support your recommendation.

[FR Doc. 98-33568 Filed 12-17-98; 8:45 am]

BILLING CODE BILLING CODE 4210-28-C