

Housing Rights for People with Disabilities

by Tracy A. Miller, Access to Independence Inc.

Introduction

People with disabilities face a challenge finding decent, affordable, and accessible housing. Federal laws – Section 504 of the Rehabilitation Act of 1973, the Fair Housing Amendments (FHA) Act of 1988 and the Americans with Disabilities Act (ADA) - have increased the housing opportunities for people with disabilities. The laws establish certain requirements to make all housing and housing-related services more accessible.

The FHA is different from previous fair housing laws which required that everyone be treated the same. The FHA requires landlords to work with renters who have disabilities to address their needs on a case by case basis. This flexibility is necessary because disabilities are as individual as the people who live with them.

This article explains the major protections against housing discrimination for renters with disabilities.

Asking About Disabilities

Landlords cannot inquire whether a prospective tenant, guest, or associate of a tenant has any type of disability, and cannot ask about the nature or severity of a disability. The exception is for housing that is specifically designated for people with disabilities, where inquiries can be made to determine eligibility. Landlords can also inquire whether a prospective tenant may need specific accommodations, if they ask this question of all people applying for housing.

Modifications at the Renter's Expense

Every landlord must permit renters with disabilities to make reasonable modifications to rental property at the renter's expense. "Reasonable" means any modification necessary for the renter to fully use and enjoy the housing.

Tenants needing modifications must first get the landlord's permission before making the changes. Landlords can require that modifications be made appropriately: for example all modifications should comply with local housing codes. They can also request third-party verification that the tenant meets the definition of a person with a disability and that the modification or accommodation is necessary for the person to use and enjoy the premises.

Common examples of reasonable modifications include installing ramps and grab bars. More extensive modifications could include building ramps, widening doorways or remodeling kitchens and bathrooms for greater accessibility. Landlords can require tenants who make changes to restore interior changes when they move out. However, landlords must permit modifications to remain if they don't interfere with other renter's use and enjoyment of the housing. For example, it would be unreasonable to ask that widened doorways be made narrow again. Landlords cannot require that exterior changes, such as ramps, be removed when the tenant moves out.

Finally, landlords may require a tenant to pay money into an escrow account to restore the apartment to its original condition if extensive modifications are planned. However, most modifications are relatively minor, and often even extensive modifications for accessibility make an apartment more attractive to other renters - particularly those with accessibility needs. In many cases, it is to the landlord's advantage to leave modifications in place and try to market the unit to another tenant with accessibility needs.

Modifications at the Landlord's Expense

In some cases, landlords must pay to modify part or all of a structure. For example, in new construction, Wisconsin Open Housing Law requires that landlords install levered door handles or single-lever faucet controls at no cost at the request of a tenant with a disability. Under Section 504 of the Rehabilitation Act of 1973, housing that is subsidized through federal or other public sources must be made accessible at no cost to the renter, unless the landlord can show an undue financial or administrative burden.

Public and common use areas of buildings, such as lobbies, swimming pools, community rooms, and playgrounds, may fall under the public accommodation requirements of the ADA, particularly in newly constructed or renovated housing.

Remodeling at the owner's expense may also be required for newer housing that does not comply with the basic accessibility requirements of the law as part of the legal remedy for noncompliance. (See section below for more information on the accessibility requirements for new construction.)

Accommodations in Rules, Policies, and Procedures

Landlords must make reasonable accommodations in rules, policies, practices, and services if necessary for a disabled person to use and enjoy housing. Upon the request of a tenant with a disability, landlords may be required to take actions such as the following: changing a no-pets policy to allow service and support animals; providing reserved parking close to ramps or accessible entrances; providing help reading the lease or other written materials for someone with a visual or reading disability; providing written materials in other formats or giving verbal notice when rent is due or other information is being communicated; meeting renters with disabilities at accessible locations to conduct business, (for example, if the rental office is not accessible, the landlord must meet a disabled renter elsewhere to show an apartment, collect rent, or sign a rental contract); delaying eviction of a tenant with mental illness to allow them to seek counseling.

Federally subsidized housing providers have even greater obligations to accommodate people with disabilities, just as they are more responsible for the cost of accessibility modifications. Section 504 of the Rehabilitation Act of 1973 requires access for people with disabilities in all programs and services that receive federal funding. The ADA further ensures access to housing related services. (See below.)

The ultimate test of whether or not an accommodation is reasonable: Does the benefit of continued housing for the tenant outweigh the burden and cost to the landlord? A good faith effort must be made to modify rules and policies to serve renters with disabilities. Help with negotiating reasonable accommodations is available through Access to Independence, Inc. (See contact information below.)

Accessibility in Newer Housing

Under the Fair Housing Act, architects, developers and owners must design and construct new multifamily housing to include seven basic features of adaptable design. Multifamily housing is defined under FHA as housing with four or more attached units. The requirements took effect in March of 1991. (Wisconsin law defines multifamily housing as three or more attached units, and also requires increasing accessibility when housing is remodeled - see section below.) The seven basic features of access are required in the ground floor of all buildings without elevators, and all other floors if a building has an elevator.

General design requirements for buildings built since March of 1991 are:

- At least one building entrance must be accessible to a person using a wheelchair and on an accessible route.
- Public and common use areas of buildings such as lobbies, rental offices, recreation areas, laundry rooms, and playgrounds, must be accessible.
- All doorways and hallways must be wide enough to allow passage of a person using a wheelchair.
- Design requirements for individual housing units are:
 - An accessible route must be provided into and through the unit.
 - Electrical switches, outlets, and environmental controls such as intercoms and thermostats must be in accessible locations.
 - Bathroom walls must have blocking to allow for later installation of grab bars if needed.
 - Kitchens and bathrooms must have sufficient space for a person using a wheelchair to maneuver.

State of Wisconsin Open Housing Law

The state requires accessibility features to be included in new construction in dwelling units of three or more living units, as well as in public and common use areas. In addition, when remodeling or adding to a building, the state requires owners to increase accessibility proportionate to the floor space being remodeled or added as follows:

- More than 50% - Entire building must comply.
- 25% to 50% - The area being remodeled must comply.
- Less than 25% - If it involves work on interior doors, entrances, exits, bathrooms or toilet rooms, then those features must comply with accessibility requirements.

In addition, the state law requires landlords to make the following modifications upon request at no cost to the tenant with a disability in properties built since 1993:

- Replacing doorknobs with levered door handles.
- Installing single-lever faucet controls at sinks or tubs.

The Americans with Disabilities Act

The ADA does not directly cover housing, but keep in mind that it does pertain to public portions of private housing such as rental offices, and to housing-related services, such as those provided by a Realtor.

Conclusion

In summary, housing providers must make a good faith effort to meet home seekers with disabilities halfway. People with disabilities are the experts when it comes to the modifications and accommodations that they may need. These laws seek to give people with disabilities the same rights enjoyed by the rest of society.

People with disabilities interested in learning more about fair housing or surveying housing for accessibility should contact Access to Independence, Inc.

Resource List of Agencies

Access to Independence Inc.

301 S. Livingston Street Suite 200

Madison, WI 53703

(608) 242-8484 or 1-800-362-9877 (Voice)

(608) 242-8485 (TTY)

(608) 242-0383 (Fax)

Email: info@accesstoind.org

Services cover Dane, Green, Columbia, and Dodge Counties. Provides assistance locating housing, advocacy, negotiating modifications and accommodations, technical assistance, resource materials, and training on accessibility and fair housing.

Metropolitan Milwaukee Fair Housing Council

600 East Mason Street Suite 401

Milwaukee, WI 53202

Provides fair housing services including complaint analysis, investigation and access to legal assistance for people in Wisconsin.

General number: (414) 278-1240 Fax: (414) 278-8033

<http://www.fairhousingwisconsin.com/>

The toll-free intake number for all potential fair housing complaints or questions state wide is: 1-877-647-3247.

The Fair Housing Program of Greater Madison

600 Williamson Street Suite L-4

Madison, WI 53704

Phone (608) 257-0853

Fax (608) 257144

Email fhpgm@aol.com

An affiliate of the Metropolitan Milwaukee Fair Housing Council, The Fair Housing Program provides education and training, outreach presentations, and general information on Fair Housing in Madison, Dane County, and surrounding areas.

The Tenant Resource Center

1202 Williamson Street Suite A

Madison, WI 53703

Phone (Inside Dane County): (608) 257-0006

Walk-In: 1202 Williamson Street, Suite A

Hours: 9:00 AM - 6:00 PM, M-F

Toll-free (Outside Dane County): (877) 238-RENT (7368)

Hours: 10:00 AM - 4:00 PM, M-F

<http://www.tenantresourcecenter.org/>

Provides training and education, resource materials, counseling on landlord-tenant problems. Housing Mediation Service (a joint project of TRC and the Madison Area Apartment Association.) Publishes comprehensive "Tenant's Rights in Wisconsin" handbooks for both Landlords and Tenants.

Portions of this article first appeared in *Tenant Times*, the newsletter of the Tenant Resource Center, and in TRC's handbook *Tenant's Rights in Wisconsin*.

Reprints are available: contact Access to Independence, Inc.

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