

PROVIDING ACCESSIBLE HOUSING FOR PERSONS
WITH DISABILITIES:

New Construction Provisions of the Fair Housing Act and Section 504 of the Rehabilitation Act



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NOTE: *This publication is intended to serve as a useful overview, reference and guide for understanding the new construction requirements of two federal laws, the Fair Housing Act and Section 504 of the Rehabilitation Act. The outline is not and should not be considered legal advice, nor should it be relied upon by developers, architects and other building professionals in making design and/or construction decisions.*

Such decisions require a more comprehensive understanding of the requirements and, as appropriate, consultation with a building professional with expertise on new construction/accessibility issues. Access Living thanks Alison McKay, a summer law clerk, for her significant work on this publication.

This outline is available in alternative formats upon request. Please call (312) 640-2100 (voice) or (312) 640-2102 (TTY) for assistance in this regard.

SECTION ONE:

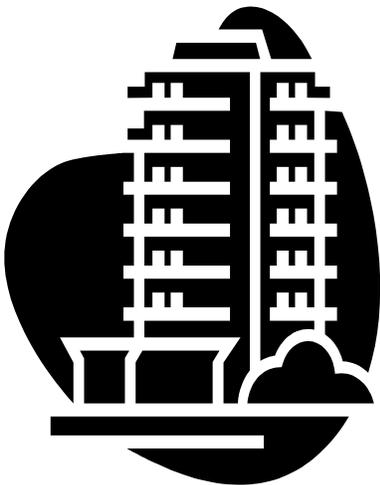
THE FAIR HOUSING ACT

What is the **purpose** of the New Construction Provisions of the Fair Housing Act?

The **Fair Housing Act**, when originally passed in 1968, prohibited housing discrimination based on **race, color, religion, gender, and national origin**.

The **Fair Housing Amendments Act**, passed in 1988, modified the original Act by prohibiting discrimination based on **disability and familial status**.

The new Act promised to **reverse the discriminatory exclusion** of people with disabilities from housing **and their concomitant segregation and isolation** in institutions and nursing homes.

**What does the Act require?**

Among other things, the Act requires that new multi-family housing provide **at least a minimal level of accessibility** to persons with disabilities.

The Act gives a pass to existing buildings; that is, the Act does **not mandate affirmative improvements to existing buildings** to make them accessible, for fear it would be too burdensome and costly.

Hence, the Act's goal of ensuring accessible housing rests largely on new construction.



The Act's New Construction Provisions apply to:

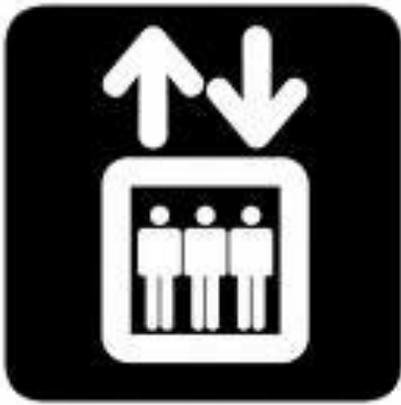
New buildings with 4 or more units
(e.g., apartment buildings, condominium buildings) **first occupied on or after March 13, 1991.**



Note: The Act **does not apply** to single family homes, multistory townhouses, duplexes, or triplexes.



Must new multi-family buildings have an **elevator**?



An elevator is **not** required.

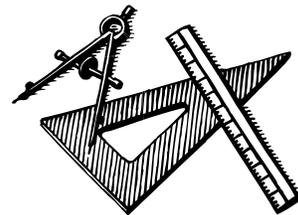
However, if there is an elevator, all units on all floors must be accessible.

If there is **not** an elevator, then only the ground floor units must be accessible.



How many **design and construction requirements** are there?

There are **seven** general requirements.



The Seven Design and Construction Requirements:

Requirement 1: Accessible building entrance on an accessible route.

What is an Accessible Route?

There must be **at least one** accessible route into the building.

This route **must connect accessible elements and spaces within and about the building and site**, such as mailboxes, laundry room, exercise area, pool, management office, and refuse areas.



What is an Accessible Entrance?



- Must be the **primary entrance**.
- Must be connected by an accessible route to **public transportation stops, accessible parking and passenger loading zones, public streets and sidewalks**.
- Must have a **minimum clear width opening** of 32 inches, **clear maneuvering space** at the door, a **beveled threshold** with a ½ inch maximum height and a 1:2 maximum slope, and **usable door hardware** (hardware that can be operated without tight grasping, pinching or twisting, such as lever handles).
- **Must not have** a running slope that exceeds 1:20 or a cross slope that exceeds 1:50.

Design and Construction Requirements:

Requirement 2: Accessible and usable public and common use areas.

Examples: lobbies, laundry rooms, mailboxes, building lounges, pools, playgrounds, public bathrooms, water fountains, trash receptacles, and loading areas.



Public Bathrooms:
Grab bars must be installed in public bathrooms.



Parking:

What are the parking requirements?

What is an accessible parking space?

An accessible parking space is **at least 96 inches wide** with an **access aisle at least 60 inches wide**.



For **resident parking**, **at least 2% of the parking spaces** serving the units must be accessible (at a minimum, **there must be at least one accessible space**).

If **additional parking is provided at other locations**, such as the pool or clubhouse, then **at least one** space at such locations must be accessible.

If **visitor parking** is provided, there must be a **sufficient number** of accessible parking spaces for visitors (at a minimum, there must be **at least one** accessible space).

If parking is provided at the sales/rental office, then **at least one** of the spaces must be accessible.

Design and Construction Requirements:

Requirement 3: Usable doors.

What is a usable door?

All doors must be **sufficiently wide** to allow passage by persons in wheelchairs, **have at least 18 inches of clear floor space** on the pull side of the door, and **passable thresholds**.



What measurements are required?

Doors leading into and within common areas:

- Must have a clear width opening of **at least 32 inches**,
- **Clear maneuvering space** at the door, and
- Usable door hardware (can be operated without tight grasping, pinching or twisting, such as lever handles).

The force required to open interior doors in common areas **must not exceed 5 pounds**.

Doors leading into a residential unit:

- Must have a clear width opening of **at least 36 inches**,
- **Clear maneuvering space** at the door, and
- Usable door hardware (can be operated without tight grasping, pinching or twisting, such as lever handles).

Doors within a unit:

(e.g., doors leading to bedrooms, bathrooms, storage rooms, closets, pantries and patios)

- Must have a nominal clear width opening of **at least 32 inches**, and
- **Clear maneuvering space** at the door,

BUT they do not have to have usable door hardware

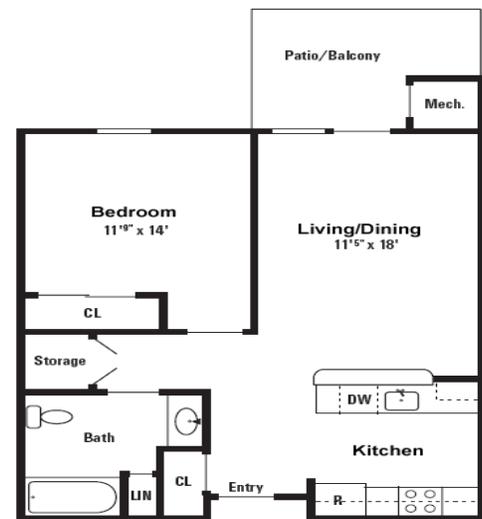
Design and Construction Requirements:

Requirement 4: Accessible route into and through the unit.

What is an accessible route?

All routes (e.g., hallway routes) within unit must be **at least 36 inches wide**.

Where turns are required (e.g., within hallways, into other rooms, and through doors), there must be **sufficient maneuvering/turning space** for a person in a wheelchair.



At the **PRIMARY ENTRANCE DOOR**:

If the outside landing is **impervious** (e.g., concrete, brick or stone), the landing must not be more than $\frac{1}{2}$ inch below the floor of the unit.

If the outside landing is **pervious** (e.g., wood), the landing must be flush with the interior floor.

At the **SECONDARY ENTRANCE DOOR** (e.g., patio):

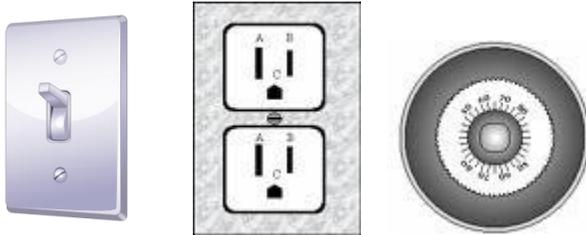
If the outside landing is **impervious**, the landing may be dropped up to 4 inches below the level of the interior floor.

If the outside landing is **pervious**, the landing may be dropped up to $\frac{1}{2}$ inch below the level of the interior floor.

Note: At the **primary** and **secondary** entrance doors, the thresholds must be no greater than $\frac{3}{4}$ inch above the interior floor. On the **interior** and **exterior** sides, the thresholds must be beveled with a **maximum slope of 1:2**.

Design and Construction Requirements:

Requirement 5: Accessible light switches, electrical outlets, thermostats and other environmental controls.



NOTE: these controls must be located **no lower than 15 inches** and **no higher than 48 inches** off the floor.

Requirement 6: Bathroom walls reinforced near the toilet, bathtub and shower – so a resident, if necessary, can install grab bars.

NOTE: Although reinforcement is required, there is no requirement to install grab bars in **unit** bathrooms; however, grab bars must be installed in **public** bathrooms.



Design and Construction Requirements:

Requirement 7: Usable kitchens and bathrooms.

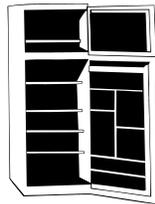
What is a usable kitchen?



A usable kitchen is characterized by **sufficient clear floor space at appliances and sufficient clearance between fixtures.**

What is Clear Floor Space?

Clear floor space means an **unobstructed area** that is **30 inches by 48 inches**. This approximates the space occupied by an average-sized person using an average-sized wheelchair.



At ovens, dishwashers, refrigerators, trash compactors. . .

- The clear floor space must **allow for a parallel or forward approach**, and be **centered** on the fixture.



At ranges, stovetops, and sinks. . .

- The clear floor space must be **parallel to and centered on** the appliance.



Between opposing base cabinets, countertops, appliances, and walls. . .

- There must be a clearance of at least **40 inches**.

U-shaped kitchens:

For U-shaped kitchens, where an appliance is located at the base of the “U”, there must be a minimum **60 inch diameter** maneuvering space.

What is a usable bathroom?



A usable bathroom is characterized by **clear floor space** (a) **within the bathroom** outside the swing of the door and (b) at **bathroom fixtures**. The clear floor spaces may overlap.

What is a bathroom? A bathroom is defined as including a (a) **toilet**, (b) **sink**, and (c) **bathtub or shower**.

NOTE: Powder Rooms are not considered bathrooms because they do not have a bathtub or shower. Therefore, they are **not required** to have reinforced walls or meet the maneuvering and clearance requirements of a bathroom.

Two Accessible Bathroom Options:

A

Type A bathrooms provide basic accessibility and **all fixtures must be usable and meet clearance requirements**. The toilet can be placed within the clear floor space of the bathtub (e.g., toilet can be located next to the tub).

B

Type B bathrooms provide a greater level of accessibility due to increased access to the bathtub. The toilet and sink base cabinet **must not** be placed within the clear floor space of the bathtub. This allows easier transfer by persons with disabilities into and out of the tub.

When must a bathroom be Type A or Type B?

If a unit has **one** bathroom, the bathroom can be either a Type A or Type B.

If unit has **more than one** bathroom, then –

- All bathrooms can be Type A, **or**
- One bathroom can be Type B. In this situation, the other bathrooms are not required to meet the maneuvering and clear floor space requirements at the fixtures.

What measurements are required?

A

B

Outside the Swing of the Door:



- There must be clear floor space of at least **30 inches by 48 inches**.
- The clear floor spaces may overlap each other.

- There must be clear floor space of at least **30 inches by 48 inches**.
- The clear floor spaces may overlap each other.

For Sinks:



- The clear floor space must be at least **30 inches by 48 inches** and **be parallel to** and **centered on** the sink. A forward approach is allowed if there is sufficient knee space under the sink.

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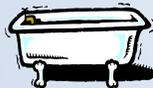
For toilets:



- There are three different size options for clear floor space: (a) **48 inches by 66 inches** for a forward or side approach; (b) **48 inches by 56 inches** for a side approach; or (c) **56 inches by 60 inches fully accessible**, for a forward or side approach.

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For bathtubs:



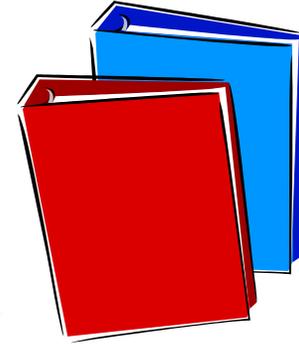
- There are two different size options for clear floor space: (1) 30 inches by 60 inches parallel to the tub; or (b) 48 inches by 60 inches adjacent to the tub. The toilet may be placed within the clear floor space of the tub. However, there must be at least 30 inches of clearance between the rim of the toilet and the opposite wall to allow a person in a wheelchair to make a forward approach to the tub.

- There must be clear floor space of at least 30 inches by 48 inches parallel to and adjacent to the tub, beginning at the control panel. No fixtures may be placed within the clear floor space of the tub. One of each fixture type must be usable and meet clearance requirements. Hence, if the Type B bathroom has a tub and shower, **only one of these fixtures has to be accessible** and meet the maneuvering requirements.



Compliance Issues:

The Fair Housing Act authorized the U.S. **Department of Housing and Urban Development (HUD)** to provide technical assistance to implement the Act's accessibility requirements.



Pursuant to this authority, HUD: (1) on March 6, 1991, issued the **Fair Housing Amendments Act Guidelines (Guidelines)**; and (2) on June 28, 1994, issued the **Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines ("Supplemental Notice")**.

In addition, in 1998, HUD issued the **Fair Housing Act Design Manual (Design Manual)** to help building professionals comply with the new construction requirements of the Act.



Safe Harbors:

HUD has approved ten "**safe harbors**" for compliance with the Act. **Compliance with any of these safe harbors will satisfy the Act's requirements.**

The **most common safe harbors** relied upon include:

- The Guidelines and Supplemental Notice;
- The Design Manual; and
- American National Standards Institute (ANSI) A117.1, used in conjunction with the Act, the Act's regulations, and the Guidelines.

NOTE: In drafting the Fair Housing Act section of this outline, Access Living relied upon a publication titled "The Design and Construction Requirements of the Fair Housing Act: Technical Overview" published by the Fair Housing Accessibility First program of HUD. The Technical Overview was based on the requirements and guidance of these three common safe harbors. For more information about the requirements and technical assistance, call Accessibility First at (888) 341-7781 (voice/TTY) or review its website, www.FairHousingFIRST.org.

SECTION TWO: SECTION 504



Section 504's New Construction Provisions **apply to:**

- **New public housing and government-subsidized housing with 5 or more units** designed or constructed after July 11, 1988.
- **Renovated public and government-subsidized buildings** where the (a) project consists of **at least 15 units**, (b) the **alterations are substantial**, which means the cost to improve the building is equal to at least 75% of the cost to replace the whole building, and (c) the alterations occur after July 11, 1988.

Accessible and Usable Units must . . .

- comply with the **Uniform Federal Accessibility Guidelines (UFAS)**. These requirements are stricter than the Fair Housing Act requirements.
- be **distributed throughout the project and include a range of sizes and amenities** so that the options available to persons with disabilities are comparable to those available to persons without disabilities.

What does Section 504 require?

5% of the units must be accessible to and usable by persons with **mobility disabilities** (at a minimum, at least one unit).

- These units must be **adaptable**. This means that certain elements, such as kitchen counters, sinks, and grab bars, **must be capable of modification** (added to, raised, lowered or otherwise altered) **to accommodate a person with a disability**.

2% of the units must be accessible to and usable by persons with **hearing or vision impairments** (at a minimum, at least one unit).

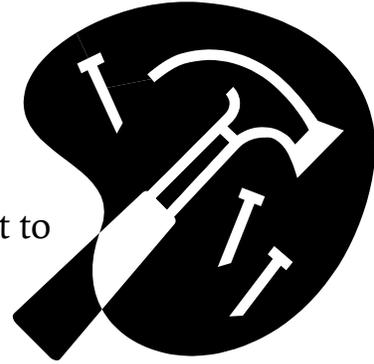
- These units must be **adaptable**. For example, they must be built with the wiring for **visible emergency alarms**, which would be needed by a person with a hearing impairment. The alarms **would not need to be installed until such a person was about to move-in**.

HUD, if necessary, may increase the 5% and 2% requirements.



What about **non-substantial** renovations?

In **renovated public and government-subsidized buildings** where (a) the project consists of **at least 5 units**, (b) the alterations are **not substantial**, which means the cost to improve the building is less than 75% of the cost to replace the whole building, and (c) the alterations occur after July 11, 2008 –



- The improvements, to the maximum extent feasible, **must be readily accessible to and usable by** persons with disabilities.
- The **improvements must continue until at least 5% of the units are accessible** to persons with mobility disabilities. HUD, if needed, may increase this percentage.



Do the New Construction Provisions of the Fair Housing Act also apply to **New Public Housing** and **Government-Subsidized Housing**?

Yes, the entire project and all units must comply with the accessibility standards of the **Fair Housing Act**, as well as the additional requirements of **Section 504**.

For example, in a new 40 unit public housing building with an elevator:

- a) All units (here, 40) must comply with the seven general requirements of the Fair Housing Act;
- b) 5% (here, 2) of the units must be accessible to and usable by persons with mobility disabilities; and
- c) 2% (here, 1) of the units must be accessible to and usable by persons with hearing or vision impairments.