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DISABILITY RIGHTS IN HOUSING

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DISABILITY SERVICES



MARCA BRISTO





In the
beginning...

PRESIDENT JOHNSON SIGNS THE FAIR HOUSING ACT: 1968 one week after the murder of Dr. King

People with Disabilities are not in the protected class: No enforcement mechanism. Toothless. Conciliation power.



REHABILITATION ACT 1973

Implementing Housing Regs 1977

Nationwide Protests: And in San Francisco 150 People with Disabilities occupied a federal building for 25 days—longest federal building sit-in in history. Others dragged themselves from wheelchairs up the steps to the capital.



DISABILITY RIGHTS HEYDAY: LATE 80'S TO 90'S



HUD IMPLEMENTING REGS FOR SECTION 504 OF THE REHAB
ACT 1988



FAIR HOUSING AMENDMENTS ACT 1988



ILLINOIS HUMAN RIGHTS ACT (SUBSTANTIALLY EQUIVALENT)
(early protections employment 1970.) Housing 1985



ILLINOIS ENVIRONMENTAL BARRIERS ACT/ILLINOIS
ACCESSIBILITY CODE –Amended 1988



AMERICANS WITH DISABILITIES ACT- 1991

COOK COUNTY HUMAN RIGHTS ORDINANCE-1993



Coordinating Housing Protections

Shared key concepts:

Covered Disabilities, Program Access, Design & Construction, Reasonable Accommodations & Modifications, Equal Terms & Conditions, Anti-Harassment

Definition of Disability

Section 504/Fair Housing Act/ADA:

A physical or mental impairment that substantially limits one or more major life activities; a record of having such an impairment (e.g. remission from cancer); or being regarded as having such an impairment (not disabled but believed to be, e.g., someone with AIDS). (Outdated term “handicap” no longer used.)

Note:

***ADA** more broadly defines the terms within the definition of disability (e.g., major life activity).

*The **Illinois Human Rights Act** has a somewhat broader definition of disability, potentially covering more individuals. (“a determinable physical or mental characteristic of a person, including, but not limited to, a ...characteristic which necessitates...”)

***Social Security** has a completely different definition of disability (“...inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.”)

Evidence of Disability



- Inquiry is permitted to the extent that it is needed to evaluate a reasonable accommodation or modification request or program qualification



- Balance the need to evaluate reasonable accommodation requests of tenants who refuse to disclose the nature of their disabilities with legitimate privacy issues.



Comparing
protections:
Rehab Act,
FHAA, ADA, EBA

- PROGRAM ACCESS
- DESIGN AND CONSTRUCTION
- REASONABLE ACCOMMODATION
- REASONABLE MODIFICATION



REHABILITATION ACT: Section 504

Section 504 of the Rehabilitation Act of 1973

Signed into law but with no implementing regulations



No otherwise qualified individual with a disability shall ... solely by reason of her or his disability



be excluded from the participation in, be denied the benefits of, or subjected to discrimination



under any program or activity receiving Federal Financial assistance.

- 29 U.S.C. § 794.

Definitions - 24 C.F.R. § 8.3

Federal financial assistance:

HUD grant, loans, contracts, services of HUD employees, real or personal property or interest, and Community development funds

Program or activity:

Operations of a department, agency, instrumentality of the state or local government, college, university, corporations, partnerships, and private organizations

Qualified Individual with a disability:

A person who meets the definition of disability under the Rehab Act and who with or without reasonable accommodations meets the program requirements for the housing or activity. E.g., a person with a disability applying for a low-income housing subsidy must be low income as that is defined by the program to be qualified for the unit.

Programmatic access:

In addition to housing itself, qualified PWDs must have access to federally funded programs, projects and activities of that housing. E.g., application materials in alternative formats like large print, Braille. Captioned videos. Meetings and trainings with sign language interpreters. Physically accessible rental offices and meeting spaces.

Figuring out what housing is covered

Public Housing
Authority units &
programs: YES

Section 8
subsidized units &
programs: YES

Section 8 voucher:
No

HUD Funded
affordable or
assisted housing
and programs: YES

(tip: look for HUD
on the lease)

Low Income
Housing Tax Credit
property: NO

Private University
Dorms, no federal
monies: NO

State University
Dorms: YES

Section 504 Scope & Integration Mandate

- “Program or activity” is broadly interpreted pursuant to the Civil Rights Restoration Act of 1987 overruling *Grove City v. Bell*. However, HCV/LIHTC landlords are not included as recipients of federal assistance.
- “Recipients shall administer programs and activities receiving financial assistance in the most integrated setting appropriate to the needs of qualified individuals with handicaps.” 24 CFR 8.4
- Section 504 prohibits disability-only housing or specific-disability housing unless there is a federal statute or EO authorizing that housing. 24 CFR 8.4(c)
- Accessible units may not be segregated on any one wing, floor, or in one building.

504 Compliance and Enforcement

- FHEO ensures compliance with civil rights requirements. 24 C.F.R. § 8.50.
- Investigation and resolution (24 C.F.R. §§ 8.1-8.58.)
 - Investigation may begin after periodic compliance review, complaint, report, or other information.
 - Letter of Findings Issues, then response, then Letter of Determination
 - Voluntary Compliance Agreement is favored.
- Non-compliance consequences – termination of funds, disapproval of future funding requests, condition funding on taking certain actions, compensatory damages, disbarment (suspension) and other sanctions.

**Voluntary Compliance Agreement
Between
HUD and the Chicago Housing Authority
A National Model**

- Created Office of Disability Compliance.
- Changed processing of Reasonable Accommodation Complaints.
- Created a System of Matching Individuals with Disabilities and Accessible or Adaptable Units.
- Built or rehabilitated a thousand+ units to bring them into compliance with UFAS, FHAAG, ADAAG, ABA and state and local accessibility codes.
- Provides for routine broad training of all affiliated housing providers and staff.

President Reagan signs Fair Housing Amendments Act, 1988.
Protects Families with Children and People with Disabilities.
Provides for Enforcement, Giving the Law “Teeth”



1988 Fair Housing Amendments Act

FHAA 804(f) provisions:

- 804(f)(1): Prohibits Discriminatory Refusal to rent or sell
- 804(f)(2): Prohibits Discriminatory Terms and Conditions
- 804(f)(3): Defines Three Types of Discrimination under (f)(1-2):
 - Reasonable Accommodation
 - Reasonable Modification
 - Design and Construction

Fair Housing Amendments Act: Covered Properties

Covers multifamily dwellings of 4 or more units, regardless of funding: private, market rate and federally funded

- Vast majority of housing is covered
 - Co-ops, condominiums, timeshares, dorm rooms, many overnight shelters.
- Exemptions from covered housing are narrow (and may not reach discriminatory statements)
 - Senior housing meeting all requirements (familial status, only)
 - “Mrs. Murphy” Owner occupied buildings with 4 or fewer units
 - Single family homes in certain circumstances.
 - Private organizations restricting housing to members (in very limited circumstances)

President Bush Signs ADA into Law 1991



Title II of the ADA

- Title II of the ADA prohibits disability discrimination in *all* services, programs and activities of public entities. 42 USC 12132 (28 CFR Part 35).
- “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by any such entity.”

ADA Titles

Title I –Employment

Title II-State and Local Governments (e.g., Arlington Heights) & public transportation

Title III-Public accommodations (e.g. stores, rental offices)

Title IV-Telecommunications

***Limited applicability to housing, for our purposes today, except under Title II and for public areas of housing, like rental offices.**

ENVIRONMENTAL BARRIERS ACT

- Implementing code is the Illinois Accessibility Code
- Enforced exclusively by Illinois Attorney General
- No private right of action, but complaint driven
- Provides for minimum physical access requirements for all public facilities altered, renovated (fix it, make it right) or built after 1988. Public facilities include private and publicly owned buildings. Includes multifamily housing, but also places like libraries and fire stations and court houses.
- More stringent in some places than ADA. Covers fewer units than FHAA but has greater accessibility within those units.
- For housing 10 or more units, 4 or more stories= 20% accessibility

Let's get to it: Design and Construction



DESIGN AND
CONSTRUCTION:
3 Standards
3 Levels of
Accessibility



Fair Housing Amendments Act:
FHAAG/safe harbors: Adaptable



Environmental Barriers Act: IAC:
Higher level of Adaptability



Section 504: UFAS: Fully
Accessible

Fair Housing Act: Application of D & C Requirements

- All multifamily dwellings designed and constructed for first occupancy after March 13, 1991
- Non-elevator buildings: Common Areas and Ground Floor Units Only
- Elevator Buildings: All Units and Common Areas

NO coverage for:

Rehabbed buildings or alterations *unless* all 3 walls, but the facade still standing.

Certain styles of housing where not all of the living space is under one roof, like homes on top of garages and certain types of townhomes.





Fair Housing Act: D & C Liability

- A violation is failure to design and construct multifamily dwellings with accessible features. 42 U.S.C. § 3604(f)(3)(iii).
- Defendants/respondents may include anyone involved with only the design, only the construction, or both design and construction of multifamily dwelling.

Examples of Covered Multifamily Dwellings

Condos and
co-op's

Lofts

Apartment
buildings

Vacation and
time share
units

Assisted-living
facilities

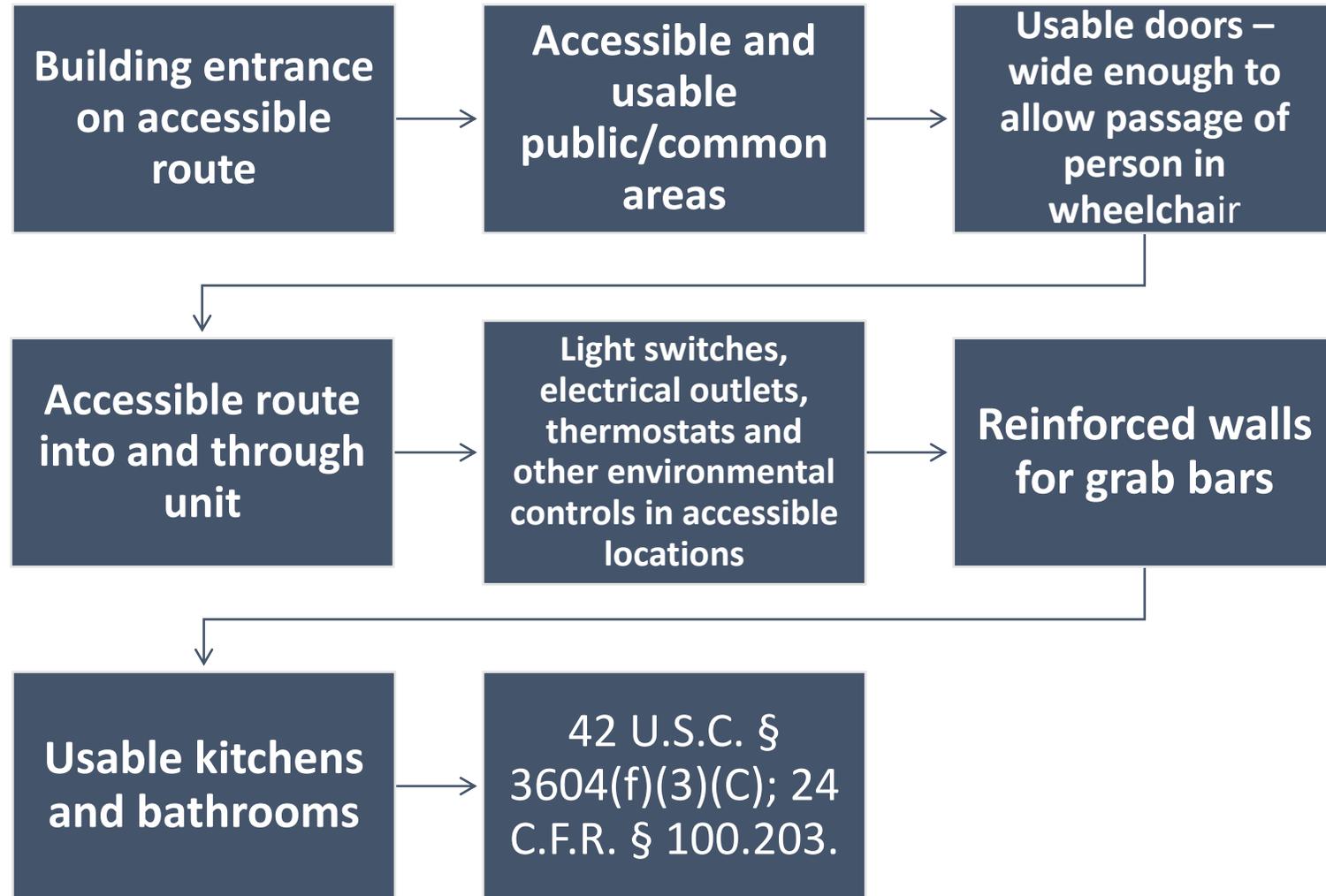
Projects
funded by
federal funds

Transitional
housing

Homeless
shelters

Dormitories

7 required accessibility features



Parking and Accessible Routes:

- Continuous unobstructed path connecting spaces or within a site that can be negotiated by a person in wheelchair.
- Exception: if defendant /respondent can show that an accessible route is impractical because of terrain or unusual characteristics of the site.
 - 24 C.F.R. § 100.205(a)



Parking fun facts:



- Accessible not “handicapped”
- No parking on the access aisle. If you can drive, you can reverse in.
- No short signs! Can’t be seen over snow or SUVs or 1979 Buicks.
- Put curb cut where it’s not blocked by the vehicle. Also, put a curb cut.
- Post a fine.
- There’s no point to having reserved parking if you don’t enforce it.
- Accessible parking at housing is different than businesses (Private enforcement. New construction? Or just a need for proximity? How much space is required? What’s the lot look like? Can you get 16’? Then do it.)

Just... No



Example: *United States v. Noble Homes*

- multiple violations found for development with 52 condominium units in thirteen buildings :
 - Steps leading to the entrance for 31 of 52 units
 - Driving to front entrance slopes of over 7% and 11%
 - No sidewalks or pedestrian routes'
 - Buzzers, thermostats too high

Are there any safe harbors?



- Yes. If defendant/respondent show that it followed specific guideline or code without deviation, then it complied with the design and construction requirements. (Can't borrow from many codes. Pick one and go with it.)
- The Act states in particular
 - American National Standard for Buildings and Facilities (ANSI A117.1)
 - 42 U.S.C. § 3604(f)(7)
 - Other safe harbors at the end of Presentation



504 DESIGN AND
CONSTRUCTION

Section 504 regulates

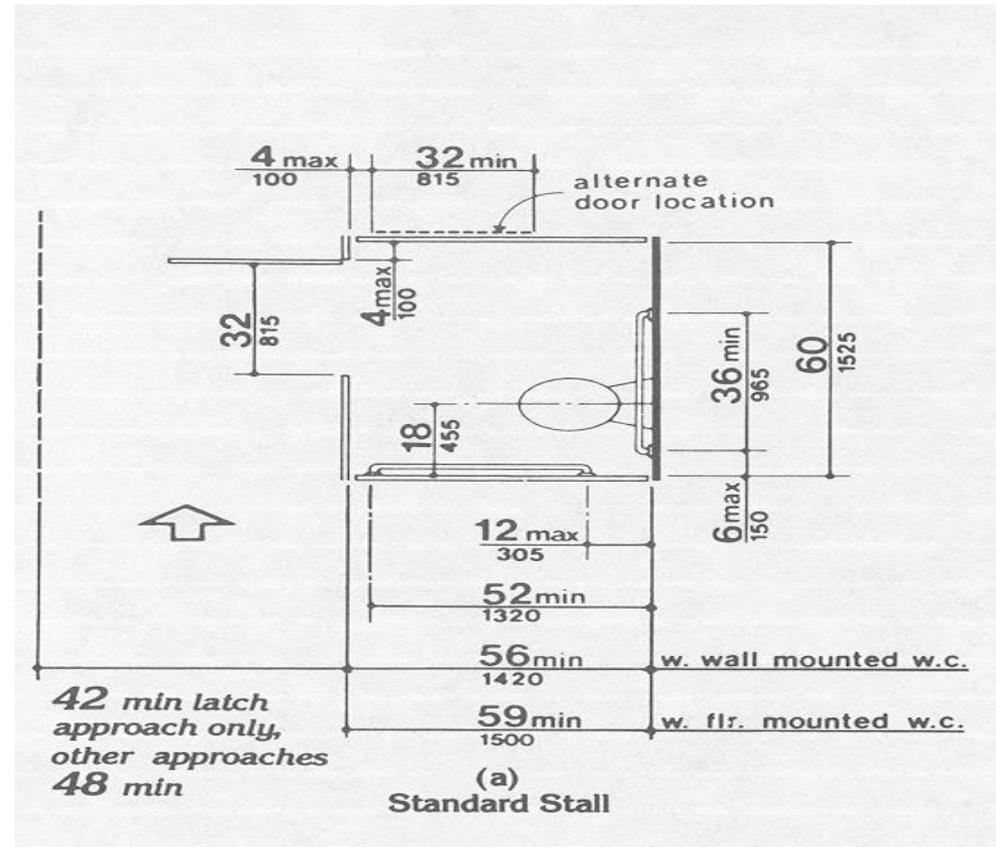
More than just housing – includes universities, cities, and programs!

Most local housing authorities

Privately operated federally subsidized apartment complexes

504 Physical Accessibility Standards

- Uniform Federal Accessibility Standards (UFAS)



504 After May 24, 2014...



Recipients may use the 2010 ADA
Accessibility Standards for
Accessible Design;



BUT not the 11 sections that offer
less accessibility than HUD's 504
Regulation and UFAS. 79 Fed. Reg.
29,671 (May 23, 2014).

504 Accessible Non-housing Facility?

New construction

- Shall be designed and constructed to be readily accessible and usable.

Alterations to facilities

- Shall, to the “maximum extent possible” be made to be readily accessible and usable.
- Can't require an alteration that would cause undue financial burden and administrative burden

24 C.F.R. § 8.21.

504 Accessible Housing Facility?



New construction - 24 C.F.R. § 8.22.

Minimum of 5% of total dwelling units or one unit in multifamily project, whichever is greater shall be accessible for persons with mobility issues and 2 % for persons with vision or hearing impairments.



Alterations - 24 C.F.R. § 8.23.

Substantial alterations = if 15 units + costs are 75% (replacement cost of facility) then apply same standard of new construction

Other alterations – e.g., parking lots & common areas “maximum extent possible”

504 Who gets the vacant accessible unit?

1. Current tenant who needs accessibility features
2. Applicant who needs those features and on the waitlist.
3. Non-disabled applicant (and landlord may require them to move to a non-accessible unit when its available).

24 C.F.R. § 8.27

New York City Housing Authority

HUD received complaints about the accessibility of the City's Affordable Housing Program.

NYCHA is a recipient of federal financial assistance in the form of grants for its affordable and public housing programs.

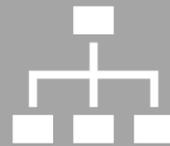
After review and continued non-compliance CDBG action plan was disapproved for civil rights violations.

VCA negotiated and includes: 1,500 new accessible units over 10 years and retrofitting of 3,100 units in affordable housing developments to make them accessible (maximum extent feasible?).

ENVIRONMENTAL BARRIERS ACT: New Construction



4 OR MORE FLOORS



10 OR MORE UNITS



20% must meet adaptability
standards

ENVIRONMENTAL BARRIERS ACT

NEW CONSTRUCTION

- 4 or more Stories
- 10 or more units
- 20% adaptability required
- Higher level of adaptability than

Fair Housing Amendments Act

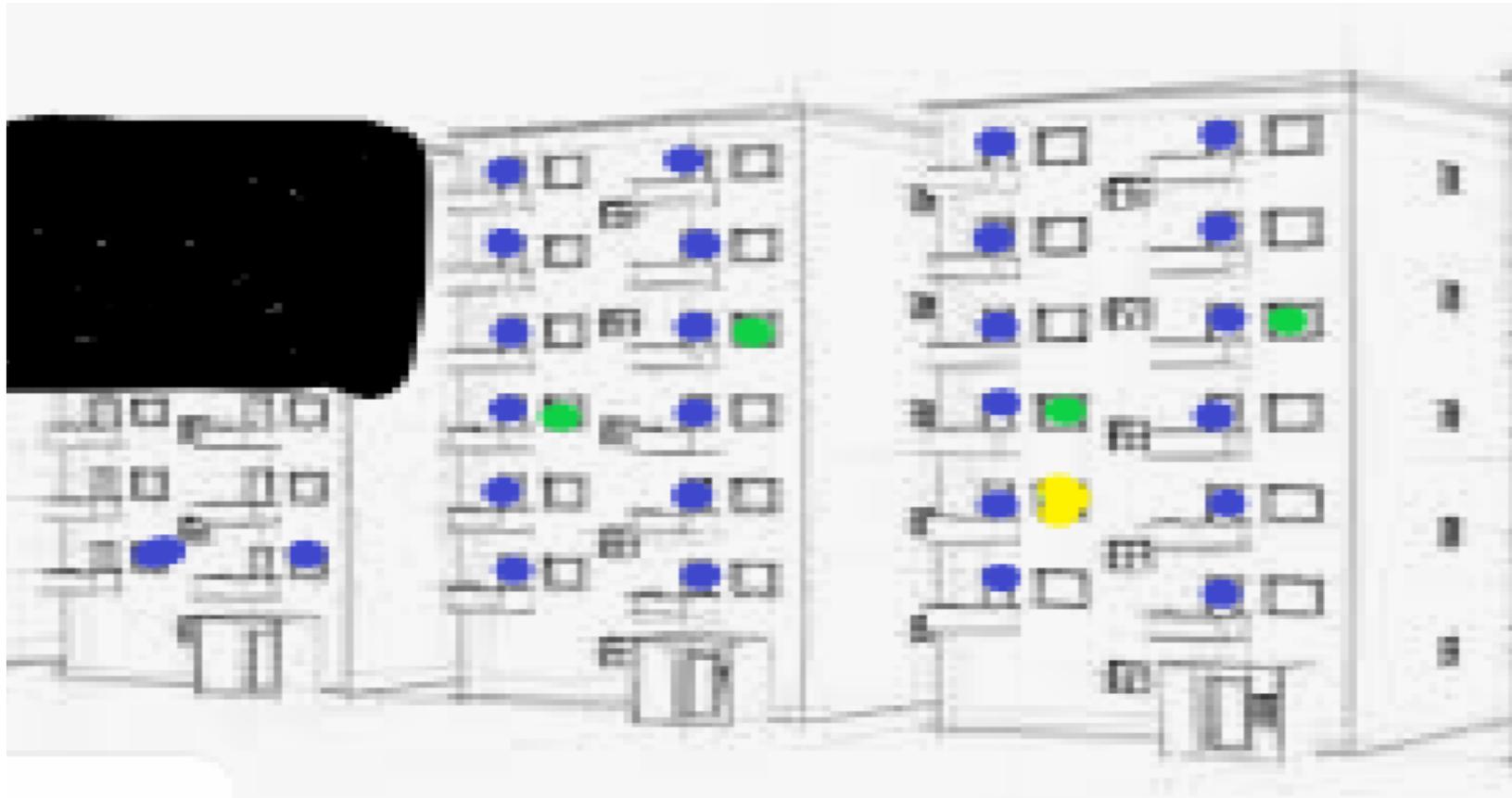
REHAB/ALTERATIONS

- You touch it you make it accessible: each element
- Formula: over a 30 month period, alterations vs. replacement cost of the facility.
- 15% or lower= just altered element
- 15-50% and less than 100k=that element + entryway
- 50% and higher reverts to new construction standards.
- Higher level of requirements than both FHAA and 504 in terms of units covered.

3 flat
no elevator
FHAA only

6 floors/12 units
elevator
FHAA & EBA

6 floors/12 units
elevator and federal subsidies
FHAA & EBA & 504



AND NOW
FOR SOMETHING
COMPLETELY
DIFFERENT

REASONABLE ACCOMMODATION DEFINITION

Change to a rule, policy or practice that allows a person with a disability an equal opportunity to use and enjoy their dwellings as a non-disabled person.

Don't get confused! 504 calls all accommodations to policies and physical alterations to a property "modifications."



504 Accessible Program or Activity? 504 Accommodations

- Activities and meetings in accessible locations
- Communications must be accessible
 - e.g., TTY, relay, braille, interpreter
- Housing provider must provide accessible feature or modification of policy unless it would result in fundamental alteration of program or undue financial and administrative burden.
 - e.g., lower handles on doors, reserved parking spaces, snow or ice removal, or permitting service animals

Reasonable Accommodations

- Assistance Animals
 - Service Animals AND
 - Emotional Support Animals



- Parking Spaces

- Apartment Transfers
 - Need for quiet



- Consideration of Alternate Application Qualifications

WHO PAYS?

FAIR HOUSING ACT

- Law is silent BUT
- Case law shows that landlord is responsible to pay for accommodations where it is not an undue fiscal burden.
- Meant to mirror 504
- Cost of doing business

504

- Housing provider pays.

AMENITIES AND ASSESSMENTS

What about
smoke detectors,
doorbells and
peep holes?

What about
condominium
assessments for
inaccessible areas

Elements of a Reasonable Accommodations Claim



Tenant must be disabled



Tenant must request a reasonable accommodation

No form can be required or specific language can be required



Request may be necessary to give tenant an equal opportunity to enjoy the dwelling, and



Request must be denied

Delay can equal denial

CRITICAL ELEMENTS OF THE CLAIM:

- Interactive Process



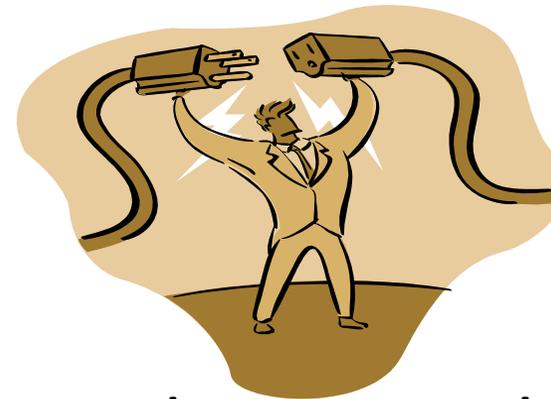
See, Jankowski Lee & Assoc. v. Cisneros, 91 F.3d 891, 19 A.D.D. 619 (7th Cir. 1996).* (some circuits)

- Necessity and Burden Shifting



Bronk v. Ineichen- 54 F.3d 425 (7th Cir. 1995) necessity-must ameliorate in some way the effects of the disability.

ANOTHER CRITICAL ELEMENT:



- Reasonableness

burden of proof that there is a nexus between the requested accommodation and the disability.

See argument in, Giovani v. Housing Authority of Lake County (N.D. IL 2009), and Giebeler v. M & B Assocs., 343 F.3d 1143 (9th Cir. 2003).

Contrast to economic accommodations rejected in Salute v. Stratford Greens Garden Apts., 136 F.3d 293 (2nd Cir. 1998), Hemisphere v. Village of Richton Park, 171 F.3d 437, 440 (7th Cir. 1999).



HIDDEN DISABILITIES

- Examples of what may be a hidden disability:
 - Depression, Anxiety, PTSD, ADHD
 - Multiple Sclerosis, Cerebral Palsy, Ankylosing Spondylitis
 - Chronic Fatigue, Migraines, Autism, Crohn's Disease
 - Heart Disease, Sleep Apnea, High-Blood Pressure, Cancer
 - In recovery for substance abuse
 - But persons currently illegally using, or addicted to, controlled substances are not considered disabled. 24 C.F.R. § 100.201.



REASONABLE
ACCOMMODATION
CASES

**FAIR HOUSING ACT
AND SECTION 504**



ANIMALS AS REASONABLE ACCOMMODATIONS:

Doesn't matter what ya call it, it only matters what function it serves.

- SUPPORT ANIMAL
- ASSISTANCE ANIMAL
- SERVICE ANIMAL
- COMFORT ANIMAL
- COMPANION ANIMAL

United States v. Brooklyn Park



- Reasonable Accommodation request to keep Staffordshire Terrier as an emotional support animal, despite breed restriction.
- Over months, demanded more and more medical information. Finally, deposed the doctor.
- Allowed the dog to stay for final months of lease, but required liability insurance, and non-renewed the lease.
- Arguments were that the breed of dog was dangerous and that emotional support animals are not covered under the ADA.
- **TAKEAWAY 1: No breed or weight restrictions can apply to a medically necessary animal.**
- **TAKEAWAY 2: ADA and Fair Housing Act both apply.**
- **TAKEAWAY 3: Landlords can non-renew a lease for any reason... except a discriminatory one.**

Valencia v. City of Springfield, Illinois (7th Cir. 2018)

FAIR HOUSING ACT/SECTION 504/ADA: Tripple Whammie

- Group home sued Springfield for enforcing a zoning and occupancy restriction that prohibited an unrelated group of 3 disabled adults from occupying a single-family residence (CILA) within 600 feet of an existing disability group home.
- District court enjoined Springfield from evicting the plaintiffs: upheld on appeal.
- Springfield receives Federal Financial Assistance in the form of a Community Development Block Grant (CDBG)—community planning includes zoning. Zoning is a program or activity. Discrimination in zoning based on disability. 504 triggered.
- Springfield is a public entity. Title II prohibits disability discrimination by public entities. ADA triggered.
- Springfield's actions made housing unavailable to persons with disabilities. Fair Housing Amendments Act triggered.
- Zoning covered by all 3 laws. All three laws are subject to disparate treatment or impact theories. And all three laws make illegal failure to make a reasonable accommodation.
- Court found failure to make an accommodation to an existing zoning policy.

This is the Rathbone. Admissions Criteria: “Of high moral character, 55 years of age or older, **ambulatory**, mentally alert and in good health.” (emphasis added)





U.S. v. Rathbone: Facts

*Jasper Spellaza was an 84 year old widower, who moved into the Rathbone Retirement Community with his late wife.

*Mr. Spellaza developed osteoarthritis of the knee, and complications with his rotator cuff, making it both difficult to walk and difficult to wheel a manual wheelchair.

*3 years into his tenancy he was prescribed the use of a motorized wheelchair or scooter.

*Shortly thereafter, Rathbone passed 3 policies:

U.S. v. Rathbone: Facts



1. No Motorized wheelchairs or scooters in the dining room.
(In order to protect the “beautiful woodwork, furniture and walls.”)
2. Residents must be able to ambulate independently in their units with the help of a staff member. (“electric devices should not be necessary.”)
3. Any damage to the property caused by “electric devices” would not be considered “normal wear and tear” and would be charged to the resident.

U.S. v. Rathbone: Facts

Ultimately

1. Rathbone determined that residents who used motorized Scooters or wheelchairs were no longer “ambulatory” and no longer met residency criteria.
2. Mr. Spellaza requested a reasonable accommodation to the ambulation policy to use a wheelchair. Denied.
3. Mr. Spellaza and 3 other tenants vacated as a result of the policy.



Fun fact: Motorized vs. Electric

This is a motorized wheelchair:



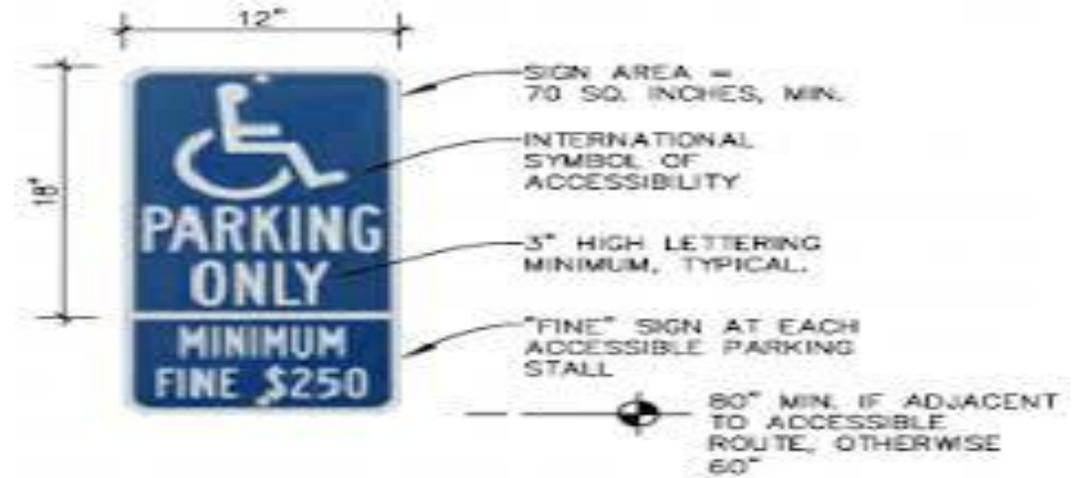
This is an “electric chair”:



U.S. v. Rathbone: Consent Order (2 years)

- Aggrieved party monetary relief: \$70k (\$30k to Spellaza);
- Victim Escrow of \$25k with advertising for victim search;
- Civil Penalty \$21k;
- Policy changes for ambulation, addition of R/A Policy;
- Affirmative Advertising with nondiscrimination language;
- Reporting Requirements to DOJ;
- Training for Staff; and
- Injunction against future discrimination.

Butts v. Persaud: Facts



- Complainant is substantially impaired the major life activities of walking and climbing stairs. She also has some emotional disabilities.
- Subject property is a 120-unit apartment complex, with 176 surface parking spaces, and an additional 40 garage spaces.
- Parking is on a first-come, first served basis, except in garages which are by contract.
- An accessible space was created, but **Respondent refused to reserve it for her use.**
- Because the accessible parking space created at Complainant's request was not reserved for her use, other disabled tenants parked in the space.
- Complainant ultimately moved.

Butts v. Persaud: Proffered Defenses

- * Respondents under no obligation to create any more spaces than required by ADA and local law. (Again, conflates obligations of ADA visitor and public accommodations parking with Fair Housing Act)
- * Respondents contend that they can't enforce the parking against another disabled tenant that need accessible parking. (Fair Housing Act permits reserved parking as an accommodation. It's an individualized assessment. E.g., Some people just need proximity, some need full accessibility.)



WRONG

*Butts v.
Persaud:*
Consent Order

Resolving allegations of discriminatory terms and conditions and failure to provide a reasonable accommodation:

1. \$2,000 in compensatory damages to Complainant;
2. Training requirement for Respondents' employees;
3. Implementation of Reasonable Accommodation Policy;
4. Reporting requirements to the Department, should any complaints be filed against Respondents for FHAA violations;
5. General injunction against discrimination.

DEFENSES to Providing a Reasonable Accommodation



Undue fiscal and administrative burden



Technological infeasibility



Direct threat



Fundamental alteration to the manner in which the housing is provided.



*Aesthetics not a defense except where it completely changes or ruins the building structure or architecture and some historic building exceptions.

DIRECT THREAT

- A dwelling need not be made available to 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. 42 U.S.C. 3604(f)(9)
- Can't be based on stereotypes, fears or prejudices.
- Must relate to the particular abilities of the disabled individual.
- Must be established by objective evidence. *Fair Housing; Implementation of the Fair Housing Amendments Act of 1988*, 53 Fed. Reg. 44992, 45002 (1988)
- Defense is only available where the threat cannot be ameliorated by a reasonable accommodation.
- Sometimes there's an affirmative obligation to accommodate. Some cases have held that a housing provider must attempt to accommodate a direct threat before evicting. Groner v. Golden Gate Gardens Apts., 250 F.3d 1039, 2001 FED App. 0174P (6th Cir. 2001); Roe v. Sugar River Mills Assoc. 820 F. Supp. 636 (D.N.H., 1993), Roe v. Housing Authority of the City of Boulder, 909 F. Supp. 814 (D. Colo., 1995).

And now
for something
completely different...



MODIFICATIONS

- A STRUCTURAL CHANGE TO THE DWELLING/STRUCTURE THAT PROVIDES PHYSICAL ACCESS TO AN INDIVIDUAL WITH A PHYSICAL DISABILITY.

WIDENEND DOORWAYS

RAMPS

GRAB BARS

HARD WIRED FIRE ALARMS

ELECTRONIC DOORS

Elements of Reasonable Modification Claim

- The complainant is a person with a disability.
- The respondent knew or reasonably should have known that the complainant is a person with a disability.
- The complainant requested permission to modify his dwelling or the common areas of the housing.
- The requested modification may be necessary to afford the complainant an equal opportunity to use and enjoy the dwelling.
- The respondent refused the complainant's request to make such modification or failed to respond or delayed responding to the request such that it amounted to a denial.
- *And for an 804(f)(1) violation:*
- The respondent's refusal made housing unavailable to the complainant.

WHO PAYS?

FAIR HOUSING ACT

The Fair Housing Act is explicit
That the **Person with a Disability**
Who is Requesting the
Reasonable Modification Must
Pay.

Housing Provider responsible to
Review and Where Appropriate,
Approve Accommodation

SECTION 504

- **Housing Provider Pays**

Housing Provider Rights

Access to specifications and plans;

Work Performed in a Workmanlike Manner

In some, though not all, circumstances to have the property returned to original condition when the PWD moves out or no longer needs it.

Rule of thumb: If it can be used by the next resident/tenant, it need not be removed. (E.g., grab bars, widened doorways, automatic doors).

Modification Case examples.

- *Permission to install fence around outside property to provide enclosure for support dogs.**
- *Permission to install handle outside of entrance door so that elderly woman could grasp the handle to pull herself up on the stoop.**
- *Permission to install a lift up to back porch of a walk-up (escrow and removal question).**
- *Permission to widen doorways inside rental unit to permit access of wheelchairs.**
- *Permission to pave a path through the grass from back sliding doors to sidewalk to permit easier access to paratransit pick-up.**
- *Flashing doorbells (modification or accommodation?)**
- *Peephole at seated level. (modification or accommodation? Amenity terms and conditions.)**





RESOURCES

Design & Construction Safe Harbors/Standards

- HUD's March 6, 1991 Fair Housing Accessibility Guidelines and Supplemental Notice, 56 Fed. Reg. 33, 362 (June 28, 1994).
- Fair Housing Act Design Manual (1998);
<http://www.huduser.org/publications/destech/fairhousing.html>
- Total of 10 safe harbors approved by HUD
- Can't borrow from various safe harbors: pick one

Design and Construction Resources

- Joint Statement of HUD and DOJ, Accessibility (Design and Construction) Requirements for Covered Multifamily Dwellings under the Fair Housing Act (April 30, 2013);
<http://portal.hud.gov/hudportal/documents/huddoc?id=JOINTSTATEMENT.PDF>
 - Contains all 10 safe harbors and Q&A
- HUD regulations, 24 C.F.R. § § 100.200-205.

504 Resources

- <https://www.huduser.gov/publications/pdf/fairhousing/fairfull.pdf>
- https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/fhefhag
- https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/fhefhasp
- <https://www.ecfr.gov/cgi-bin/text-idx?SID=b7dac11f71983b480aa52fe37d15e456&mc=true&node=pt24.1.40&rgn=div5>

Reasonable Accommodation/Modification Resources

- The Bazelon Center for Mental Health Law: <http://www.bazelon.org/>
- HUD Fair Housing: https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws
- HUD-DOJ Joint Statement on Group Homes and Local Land Use: <https://www.justice.gov/crt/joint-statement-department-justice-and-department-housing-and-urban-development-1>
- HUD-DOJ Joint Statement on Reasonable Modifications: https://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf

LOOK US UP OR CONTACT US

Questions and Additional Resources

Visit us at www.hud.gov

(Fair Housing and Equal Opportunity Page)

Look at our election cases at www.usdoj.gov

(Housing and Civil Enforcement Section)