

# Fair Housing

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## Introduction

There are many housing programs and laws that can be used by people with disabilities. This chapter discusses some of them, with a particular focus on safe, accessible and affordable housing. It also includes basic information on fair housing for people with disabilities.

## Overview of Fair Housing/Anti-Discrimination Laws

Historically, owners of property had broad legal authority to buy, sell and rent under whatever conditions they wished. Starting with the days of the African-American freedom struggles, laws have developed to limit owners' rights in several ways, perhaps most strikingly by prohibiting discrimination in the sale, purchase or rental of housing.

Several laws passed since 1973 now protect the rights of people with disabilities to equal housing opportunities. However, coverage and protections vary among the laws and that can be confusing.

### Three main laws

42 USC 3601 et seq.,  
Sec. 106.04, Wis. Stats.;  
29 USC 794

The three principle laws to be discussed in this chapter are: the federal Fair Housing Act (FHA), the Wisconsin Open Housing Law, and Section 504 of the Rehabilitation Act of 1973 (504).

Note: The Americans with Disabilities Act of 1990 (ADA) has a more limited role in the housing arena and therefore, will not be covered in any detail in this chapter. Basically, ADA Title II prohibits discrimination by state and local governments, including their housing programs. The protections generally parallel those of 504. Employment discrimination by larger housing providers is governed by ADA Title I. Under ADA Title III, sales or rental offices, places of exercise or recreation or other places of public accommodation associated with privately owned housing may not discriminate on the basis of disability in the full and equal enjoyment of the services, facilities, privileges, advantages or accommodations. *(For more information on the ADA see Americans with Disabilities Act: Title I - Employment, Title II - Government Programs and Services and Title III - Public Accommodations chapters, pgs. 305, 319, and 326, respectively.)*

## Federal Fair Housing Act

The Fair Housing Act makes it unlawful (with respect to the sale or rental of a dwelling) to make, print, or publish any notice, statement or advertisement that indicates any preference, limitation, or discrimination based on handicap; to represent to any person because of

handicap that any dwelling is not available for inspection, sale, or rental when it is available to other persons; to induce any person to sell or rent any dwelling by representations regarding the entry into the neighborhood of a person of a particular handicap; or to discriminate or otherwise make available or deny a dwelling to a buyer or renter because of handicap.

Sec. 106.04, Wis. Stats. The federal Fair Housing Act has only protected people with disabilities since it was amended in 1988. After passage of the federal amendments, Wisconsin studied how to bring its laws “into compliance with the 1988 amendments ... without lessening the protections under existing fair housing laws.” As a result, Wisconsin law provides protections for people with disabilities and procedures which parallel those of the Fair Housing Act.

**When FHA applies** The FHA generally applies to multi-family housing. Owner-occupied dwellings with rooms or units containing living quarters occupied or intended to be occupied by four families or less living independently of each other are exempt, however.

42 USC 3603(b)(1) and (2) The FHA applies to single family homes only when the owner:

- owns an interest in three or more single-family houses at one time; or
- uses the facilities or services of a real estate broker, agent, salesman or any person in the business of selling or renting dwellings or the employee or agent of such a person; or
- publishes, posts or mails, after notice, of an advertisement or written notice that indicates a preference, limitation, or discrimination (or intention to make a preference, limitation or discrimination) based on race, color, religion, sex, handicap, familial status, or national origin.

### **Wisconsin Open Housing Law**

Sec. 106.04(2r)(bm), Wis. Stats. The Wisconsin Open Housing law continues some of the protections for people with disabilities that have been part of state statutes for more than 25 years. The protections include: prohibition of discrimination on the basis of lawful source of income (such as SSI) and requirements for building owners to allow individuals to live with their trained service animals unless the owner occupies a building and the owner or family member can substantiate a claim of an allergic reaction to the animal. These protections are in addition to those that parallel the FHA. **The Wisconsin Open Housing Law, generally, prohibits discrimination in single-family and multi-family housing not covered by the FHA, in addition to housing covered by the FHA.**



*If you believe you were denied housing because of your disability or other protected class status, you may want to contact one of the Fair Housing Councils in Wisconsin. (See pg. 267.) They are often able to conduct a test (of the owner's action) to verify discrimination. Discrimination complaints are much more likely to be remedied when testing has verified discrimination.*

## Section 504

### HUD assistance & programs

Section 504 of the Rehabilitation Act of 1973 was the first law to prohibit discrimination against people with disabilities in housing. It applies to housing programs, services and activities administered and/or funded by the federal government. Federal housing assistance is provided by the Department of Housing and Urban Development (**HUD**) and the Rural Development agency through public housing authorities and other organizations.

24 CFR Parts 8 & 9

HUD has developed one set of 504 regulations which apply to all applicants for, and recipients of, HUD assistance. In addition to the general prohibition of discrimination and physical accessibility requirements, these regulations make it clear that public aid recipients (agencies that receive federal funds) must provide effective program accessibility, such as communication for blind, deaf and other residents with a disability, when the disability prevents him/her from accessing the recipient's regular communications. The regulations require assurances of compliance by recipients and provide enforcement mechanisms. Among the protections is a requirement that the aid recipient designate a coordinator for agency compliance with the rules and a grievance procedure to be used by employees and consumers of the recipient to remedy complaints of unequal opportunity.

7 CFR Parts 15b, 15d & 15e

Rural Development programs are governed by the U.S. Department of Agriculture (**USDA**) regulations. In most respects, the USDA regulations parallel requirements of HUD 504 regulations. The accessibility provisions of USDA regulations prohibit discrimination by recipients of rural housing assistance and require Rural Development and other agencies within the department to provide equal access to their services to people with disabilities.

## Reasonable Accommodations

42 USC 3704(f)(3)(B),  
24 CFR 100.204

Perhaps the most important concept borrowed by the FHA from 504 is that of "reasonable accommodation." **Under the FHA, 504 and Wisconsin law, "discrimination" includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling."** The FHA regulations give two examples of reasonable accommodations. The first example illustrates the need for permission for a blind applicant for rental housing to live in a unit with a "no pets" policy with her seeing eye dog. The

### Examples

second illustrates the need for permission for a resident with mobility impairments of a housing complex with a “first come, first served” parking policy to have a reserved parking place near an accessible entrance.

Cases have affirmed the broad nature of the reasonable accommodation requirement. Courts have held that not only landlords but co-ops and condominium associations have a duty to ensure that a resident gets a reserved parking place in cases similar to the example in the regulations. The federal appeals court for Wisconsin held that a deaf individual’s need for a hearing dog is “*per se* reasonable” and that the dog need not have formal training. Other cases where courts have required accommodations include: accepting late rent payment and postponing eviction proceedings against a tenant who had been hospitalized because of a mental illness; allowing a move from the third floor to the first floor when arthritis prevents enjoyment of the premises; and allowing residents with anxiety or panic disorders to keep a dog or cat in spite of a “no-pets” policy.

Accommodations must be considered at all stages of a housing relationship, including inspection, application, closing of a sale or entry into a rental agreement, during residence and even during the eviction or other judicial process. Types of accommodations include modifications of landlords’ policies requiring tenants to have a positive rental history for a certain length of time or a prohibition of tenants with criminal records.

#### **Definition of reasonable**

In general, a modification of a rule, policy, practice or service that is necessary to allow a person with a disability equal opportunity to use and enjoy housing is reasonable unless it would impose an undue hardship on the owner. An undue hardship occurs when the requested modification would fundamentally alter the nature of the housing provided or would impose an undue administrative or financial burden. Ordinarily, the owner must bear the cost of an accommodation.



*You must show that the person from whom you requested a reasonable accommodation knew (or should have known) about your need for accommodation. It is a good idea to make these requests in writing and keep a copy. You must also be prepared to prove your need if requested. A disability, fair-housing or tenant advocate can help you assess if your request is reasonable and help you support your request with appropriate documentation. You should contact an advocate if an owner, real estate agent, co-op, condominium association or other agent denies your accommodation request. You should contact a lawyer if you have violated (or may violate) a provision of a rental agreement but may be able to avoid violation with reasonable accommodation. Good sources for advocates or lawyers include tenant resource centers, your local independent living center, a legal services agency, or WCA.*

## Harassment

42 USC 3617,  
Sec. 106.04(2)(j), Wis. Stats.

All of the fair housing laws prohibit an owner or agent from harassing a person because of their protected status (race, sex, disability, etc.). In addition, both the FHA and Wisconsin statute prohibit any person from coercing, intimidating, threatening or interfering with a person in the exercise or enjoyment of a right granted or protected under the laws. The courts have sometimes limited the scope of these provisions when a party alleges that speech or association without force or threat of force interferes with their rights.

## Zoning

Most courts have found that the Fair Housing Act prohibits discriminatory zoning practices. This frequently comes up when governments set standards for group homes serving people with disabilities that are harder to meet than their other zoning standards. The legislative history of the Wisconsin law indicates it was intended to prohibit discriminatory zoning practices but at least one decision limits its use in this area.

## Physical Access

All of the laws providing for fair housing for people with disabilities provide rules for physical accessibility in dwellings. The rules for most privately owned houses are different from those for publicly owned or federally subsidized housing. Rules are also different for one and two family homes, three family homes and larger complexes. In addition, the date the premises were designed and constructed also affects which rules apply.

## Private Housing

**Accessibility rules for privately owned housing may be the most difficult to determine.** In short, there are no accessibility requirements in Wisconsin for construction of private one and two family homes built without federal assistance. Any private housing where the owner (e.g., an individual or non-governmental corporation) receives a federal subsidy (usually from HUD or Rural Development) is governed by the 504 rules explained below. With all housing, however, owners must allow reasonable modifications to the premises as explained below.

Secs.101.132 and  
106.04(2r)(c), Wis. Stats.  
Comm 57.79(2) Wis. Admin. Code

## Remodeling

Wisconsin law requires housing first ready for occupancy on or after October 1, 1993, consisting of 3 or more dwelling units, to meet accessibility standards if: (1) it has one or more elevators, or (2) it is a grade-level dwelling unit in housing without elevators. In addition, any owner who remodels more than 50% of the interior square footage of multifamily housing must ensure that the entire dwelling meets accessibility standards. If 25% to 50% is remodeled, the remodeled area must conform. If less than 25% is remodeled, only doorways and toilet rooms

that are remodeled must meet accessibility standards. The percentage requirements apply to the cumulative sum of any remodeling after May 1, 1994.

The Fair Housing Act prohibits design or construction of multifamily housing that is not accessible. It applies to housing in buildings consisting of 4 or more dwelling units ready for first occupancy by March 13, 1991 if: (1) they have an elevator, or (2) are a ground floor unit. FHA does not have remodeling requirements.

### **HUD rules on new construction**

24 CFR 100.205,  
Comm 57.78 Wis. Admin. Code

Accessibility for new construction means that it includes the “seven elements of accessible design.” The elements are:

1. An accessible building on an accessible route.
2. Accessible and usable public and common use areas.
3. Doors usable by people who use wheelchairs.
4. An accessible route into and through covered units.
5. Light switches, outlets and environmental controls in accessible locations.
6. Reinforcements in bathroom walls for later installation of grab bars.
7. Kitchens and bathrooms usable by a person using a wheelchair.

### **Publicly-owned and Subsidized Housing**

Property owned by a public housing authority or a private owner receiving federal assistance must comply with 504. HUD 504 regulations require physical accessibility for new construction, alterations of facilities (to the maximum extent feasible) and existing facilities. A minimum of five percent of the total dwelling units must be made accessible for people with mobility impairments, including an accessible route to and from the units. An additional two percent of the units must be accessible for persons with hearing or vision impairments.

24 CFR Part 8, Subpart C  
**Architectural Barriers Act**  
24 CFR Parts 40 & 41

Another set of HUD regulations enforces the accessibility standards of the Architectural Barriers Act of 1968 (**ABA**) for housing. Federal and federally assisted residential buildings need to meet the Uniform Facilities Accessibility Standards (**UFAS**) under both the ABA and 504. Owners of covered housing generally must modify premises at their expense when necessary to afford a person with a disability equal access.

## Reasonable Modifications and Restoration

24 CFR 203;  
Sec. 106.04(2r)(b)3., Wis. Stats.

It is discrimination under both state and federal law to refuse to permit reasonable modification of existing housing at the expense of a person with a disability who occupies the housing as a tenant when the modification is necessary for equal enjoyment of the housing opportunity. An owner may require the resident to restore the property unless the modification would not interfere with use or would be unreasonable for other reasons. When the owner requires a deposit to fund restoration, the money must be kept in an escrow account with interest for the benefit of the person with a disability.

## Enforcement

All housing discrimination laws are triggered by citizen complaints. If you believe you have been denied equal housing opportunity, you can choose to take it to an administrative agency or file a lawsuit. A lawyer is advisable in either case since it is very difficult for non-lawyers to meet all procedural requirements in court.

## Administrative Enforcement

Persons may complain that their rights to an equal housing opportunity under the FHA or 504 (HUD or its recipients) were violated to the Fair Housing and Equal Opportunity Office of HUD in Washington, DC or any HUD office. Complaints under 504 about other agencies (such as Rural Development) or their recipients are made directly to those agencies. Complaints about violations of the Wisconsin Open Housing law are made to the Equal Rights Division (**ERD**) of the Wisconsin Department of Workforce Development in Milwaukee, Madison or one of several other cities. In most cases, the agency will also attempt to “conciliate” or mediate a settlement of the dispute.

### Where to register complaints



*You may file a complaint with one or more agencies. It is important to note that in Wisconsin, making a housing discrimination complaint with one agency does not invoke both state and federal law. The agency or agencies in which you file will each follow their own procedures under the appropriate law. It may be to your advantage to file complaints with both federal and state authorities.*

*HUD investigations are generally slower, but result in more detailed findings. ERD investigations are quicker but often not as thorough. HUD will prosecute a case on your behalf if they find cause to believe you were denied equal housing opportunity. In the ERD, you must prosecute your own case.*

24 CFR 103.30  
42 USC 3610(a),  
Sec. 106.04(6), Wis. Stats.,  
24 CFR 8.56(c)(3)

Complaints must be in writing, signed and affirmed under penalty of perjury by the person with a grievance under the law. The complaint must contain the name and address of the complainant, the name and address of the person who violated the complainant’s rights, a

### **Content and timelines**

description and address of the dwelling and a short statement which includes facts and dates about the violation. FHA and Wisconsin Open Housing complaints must be filed within one year from the violation. 504 complaints must be filed within 180 days of the violation.

42 USC 3612(a),  
Sec. 106.04(6)(c)2., Wis. Stats.

After the complaint has been filed and if the agency is not able to successfully conciliate the matter, it will make an initial determination. If it finds cause to believe that a prohibited housing practice has occurred, it will make a charge and serve all parties. The complainant or respondent may elect within 20 days of issuance of the charge to have the claims decided in a civil action.

### **Judicial Enforcement**

42 USC 3613,  
Sec. 106.04(6m), Wis. Stats.

**It also is possible to start a suit in court to enforce the protections of this law instead of using the administrative complaint process.**

There is no need to even file an administrative complaint if you wish to proceed in court. However, if you do file an administrative complaint, you must elect to proceed in court within 20 days of the charge under state law or start the lawsuit before an administrative judge starts a hearing on your FHA complaint.

42 USC 3613, 106.04(6m)

A civil action must be filed within two years of the discriminatory act under the FHA or one year under state law. This time will be extended by the amount of time spent processing your administrative complaint. The suit may be filed in state court under any of these laws. A state claim, however, may be brought in federal court only under limited circumstances. Under the FHA and Open Housing Law, a court may award actual and punitive damages, a court order prohibiting discrimination, and your costs and attorneys' fees.

### **Helpful Resources**

For information on:

FHA and HUD 504 Regulations  
**U.S. Department of Housing and Urban  
Development (HUD)**

Henry Reuss Federal Plaza  
310 West Wisconsin Avenue, #1380  
Milwaukee, WI 53203-2289  
414-297-3214

**HUD Washington DC Fair Housing Hotline**  
800-669-9777  
800-927-9275 (TTY)

[www.hud.gov/groups/](http://www.hud.gov/groups/)

**HUD Washington DC Fair Housing  
Information, Forms, and Publications**  
800-767-7468  
800-877-8339 (Federal Relay Service)

[www.dwd.wi.us/er/](http://www.dwd.wi.us/er/) Wisconsin Open Housing Law  
**Wisconsin Department of Workforce Development**  
**Equal Rights Division**  
P.O. Box 8928  
Madison, WI 53708-8928  
608-266-6860  
608-264-8752 (TTY)

Landlord/tenant issues  
**Tenant Resource Centers, Inc.** (statewide)  
1202 Williamson Street  
Madison, WI 53703  
608-257-0143  
608-257-0006 (for counseling)

[datcp.state.wi.us/  
static/cp/index.htm](http://datcp.state.wi.us/static/cp/index.htm) Wisconsin Department of Agricultural, Trade  
**and Consumer Protection**  
2811 Agriculture Drive  
Madison, WI 53708-8911  
800-422-7128

**Fair Housing Councils**  
Fair Housing Program of Greater Madison  
608-241-0105  
Metro Milwaukee Fair Housing Council  
414-278-1240  
Northeast Wisconsin Fair Housing Council  
920-734-9641

[www.rurdev.usda.gov/wi](http://www.rurdev.usda.gov/wi) **USDA Rural Development**  
4949 Kirschling Court  
Stevens Point, WI 54481  
715-345-7600  
715-345-7614 (TTY)