



Accessible Housing Facilities: The ADA, FHA and Section 504

**Mid-Atlantic ADA Update 2019
Philadelphia, PA
November, 2019**

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Our Mission:

- The mission of the Yang-Tan Institute on Employment and Disability advances knowledge, policies and practice to enhance equal opportunities for all people with disabilities.

Our Areas of Focus:

- The Yang-Tan Institute focuses on inclusive workplaces, education, work, income, healthy living, community membership, and engaged learning.

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Today's Presenter



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Setting the Tone...

- **TA Caller:** "Hi – I need some advice...my apartment manager said that I cannot have a reserved parking space closer to my unit, and I have a disability. Doesn't the ADA prohibit that?"
- **TA Caller:** "Hello – I'm an architect designing new private condos and I want to make sure I'm complying with the ADA in the bathroom and kitchen designs"

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FAIR HOUSING TRENDS IN 2018

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ANNIVERSARY
1968-2018
FAIR HOUSING ACT

Every year, NFHA collects data from private fair housing organizations, local and state government agencies, HUD, and DOJ to establish a picture of fair housing complaints in America.

PERCENT OF COMPLAINTS BY PROTECTED CLASS

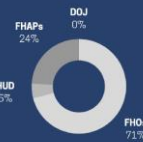


In 2017, there were

28,843

reported complaints of housing discrimination across the USA.

PERCENT BY REPORTING AGENCY



Private Fair Housing Organizations (FHOs) processed the overwhelming majority of housing discrimination complaints, followed by Fair Housing Assistance Program (FHAPs) agencies, HUD and DOJ.

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FHA Complaint Data

- As has been the case in past years, **the majority of complaints from 2017 involved housing discrimination against people with disabilities.**
- There were 16,337 cases that involved discrimination against a person with disabilities, or **56.7 percent of all cases.**
- It should be noted that discrimination on the basis of disability is the easiest to detect as it usually involves a denial of a request for a reasonable accommodation or modification or **because it involves a multi-family property that is not accessible in ways that violate the requirements of the Fair Housing Act**
- *Source: 2018 National Fair Housing Alliance Trends Report*
- https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report_4-30-18.pdf

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HUD Charges New York, Pennsylvania and Georgia-based Housing Design and Construction Professionals with Discriminating Against Persons with Disabilities

Charge alleges New York condominium complex is not accessible to persons with disabilities

September 16, 2019

- WASHINGTON - The U.S. Department of Housing and Urban Development announced today that it is charging housing professionals based in New York, Pennsylvania and Georgia with discrimination for **failing to design and construct the 40-unit North 8 Condominium development in Brooklyn, New York, in accordance with the accessibility requirements of the Fair Housing Act.**

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Overview of Applicable Fair Housing Laws

- The Americans with Disabilities Act of 1990 (ADA)
- Fair Housing Act of 1968, as amended in 1988 (FHA)
- Section 504 of The Rehabilitation Act of 1973 (504)

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The Americans with Disabilities Act



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The Americans with Disabilities Act (ADA)

- **Federal civil rights law** passed in 1990 and amended in 2008
- Aims at achieving equal opportunity and equal access to community life for individuals with disabilities



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Five Titles of the ADA



Title I Employment

Prohibits disability discrimination in all employment processes (EEOC Enforcement)



Title II Accessibility in State/Local Government

Physical and program accessibility in state/local govt. entities (U.S. DOJ/DOT Enforcement)



Title III Accessibility in Public Accommodations

Physical and program accessibility in restaurants, hotels, stores, places of business (U.S. DOJ Enforcement)

Title IV Telecommunications

Telephone and communications systems for the public (FCC/ U.S. DOJ Enforcement)

Title V Miscellaneous

Protection from retaliation

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The Americans with Disabilities Act (ADA)

- Housing – and services – provided by state and local governments and their entities (Title II), including, but not limited to, **correctional facilities, housing authorities, dorms, group homes and long term shelters** - *regardless of whether they receive federal funds*
- Public Accommodations that are open to the public, such as homeless shelters and motels (Title III)
- Common areas of multi-family housing that are open to the public (Title III)

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ADA Enforcement

- The ADA gives people with disabilities the right to file lawsuits in Federal court and obtain Federal court orders to stop ADA violations.
- People with disabilities can also file complaints with the U.S. DOJ, which can investigate and attempt to resolve the complaint – <http://www.ada.gov>.
- The Justice Department is also authorized to file lawsuits in Federal court in cases of “general public importance” or where a “pattern or practice” of discrimination is alleged.

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Section 504 of the Rehabilitation Act of 1973



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Section 504 of The Rehabilitation Act of 1973 (Section 504)

Section 504 states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any **program or activity that either receives Federal financial assistance or is conducted by any Executive agency** or the United States Postal Service.

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Section 504 of The Rehabilitation Act of 1973 (Section 504)

Requirements common to these regulations include reasonable accommodation for employees with disabilities; program accessibility; effective communication with people who have hearing or vision disabilities; and **accessible new construction and alterations**.

Each federal agency is responsible for enforcing its own regulations. Section 504 may also be enforced through private lawsuits. It is not necessary to file a complaint with a Federal agency or to receive a "right-to-sue" letter before going to court.

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HUD Section 504 Regulations – Key Points

Who are *recipients of federal financial assistance*?

- The Section 504 regulations define “recipient” as any State or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution organization, or other entity or any person **to which federal financial assistance is extended for any program or activity** directly or through another recipient, including any successor, assignee, or transferee of a recipient, **but excluding the ultimate beneficiary of the assistance.**

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What do you think?



- Would a non-profit developer of low income housing be considered a *recipient of federal financial assistance*?
- Would a public housing agency that receives HUD funding be covered by Section 504 in the operation of its Section 8 voucher program or activity?
- Would a private landlord who accepts Section 8 tenant-based vouchers in payment for rent from a low-income individual be considered a *recipient of federal financial assistance* because of this payment?

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Section 504 (HUD) Enforcement

- HUD's Office of Fair Housing and Equal Opportunity (FHEO) begins its complaint investigation process shortly after receiving a complaint.
- https://www.hud.gov/program_offices/fair_housing_equal_opp/complaint-process
- Generally, FHEO will either investigate the complaint or refer the complaint to another agency to investigate.
- If the investigation shows that the law has been violated, HUD or the Department of Justice may take legal action to enforce the law.

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The Fair Housing Amendments Act (FHAA)



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The Fair Housing Amendments Act (FHAA)

The FHAA applies to all **housing providers—private and public**. The FHAA prohibits housing providers from discriminating against applicants or residents because of disability. In addition, the FHAA makes it unlawful to refuse “to make reasonable accommodations/modifications in rules, policies, practices, or services, when such accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”

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About the Fair Housing Act...

The Fair Housing Act (FHA) was first passed in 1968, shortly after the assassination of Dr. Martin Luther King, and it prohibited discrimination based on race, color, religion and national origin.

Discrimination based on sex was added in 1974. When the law was comprehensively amended in 1988, it was changed to include discrimination against people because of **disability** and because of familial status.

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FHA PROTECTED CLASSES

- RACE
- COLOR
- RELIGION
- NATIONAL ORIGIN
- SEX
- FAMILIAL STATUS
- DISABILITY

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FHA Covered Individuals/Entities

- Owners
- Managers
- Homeowner's Associations
- Lenders
- Real Estate Agents
- Brokers
- Governments
- Insurers
- Developers/Builders
- Architects
- Contractors
- Engineers
- Landscape Architects
- All Persons/Entities Involved with Residential Housing

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FHA Enforcement

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Now for the Technical Stuff...



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A Few Key ADA Definitions-

- **Transient Lodging.** A building or facility containing one or more guest room(s) for sleeping that provides **accommodations that are primarily short-term in nature.** Transient lodging does not include residential dwelling units intended to be used as a residence, inpatient medical care facilities, licensed long-term care facilities, detention or correctional facilities.
- **Residential Dwelling Unit.** A unit intended to be used as a residence, that is **primarily long-term in nature.** Residential dwelling units do not include transient lodging, inpatient medical care, licensed long-term care, and detention or correctional facilities.

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The ADA and Residential Dwelling Units (including Graduate and Faculty Housing)

- 5% of dwelling units must provide mobility features and must comply with section 809.2 through 809.4
- 2% of dwelling units must provide communication features and comply with section 809.5
- Common resident areas and areas open to members of the public must comply with all applicable requirements in the 2010 Standards
- Visit <http://www.ada.gov/> for the 2010 ADA Standards for Accessible Design

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The ADA and Dormitories (Undergraduate Housing)

- Applies **transient lodging** requirements.
- A number of sleeping units with mobility features must be provided per Table 224.2 and must comply with section 806.2
- Public and common areas must comply with all applicable requirements in the 2010 Standards

Total Number of Guest Rooms Provided	Minimum Number of Required Rooms Without Roll-in Showers	Minimum Number of Required Rooms With Roll-in Showers	Total Number of Required Rooms
1 to 25	1	0	1
26 to 50	2	0	2
51 to 75	3	1	4
76 to 100	4	1	5
101 to 150	5	2	7
151 to 200	6	2	8
201 to 300	7	3	10
301 to 400	8	4	12
401 to 500	9	4	13
501 to 1000	2 percent of total	1 percent of total	3 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000	10, plus 1 for each 100, or fraction thereof, over 1000	30, plus 2 for each 100, or fraction thereof, over 1000

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The ADA and Dormitories (Undergraduate Housing)

- Communication features must be provided per Table 224.4 and must comply with section 806.3

Total Number of Guest Rooms Provided	Minimum Number of Required Guest Rooms With Communication Features
2 to 25	2
26 to 50	4
51 to 75	7
76 to 100	9
101 to 150	12
151 to 200	14
201 to 300	17
301 to 400	20
401 to 500	22
501 to 1000	5 percent of total
1001 and over	50, plus 3 for each 100 over 1000

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The ADA and Social Service Center Facilities * (Group Homes, Halfway Houses, Shelters, etc...)

- Facilities that provide either temporary sleeping accommodations or residential dwelling units shall comply with the provisions of the 2010 Standards applicable to **residential facilities** (Section 233 and 809) **AND...**
- *Minimum of 5% of units must have accessible mobility features*
- *Minimum of 2% of units must have accessible communication features*

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The ADA and Social Service Center Facilities * (Group Homes, Halfway Houses, Shelters, etc...)

- In sleeping rooms with more than 25 beds, a minimum of 5% of the beds shall have clear floor space complying with section 806.2.3 of the 2010 Standards.
- Facilities with more than 50 beds that provide common use bathing facilities, shall provide **at least one roll-in shower with a seat** that complies with the relevant provisions of section 608 of the 2010 Standards.

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The ADA and Correctional Facilities (Jails, Prisons, and other Detention Facilities)

- Must comply with the 2010 Standards except that public entities shall provide accessible mobility features complying with section 807.2 of the 2010 Standards for a **minimum of 3%**, but no fewer than one, of the total number of cells in a facility.
- Cells with mobility features shall be provided in each classification level.

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Section 504

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Section 504 Accessibility Requirements

New Construction:

- Make at least 5% of units accessible for individuals with mobility disabilities and at least 2% accessible for those with hearing or visual disabilities.

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Section 504 Accessibility Requirements

Existing Facilities

Substantial Alterations:

- If alterations are undertaken to a project that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the provisions for new construction apply, except that load bearing structural members are not required to be removed or altered.

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Section 504 Accessibility Requirements Existing Facilities

Other Alterations:

- When other alterations are undertaken, including, but not limited to modernization, such alterations are required to be accessible to the maximum extent feasible; **up until a point where a least 5 percent of the units in a project are accessible** unless HUD prescribes a higher number or percentage.

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Section 504 Accessibility Standards – HUD (UFAS)

- The Uniform Federal Accessibility Standards (UFAS) is the accessibility standard that has been in place for the construction and alteration of HUD funded projects since 1984.
- Effective May 23, 2014, when constructing or altering housing or other facilities using HUD funds, recipients may continue to use UFAS, or may elect to use the 2010 ADA Standards for Accessible Design (2010 Standards), with some modifications by HUD. HUD permits use of the 2010 ADA Standards with approximately **11 areas** that have been modified.



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Provisions in 2010 Standards Not Deemed as Equivalent Alternatives to UFAS	Provisions HUD Recipients Must Comply with for Purposes of Section 504 Compliance
1. Section 35.151(a)(2) Exception for structural impracticability	2010 Standards at Section 35.151 without Section 35.151(a)(2) and (b) (see below) and HUD's Section 504 regulation at 24 CFR § 8.4(b)(5)
2. Section 35.151(b) Alterations	HUD's Section 504 regulation at 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, 8.26 and UFAS 4.1.6
3. Section 202.2 Additions	HUD's Section 504 regulation at 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, 8.26 and UFAS 4.1.5



Provisions in 2010 Standards Not Deemed as Equivalent Alternatives to UFAS	Provisions HUD Recipients Must Comply with for Purposes of Section 504 Compliance
4. Exception to Section 202.4 Alterations Affecting Primary Function Areas	2010 Standards at Section 202.4 without the Exception and HUD's Section 504 regulation at 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, and 8.26
5. Section 203.8 General Exceptions – Residential Facilities	2010 Standards without Section 203.8 and HUD's Section 504 regulation at 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, and 8.26
6. Employee Work Areas: Section 203.9 (General exception for employee work areas), 206.2.8 (Circulation paths in employee work areas), and the Exceptions to 403.5 (Clearances within employee work areas) and 405.8 (Handrails within employee work areas)	2010 Standards without these provisions; Note that HUD is permitting use of Section 215.3 (Fire Alarm Systems in Employee Work Areas)



Provisions in 2010 Standards Not Deemed as Equivalent Alternatives to UFAS	Provisions HUD Recipients Must Comply with for Purposes of Section 504 Compliance
7. Exception 2 to Section 206.2.1 Site Arrival Points	2010 Standards at Section 206.2.1 without Exception 2
8. Exception to Section 206.2.2 Within a Site	2010 Standards at Section 206.2.2 without the Exception
9. Exception 1 to Section 206.2.3 Multi-Story Buildings and Facilities	2010 Standards at Section 206.2.3 without Exception 1



Provisions in 2010 Standards Not Deemed as Equivalent Alternatives to UFAS	Provisions HUD Recipients Must Comply with for Purposes of Section 504 Compliance
10. Section 214 – Scoping of Washing Machines and Clothes Dryers	HUD’s Section 504 regulation and UFAS 4.34.7 Laundry Facilities. HUD recipients should also be aware that, when washing machines and clothes dryers are provided in individual dwelling units, front loading accessible washing machines and clothes dryers may be required in accessible dwelling units as a reasonable accommodation for individuals with disabilities.
11. Exception to Section 215.1 Visible Alarms	2010 Standards at Section 215 without the Exception to Section 215.1 and HUD’s Section 504 regulation at 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, and 8.26



Fair Housing Act



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FHA Design & Construction Requirements Applicability

- Apply to **Multi-Family Residential Buildings** first occupied on/after March 13, 1991
 - Four (4) or more attached dwelling units.
 - In elevator buildings, all units must **comply**.
 - In non-elevator buildings, all first floor units* must **comply**.

*The “first floor units” are not always on the ground floor.



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The Fair Housing Act (FHA) can include:

- Apartments -For Rent
- Single Story Townhouses
- Dormitories
- Boarding Houses
- Nursing Homes
- Assisted Living
- Condominiums -For Sale
- Timeshares
- Sorority Houses
- Fraternity Houses
- Shelters
- Extended Stay Hotels



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The Fair Housing Act (FHA) can include:

- Additions, when adding four (4) or more new dwelling units.



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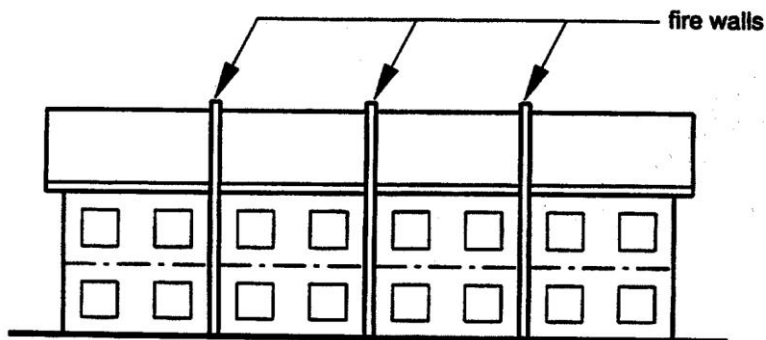
The Fair Housing Act (FHA) design/construction requirements do NOT apply to:

- Single family houses
- Duplexes or triplexes
- Multistory dwelling units*
- Alterations in existing buildings
- Changes in occupancies in existing buildings
- Additions, less than four (4) new dwelling units

*Multistory Unit: A dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it. The Fair Housing Act's design and construction requirements do not cover multistory units, unless the building has an elevator.

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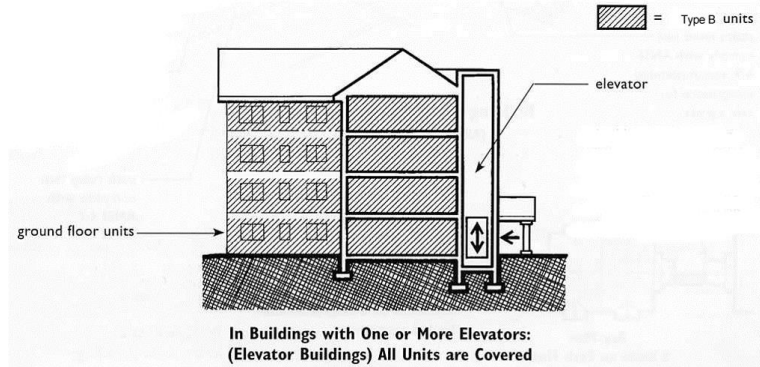


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No exception for elevator buildings.



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At Least One Story

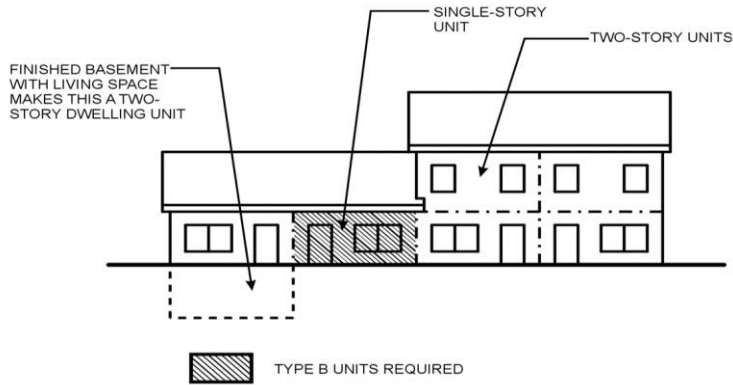


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Multi-Story Units



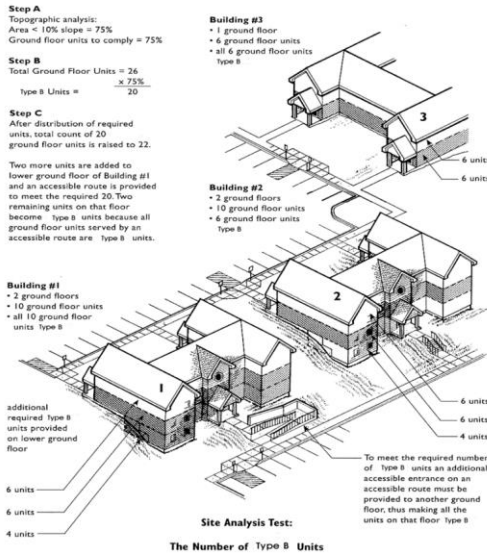
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Site Impracticality

Steep or Hilly Site

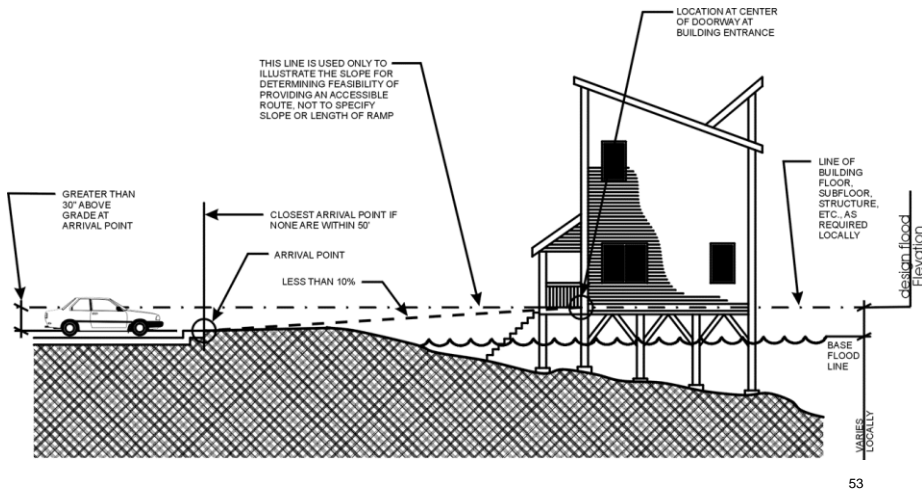


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Flood Plain



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Seven FHA Design Requirements

1. Accessible Entrance on an Accessible Route
2. Accessible Public and Common-Use Areas
3. Usable Doors
4. Accessible Routes Into and Through the Dwelling Unit
5. Accessible Light Switches, Electrical Outlets, and Environmental Controls
6. Reinforced Walls in Bathrooms
7. Usable Kitchens and Bathrooms

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FHA “Less-than-accessible” features

- Sunken living rooms or inaccessible lofts
- No accessible or adaptable kitchen work surfaces
- 4 inch threshold permitted at some porches, decks, balconies
- “Nominal” clear width at interior doors; no maneuvering clearance required at interior doors



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Accessible Common Areas

- Dumpsters
- Common Use Toilet Rooms
- Refuse Rooms
- Mail Kiosks
- Community Rooms
 - Kitchenettes
- Storage
- Curb ramps
- Parking



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Reminder! Federal Funds – Section 504



GENERALLY:

- 5% of the units must comply with 4.34 of the Uniform Federal Accessibility Standards (UFAS) or the 2010 ADA Standards with modifications – HUD \$
- 2% of the Units must have accessible communication features – HUD \$
- Applies to Municipal Housing Authorities, College Dorms, other federally-funded dwellings or dwellings constructed by recipients of federal funds.

ADA Title II – Residential Units that receive state or local government funding:

- 5% of the units must comply with the 2010 ADA Standards – Sections 233 & 809
- 2% of the units must have accessible communication features – Sections 233 & 809.5

REMEMBER – FHA is not contingent upon State/ Local or Federal Funds!

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Overlap – Section 504 & FHA

- An elevator building constructed with Federal financial assistance would be required to have **5 percent of its units meet the Section 504 accessibility requirements and the remaining 95 percent of the units would be required to comply with the Fair Housing Act design and construction requirements.**
- **Note:** an additional **2 percent** of the units are required to be accessible for people with vision and hearing impairments.

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Overlap – Section 504 & FHA

- A development consisting entirely of multistory townhouses constructed with federal financial assistance **is not a covered multifamily dwelling for purposes of the design and construction requirements of the FHA, but it would have to meet the Section 504** (5 percent + 2 percent) accessibility requirements.

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Visitability

Although not a requirement, it is recommended that all design, construction and alterations incorporate, whenever practical, the concept of *Visitability*, in addition to the requirements under Section 504, the ADA and the Fair Housing Act.

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Visitability – Minimum Design Considerations

- Provide a 32” clear opening in all bathroom and interior doorways.
- Provide at least one accessible means of entry for each unit.

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Benefits of Visitability

- Visitability also expands the availability of housing options for individuals who may not require full accessibility.
- It will assist housing providers in making reasonable accommodations and reduce, in some cases, the need for transfers when individuals become disabled in place. Visitability will also improve the marketability of units.

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Resources

Joint Statement of The Department of Housing And Urban Development and The Department of Justice: Accessibility Requirements For Covered Multifamily Dwellings Under The Fair Housing Act:

http://www.ada.gov/doj_hud_statement.pdf

HUD Section 504 Information Website:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504

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Resources

Fair Housing Accessibility FIRST (on line training/resources on the Fair Housing Act):

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

HUD UFAS Checklist

http://portal.hud.gov/hudportal/documents/huddoc?id=UFASAC_PHAs5708.pdf

Guide to the ADA Standards – U.S. Access Board

<https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards>

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