



Landlord/Real Estate Owner Obligations

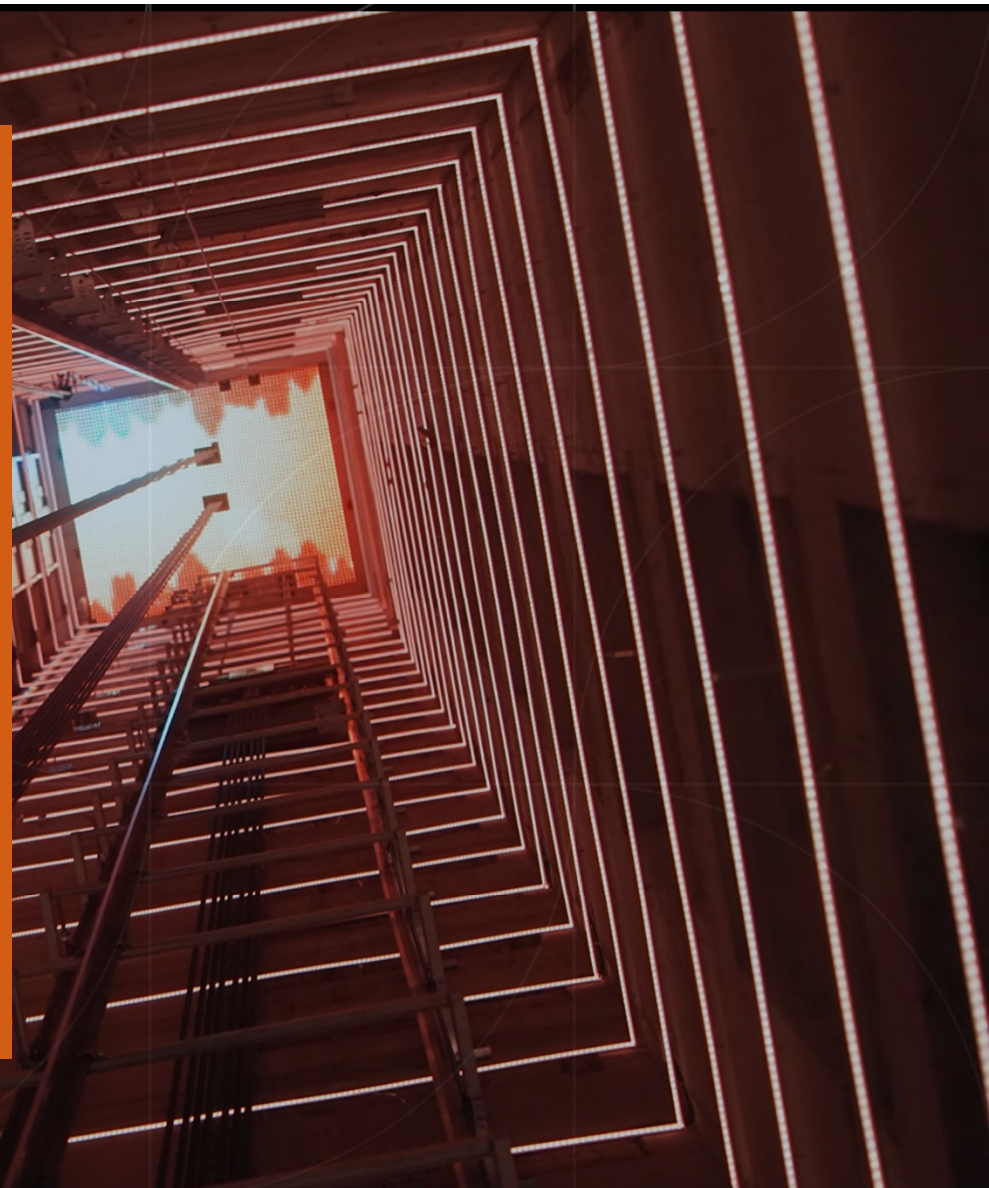
Under the Americans with Disability Act, the Fair Housing Act, and Section 504 of the Rehab Act

The Fundamentals & Recent Legal Developments

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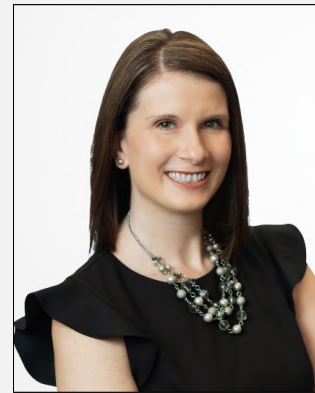
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Agenda

- 01** ADA Requirements
- 02** FHA Requirements
- 03** Section 504 Requirements
- 04** Consequences of Non-Compliance
- 05** Important Legal Decisions



Americans with Disabilities Act Requirements

Title III ADA Requirements



- **Who's Covered:** Owners, operators, lessors, lessees of commercial facilities and public accommodations facilities.

- A **commercial facility** is a privately owned facility that affects commerce but is not a public accommodation (e.g. warehouse, distribution center, corporate office building).

- **What is a public accommodation?**

12 categories of privately owned businesses

- (1) Place of lodging
- (2) A restaurant, bar, or other establishment serving food or drink;
- (3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
- (4) An auditorium, convention center, lecture hall, or other place of public gathering;
- (5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
- (6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

Title III ADA Requirements



- (7) A terminal, depot, or other station used for specified public transportation;
- (8) A museum, library, gallery, or other place of public display or collection;
- (9) A park, zoo, amusement park, or other place of recreation;
- (10) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
- (11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
- (12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

Title III ADA Requirements

- Requirements:
 - Accessible commercial and public accommodations facilities
 - Operational requirements for public accommodations:
 - Service animals
 - Power mobility devices
 - Hotel reservations/event ticketing
 - Effective communication
 - Websites, mobile apps, kiosks and other technology
 - Provision of auxiliary aids and services (e.g. sign language interpreters, CART)
 - Accepting TRS/Relay calls
 - Reasonable modifications to policies/practices

Title III ADA Requirements

- Physical Access Standards:
 - Pre-1993 facilities or elements that have never been altered: “Readily achievable” barrier removal (i.e. barrier can be removed without much difficulty or expense) (Does not apply to commercial facilities)
 - Facilities altered after January 26, 1992: Alterations must comply with applicable ADA Standards to the maximum extent feasible and compliance with path of travel requirement required;
 - Facilities constructed after January 26, 1993: Comply with applicable ADA Standards unless structurally impracticable;
 - ** Applicable ADA Standard is:
 - 1991 Standards before March 15, 2012 (2010 Standards optional from September 15, 2010)
 - 2010 Standards starting on March 15, 2012

Title III ADA Requirements

- Are landlords responsible for physical access problems in tenant spaces?
- YES
 - ADA allows allocation of responsibility for compliance between landlord and tenant in a lease, but generally plaintiffs can sue both the landlord and tenant and recover from both.
 - Landlord would also be responsible for any alterations it makes to tenant spaces.
 - Lawsuits usually involve both areas under tenant and landlord control.

Title III ADA Requirements

- Are landlords responsible for operational violations by tenants?
- It depends.
 - If the violation resulted from a landlord policy, then landlord can be responsible.
 - Example: Landlord does not allow service animals in tenant's retail or restaurant space.



FHA Requirements

Fair Housing Act Requirements

- Who's covered:
 - Persons engaged in the sale, lease, or provision of a dwelling (e.g., housing owners, real estate brokers, rental companies, homeowner/condo associations)
 - Persons involved in the design or construction of multi-family housing with 4 or more units (architects, construction companies, owner/developers)
- Type of facility covered:
 - All residential housing (for non-design & construction related requirements)
 - Exceptions: (1) owner occupied unit with 4 or fewer units and (2) single family housing rented or sold with no broker if owner does not own more than 3 rental properties.
 - Multi-family housing of four or more units (for design & construction requirements)
 - Types of housing covered: Condos, time-shares, dormitories, transitional housing, homeless shelters that are used as a residence, student housing, assisted living housing.
- Protected Classes:
 - Disability, race, national origin, color, gender, age, religion, and familial status
 - Note: State law typically covers other characteristics such as source of income, age, political affiliation, sexual orientation

Fair Housing Act Requirements

Operational Requirements

- Non-discrimination based on protected characteristics in all aspects of operations;
- Make reasonable accommodations for people with disabilities;
- Allow individuals with disabilities to modify their units and common areas at their own expense to make them accessible (but state laws may require landlords to pay)
- Non-discriminatory advertising
- No retaliation

Fair Housing Act Requirements

Operational Requirements

- Duty to make reasonable accommodations:
 - Examples:
 - Service animals and emotional support animals must be permitted
 - Assigned parking spaces when normal policy does not allow assignment
 - Adjust method of paying rent
 - Defenses:
 - No disability
 - No nexus between disability and requested accommodation
 - undue burden/fundamental alteration
 - Resident must make request but no specific format can be imposed
 - Housing provider can request reliable disability-related information that:
 - is necessary to verify that the person meets the FHA's definition of disability
 - describes the needed accommodation, and
 - shows the relationship between the person's disability and the need for the requested accommodation.

Fair Housing Act Requirements

Design & Construction Requirements

- Design & Construction Requirements:
 - Multi-family housing with four or more units constructed after March 13, 1991 must be accessible to people with disabilities.
 - Common facilities serving such housing must also be accessible.
 - Housing receiving federal funds have more stringent requirements under Section 504 of Rehabilitation Act

- Design Standards/safe harbors for FHA compliance:
 - 1986, 1992, 1998, or 2003 ANSI A117.3 Standards
 - FHA Design Manual
 - HUD’s Fair Housing Accessibility Guidelines
 - 2000 ICC Code Requirements for Housing Accessibility (CRHA)
 - 2000 International Building Code, as amended
 - 2003 IBC published Dec. 2002
 - 2006 IBC with 2007 erratum.
 - 2009 edition of the International Code Council Accessible and Usable Buildings and Facilities A117.1 Standard
 - 2009, 2012, 2015, and 2018 IBC

Fair Housing Act

Design & Construction Safe Harbors

Fair Housing Act & ADA Overlap

- Condominiums built with expectation many will be put in a rental program for short term stays must comply with both FHA and ADA design requirements
- In an apartment community, leasing office is covered by ADA in addition to FHA; ADA does not apply to dwelling units
- Student dorms are covered by both FHA and ADA.



Section 504 of the Rehabilitation Act

Section 504 Overview

- Law provides additional protections for individuals with disabilities in housing receiving federal assistance.
- Who is covered? Examples:
 - HUD funded public housing agency
 - HUD funded non-profit developer of low-income housing
 - Developer receiving Community Development Block Grant (CDBG) or HOME funds
- Who is not covered?
 - a private landlord who accepts Section 8 tenant-based vouchers in payment for rent from a low-income individual

Section 504 Requirements

- Landlord obligations beyond the FHA:
 - Must provide auxiliary aids and services to ensure effective communication
 - Must pay for reasonable modifications to units and common areas unless they result in an undue financial and administrative burden or a fundamental alteration of the program.

Application of FHA, ADA and Section 504 to Various Property Types

Property Type	ADA Title III	FHA	Section 504
Shopping Mall	X		
Retail Store	X		
Restaurant	X		
Hotel	X		
Warehouse/Distribution Center	X		
Office Building	X		
Student Dormitory	X	X	X
Extended Stay Hotel	X	Maybe	
Timeshare	Maybe	Maybe	
Condo with Vacation Rental Program	Maybe	X	
Multi-Family Housing	X (for leasing office and any other space open to the public)	X	X (if property received federal financial assistance)



The Consequences of Non-compliance

ADA, FHA and Section 504 Enforcement

	Injunctive Relief	Attorneys' Fees/Costs	Damages	Civil Penalty
ADA TITLE III				
DOJ action in court	X		X	X
Private lawsuit in court	X	X		
FHA				
DOJ action in court	X		X	X
Private lawsuit in court	X	X	X (incl. punitive damages)	
HUD complaint process	X	X	X	X
SECTION 504				
Private lawsuit in court	X	X	X	



Important Decisions

Common ADA And FHA Lawsuits/Agency Complaints Against Landlords

- ADA Title III lawsuits for inaccessible facilities
- FHA lawsuits/complaints
 - Failure to design & construct to FHA standards
 - Adverse action (e.g. application denial, eviction, rule enforcement) on the basis of race, gender, disability, age, and familial status
 - Failure to provide reasonable accommodation to disabled tenant (assistance animal issues are common)
 - Failure to allow reasonable modification to unit or common area
 - Sexual harassment
 - Retaliation

Federal Preemption

of Indemnification Claims for ADA/FHA Violations

- Rolf Jenson Assocs. v. Eighth District Judicial Court, 282 P.3d 743 (2012) (Supreme Court of Nevada) (Mandalay Bay casino could not sue architect or consultants for ADA design errors requiring \$20M in retrofits).
- Equal Rights Center v. Niles Bolton Assocs., 602 F.3d 597 (4th Cir. 2010) (owner could not sue architect for designing non-compliant multi-family housing)
- City of Los Angeles v. AECOM Servs., Inc., 854 F.3d 1149, 1161 (9th Cir. 2017) (owner can assert contribution claim against architect for design that violated the ADA)
- Shaw v. Cherokee Meadows, 2018 WL 3474082 (N.D. Okl. 2018) (court allows owners to assert contribution claim against a contractor for FHA/ADA violations).

Successor Liability of Asset Purchasers

- Cases holding that subsequent purchaser of public accommodation facility (asset sale) does not have successor liability for design, construction, alterations failures it was not involved in, but still liable for ongoing readily achievable barrier removal:
 - *Lema v. Carson Hotel*, CA 2:10-cv-07816 (CDCA 2012)
 - *Paulick v. Ritz Carlton Hotel*, 2011 WL 6141015 (NDCA 2011)
 - *Rodriguez v. Investco*, 305 F.Supp.2d 1278 (M.D. Fla. 2004)



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