

Opening Doors

A HOUSING PUBLICATION FOR THE DISABILITY COMMUNITY

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FROM THE EDITORS

The Ten Year Anniversary of the Fair Housing Act Amendments: Celebration or Vigil?

This past April fair housing advocates and people with disabilities celebrated the ten year anniversary of the passage of the Fair Housing Amendments Act of 1988 (FHAA) which extended fair housing protections to people with disabilities.

In passing the 1988 amendments, Congress took the step to ensure a national commitment to end unnecessary exclusion of people with disabilities from the American mainstream. Unfortunately, despite substantial gains for people with disabilities, the passage of the 1988 amendments has not served to change the attitudes of numerous individuals, communities, and even policy makers nationwide. Nowhere is this more readily apparent than in Washington, D.C. where sustained legislative efforts threaten to erode important protections available under the FHAA. (See Washington Bulletin Board detailing the recent legislative effort referred to as H.R. 3206).

Due to the hard work of advocates, an increasing number of Members of the House voiced their concern regarding H.R. 3206. The CCD Housing Task Force delivered a letter to all Members of

the Judiciary that included 35 pages of organization and individual signatures from all 50 states voicing their opposition to any erosion of the FHAA. This grassroots opposition, joined by civil rights, senior and religious organizations together has ended the threat to the FHAA for this year.

But this challenge underscores the ongoing need for vigilance to ensure that people with disabilities continue to be afforded the rights and protections to live in housing and neighborhoods of their choice. This vigilance begins with an understanding of the federal housing laws, the protections each provides, and how these laws can be used to ensure access to housing in the community.

The last ten years have seen tremendous gains in affordable and integrated housing for people with disabilities. This issue of *Opening Doors* outlines the fair housing tools that have made many of these gains possible. We hope that it will help support the ongoing efforts in communities throughout the country to combat stigma and foster community integration.

The Editors



*A publication of the
Technical Assistance
Collaborative, Inc.
and the Consortium for
Citizens with Disabilities
(CCD) Housing Task
Force*



A Federal Fair Housing Protections for People with Disabilities

Up until 10 years ago, it was actually legal in most states for private landlords to refuse to rent to someone because of their disability! Still today all too many people with disabilities, their advocates, family members, and providers face housing

discrimination by landlords and neighbors throughout the country.

This issue of *Opening Doors* provides an overview of the federal housing laws that protect the rights of people with disabilities to live in housing and communities of their



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To housing opportunities for people with disabilities

Opening Doors is published as a joint effort by the Technical Assistance Collaborative, Inc., Boston, Massachusetts and the Consortium for Citizens with Disabilities Housing Task Force, Washington, D.C.

The Technical Assistance Collaborative, Inc. is a non-profit organization that provides state-of-the-art technical assistance and training to housing and human service organizations so that they may achieve positive outcomes in their work on behalf of people who are disadvantaged and/or disabled. For more information, please contact Lexi Turner or Ann O'Hara, Technical Assistance Collaborative Inc., One Center Plaza, Suite 310, Boston, Massachusetts 02108. Phone: 617-742-5657 or Fax: 617-742-0509 or e-mail: info@tacinc.org.



The Consortium for Citizens with Disabilities (CCD) is a national coalition of consumer, advocacy, provider, and professional organizations who advocate on behalf of people of all ages with disabilities and their families. CCD has created the CCD Housing Task Force to focus specifically on housing issues that affect people with disabilities.



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Nat'l Assoc. of Developmental Disabilities Councils	(202) 347-1234
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Nat'l Council for Community Behavioral Healthcare	(301) 984-6200
United Cerebral Palsy Association	(202) 973-7149
Nat'l Assoc. of State Mental Health Program Directors	(703) 739-9333

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Fair Housing

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choice. Past issues of *Opening Doors* have focused on how people with disabilities, their advocates, family members, and service providers can access and advocate for a fair share of affordable housing resources. Affordable housing resources are critical to assist people with disabilities to afford housing in communities of their choice. Yet equally important is an understanding of the protections available to people with disabilities as they seek to live productive and integrated lives in the community.

B What Are the Federal Laws that Provide Fair Housing Protections?

There are currently three federal housing laws that provide fair housing protections for people with disabilities, their advocates, and providers. These are:

1. The Fair Housing Amendments Act of 1988 (FHAA);
2. Section 504 of the Rehabilitation Act of 1973 (Section 504); and
3. Title II of the Americans with Disabilities Act of 1990 (ADA).

I. Federal Fair Housing Amendments Act (FHAA)

In 1988, the Congress expanded Title VIII of the Civil Rights Act of 1968—which prohibits housing discrimination on the basis of race, color, religion, sex or national origin—to include these protections for people with disabilities. By amending Title VIII to include people with disabilities as a protected class, the 1988 Act established a critical civil rights law to repudiate the use of stereotypes, prejudice, and ignorance to exclude people with disabilities from living in housing and communities of their choice.

In passing the law, Congress made a clear pronouncement of a national commitment to end the unnecessary exclusion of people with disabilities from the mainstream of American life. The goal of the FHAA is to ensure *“no person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status or national origin in the sale, rental or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real-estate related transactions”* (24 CFR 100.5).

Congressional report language at the time of passage of the FHAA made clear that the law as it applies to people with disabilities has three purposes:

1. To end segregation of the housing available to people with disabilities;
2. To give people with disabilities the right to choose where they wish to live; and
3. To require reasonable accommodation to their needs in securing and enjoying appropriate housing.

This third purpose—*assuring reasonable accommodation*—is at the heart of the FHAA and *is essential in bringing about the first two purposes—non-discrimination and choice*.

The FHAA lays out a range of practices that are prohibited because they can result in discrimination against people with disabilities in the rental or sale of housing. Landlords cannot:

- refuse to rent or sell housing to someone because of his or her disability;
- discriminate in the terms, conditions or privileges related to the sale or rental of housing;
- misrepresent the availability of housing;
- advertise in a way that discriminates against or shows a preference against a person with a disability;
- use different qualification criteria or rental applications for housing;
- evict someone because of his or her disability; or
- steer someone to specific housing because of his or her disability.

In addition to these prohibited activities, the FHAA requires landlords to take proactive actions to ensure that people with disabilities have equal access to housing. These include:

- **Making reasonable accommodations:** An owner must make reasonable accommodations in rules, policies, practices or services when necessary to afford a person with a disability an equal opportunity to use and enjoy an apartment, including public and common areas.

- **Making reasonable modifications:** An owner must allow a person with a disability to make physical modifications to a unit if needed by that individual to fully use and enjoy the housing unit.

In addition, the FHAA establishes design and construction standards for new and substantially rehabilitated multi-family housing. The federal regulations *apply to all owner-occupied housing with five or more units and non-owner-occupied housing with four or more units*. This includes private landlords and publicly-assisted landlords, such as Public Housing Authorities (PHAs). The FHAA also covers some housing owned or operated by service providers.

Finally, in defining coverage under the FHAA, Congress included the broadest possible class of people with disabilities—from those who have visible disabilities to those who have no disabilities but are so perceived. Congress also included advocacy organizations and providers of housing for people with disabilities in addition to consumers themselves under the FHAA’s definition of “aggrieved person.” *Therefore, the law protects entities acting on behalf of people with disabilities in obtaining housing.*

II. Section 504 of the Rehabilitation Act of 1973 (Section 504)

Section 504 of the Rehabilitation Act of 1973 requires recipients of federal funds to make their programs and activities accessible to people with disabilities, including housing programs. In 1988, the U. S. Department of Housing and Urban Development (HUD) issued *24 CFR Part 8 Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities*. This regulation implements the Section 504 requirements for all HUD-funded programs and activities, such as public housing and the Section 8 rental assistance programs administered by PHAs. These

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FOR MORE
INFORMATION OR
LIMITED TECHNICAL
ASSISTANCE ON
HOUSING FOR PEOPLE
WITH DISABILITIES
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ORGANIZATION LISTED
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regulations also cover private owners of federally subsidized housing developments, such as Section 8 New Construction or Substantial Rehabilitation housing developments.

The purpose of the federal regulation is to ensure that “no otherwise qualified” person with a disability “shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits from or be subjected to discrimination under any program or activity receiving” funds from HUD (24 CFR 8.1(a)).

HUD’s regulations specify activities that are prohibited by agencies receiving federal housing funding, such as a Public Housing Authority (PHA) that administers the Section 8 certificate program or a city that receives Community Development Block Grant funding. The regulations also outline the proactive steps that these agencies must take in order to comply with the law and ensure nondiscrimination against people with disabilities. Under Section 504, agencies administering or receiving federal housing dollars must ensure that:

- **Discrimination against people with disabilities is prohibited.** People with disabilities cannot be denied

access to a housing program or service based on their disability. Services must generally be provided in an integrated manner, and not provided separately for people with disabilities. The same types and quality of services must be provided to people with disabilities as people without disabilities.

- **Programs are accessible to people with disabilities.** Recipients of federal funds must operate housing programs and activities so that the program, when viewed in its entirety, is readily accessible to and usable by people with disabilities.
- **Housing policies and practices are modified to ensure nondiscrimination.** Housing policies and practices must be reasonably modified as needed on an on-going basis.
- **Facilities that are newly constructed or substantially rehabilitated are made accessible.** This includes a requirement that a minimum of 5% of housing units be made accessible for people with mobility impairments and a minimum of 2% of the housing units be made accessible to people with hearing or vision impairments.
- **Alterations of existing facilities are also made accessible.** When making alterations to existing housing facilities that do not constitute substantial rehabilitation as described above, the alterations shall, to the maximum extent feasible, be made readily

Comparison of FHA, Section 504 and ADA

FEDERAL LAW	TYPES OF PRACTICES PROHIBITED OR REQUIRED	TYPES OF HOUSING COVERED	DEFINITION OF A PERSON WITH A DISABILITY
Section 504 of the Rehabilitation Act of 1973	<ol style="list-style-type: none"> 1 Cannot discriminate, exclude or deny benefits solely because of disability 2 Must provide reasonable modifications in all rules, policies and procedures 3 Program must be readily accessible to and usable by individuals with disabilities 	Any housing program or agency that receives federal funds including public housing authorities and assisted housing providers	<p>A person who:</p> <ol style="list-style-type: none"> 1 Has a physical or mental impairment which substantially limits a major life activity such as walking, thinking, speaking, hearing, learning, breathing 2 Has a record or history of an impairment which limits a major life activity even if the person no longer has the disability or the disability no longer limits a major life activity 3 Is regarded as having an impairment that limits a major life activity
Fair Housing Amendments Act of 1988	<ol style="list-style-type: none"> 1 Cannot discriminate 2 Must provide reasonable accommodations in rules, policies and procedures 3 Must allow tenants to make reasonable physical modifications 	All housing except owner-occupied 2, 3, or 4-family housing (whether the housing has public funding or not)	
Title II of the Americans with Disabilities Act (1990)	Same as Section 504	Housing programs or agencies receiving state and local government funding including public housing authorities and state housing finance agency-funded housing developments	

This table has been modified from “A Handbook On The Legal Obligations and Rights of Public and Assisted-Housing Providers Under Federal and State Fair Housing Law for Applicants and Tenants With Disabilities,” Debbie Piltch, J.D., Piltch Associates, Inc. in consultation with Ann Anderson, MMHS, Massachusetts Housing Finance Agency.

accessible and usable by people with disabilities.

- **Communication is effective.** The recipient must provide auxiliary aids and services as needed to ensure equal participation by persons with disabilities. These might include TTYs, sign language interpreters, or providing materials in “layperson terms.”

In addition, agencies administering or receiving federal housing dollars must take five steps to ensure nondiscrimination against people with disabilities. These include:

- 1) conducting a **self-evaluation** or review of all of their programs and practices;
- 2) conducting a **needs assessment** of the need for wheelchair accessible units in the community and developing a **transition plan** if needed, to provide the required number of accessible units;
- 3) designating a **Section 504 coordinator**;
- 4) adopting **grievance procedures**; and
- 5) **notifying** program participants, the public and others that the agency does not discriminate against people with disabilities.

III. Americans with Disabilities Act (ADA)

Title II of the ADA¹ essentially extends the requirements of Section 504 to state government and state-government funded programs. This means that state-funded public housing programs and private affordable housing developments receiving state funding – such as housing developments financed by a State Housing Finance Agency – are covered by the Title II of the ADA.

Like Section 504, Title II of the ADA:

- prohibits discrimination on the basis of disability;
- requires services, programs and activities to be accessible to and usable by people with disabilities;

- requires newly constructed or substantially rehabilitated facilities to be accessible including a requirement that a minimum of 5% of housing units are accessible for people with mobility impairments and a minimum of 2% of the housing units are accessible to people with hearing or vision impairments;
- requires facilities to make alterations readily accessible to the maximum extent feasible;
- requires the entity to ensure effective communication; and
- requires the entity to take five proactive steps to ensure nondiscrimination, including: (1) self evaluation, (2) provision of notice, (3) designation of an ADA Coordinator, (4) adoption of grievance procedures, and (5) development of a transition plan, if needed.

C What Protections Do These Laws Provide?

The three federal housing laws described above provide critical protections for people with disabilities in three primary ways:

- 1) protecting the rights of people with disabilities to rent an apartment in the community;
- 2) protecting the rights of people with physical disabilities to live in the community by creating accessible and adaptable housing; and
- 3) protecting the rights of people with disabilities, their advocates, and providers to buy or build housing in their communities.

I. Renting An Apartment

Many people with disabilities experience discrimination when they try to rent an apartment. A landlord may outright refuse to rent to someone with a disability or may make it difficult for the person to obtain or complete an application.

A landlord may ask a person with a disability a lot of personal questions about

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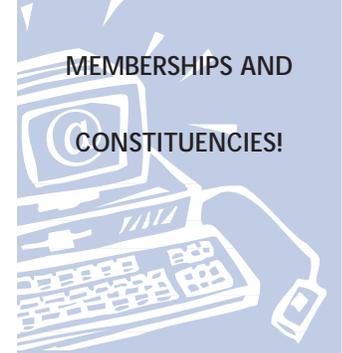
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1. Title III of the ADA covers places of public accommodation. Some housing developments have places of public accommodations such as rental offices or community rooms that would fall under Title III.

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their disability. A landlord may try to charge a higher rent because he believes the tenant is likely to do more damage to an apartment because of their disability. All of these practices are prohibited under the federal housing laws.

EXAMPLES OF PROHIBITED DISCRIMINATORY ACTIONS IN THE RENTAL MARKET

■ **It is illegal to refuse to rent an apartment to someone because they have a disability.**

Sam is a person with a psychiatric disability. Robin is Sam's case manager. Sam wants to move from a group home into his own apartment. Because Sam is low-income, he is looking into apartments that are subsidized by HUD. Sam asks Robin to come with him to see an apartment. While the housing manager shows them the apartment, he asks Sam and Robin a lot of questions about whether they are both going to live there and the nature of their relationship. Sam tried to avoid answering the questions but eventually he tells the housing manager that Robin is his case manager. When Sam calls back later in the day to tell the manager he wants the unit, the manager tells him the unit is no longer available. Sam believes that the manager does not want to rent to him because of his disability. If Sam is correct, the manager has violated the FHAA by discriminating against Sam. The manager has also violated Section 504 because the housing receives HUD funding.

■ **It is illegal to discriminate in the terms, conditions or privileges related to an apartment because the renter has a disability.**

Donna is a person with HIV. She is active in local politics and identifies herself publicly as a person with HIV so many people are aware of her disability. She moves into a new housing development that has a number of amenities including a pool. The landlord tells Donna that her lease has a special section stating that she will not be allowed to use the pool. He says that he understands that HIV cannot be transmitted through pool water but that the other tenants may not and he can not handle the complaints. The landlord is discriminating against Donna under the FHAA. Since this development has no public funding, Section 504 and the ADA do not apply.²

■ **It is illegal to charge someone a higher rent because they have a disability.**

Mr. Smith wants to rent an apartment to Susan who has a cognitive disability. He is worried, however, that Susan may not take good care of the apartment

because of her disability. He decides to charge her a higher rent to cover any repairs. Mr. Smith's actions are illegal under the FHAA.

■ **It is generally illegal for landlords to ask an applicant questions about their disability.**

The FHAA states that, generally, landlords may not ask questions about an applicant's disability. Landlords cannot ask:

- whether the applicant has a disability;
- about the nature or severity of the disability;
- about diagnosis, prognosis, medication, personal care or any other such disability-related questions; or
- whether the applicant can live independently.

The housing manager **may** ask very **specific, limited** questions regarding a person's disability in order to determine whether an individual meets the eligibility criteria for the housing unit or development. If the landlord asks **any** questions regarding disability, he must ask these questions of **all** applicants for the housing.

How To Address Discrimination

Although the federal government has passed laws prohibiting discrimination against people with disabilities in housing, discrimination continues to occur. If you believe that you have been discriminated against, there are a number of informal and formal actions that you, or an advocate or provider on your behalf, can take to respond.

[Informal responses to discrimination in housing](#)

Informal actions are those steps that do not involve filing a formal complaint but are attempts to get the landlord (or housing agency, realtor) to address the discriminatory behavior. Using these types of informal avenues does not keep you from filing a complaint at a later time.

- Make an appointment to meet and talk with the housing manager or agency
- Write a letter to the housing manager or agency outlining your concerns
- Grieve the decision or action through the agency's (if state or federally funded) established grievance procedures for hearing fair housing complaints (required by Section 504 and the ADA)
- Seek mediation through a local mediation or problem solving agency

2. Since the discrimination is around a "public accommodation" (the pool), Title III of the ADA may apply.

For example, when leasing an accessible unit, the landlord may ask an applicant if they require the design features of that unit. The landlord may also require the applicant to provide documentation of the disability. If a housing unit or development is limited to elders and people with disabilities, the landlord may ask the applicant his or her age and whether s/he has a disability. The landlord may also request documentation that the applicant is disabled. Such documentation should be very general and simply verify that a person has a disability, not the nature or severity of the disability.

USING REASONABLE ACCOMMODATION TO RENT AN APARTMENT

The ability to request a reasonable accommodation is particularly helpful to people with disabilities who want to rent an apartment. As described earlier in this issue, a reasonable accommodation is a change to a policy or practice that allows a person with a disability to participate fully and equally in a housing program. Outlined below are some examples of requests for

accommodations that people with disabilities often use when renting an apartment in the community.

■ Requesting that an application be mailed

Sally sees in the newspaper that her PHA is opening up the waiting list for the Section 8 certificate and voucher program. She wants to apply but the ad requires her to go to the PHA's office. This is difficult for her to do because of her disability. Sally can request that the PHA provide her a reasonable accommodation and mail the application to her.

■ Applying for housing if you have a poor tenancy history or no tenancy history

Bob is a person with a disability who also happens to be in recovery. When he lived in his last apartment, he was drinking a lot. As a result of his drinking, he did not pay his rent on time and the police were called to the apartment several times because of loud noise and arguments. After six months in a sober housing program, Bob feels he is ready to move back into his own apartment. The manager for the apartment where he has applied, however, tells him that he will not rent to him because his previous landlord gave him a bad reference. Bob decides to appeal this rejection. He requests an accommodation to the landlord's policy of rejecting applicants with poor tenant histories. In order to obtain the accommodation, Bob will need to show the landlord that:

- the poor reference from his previous landlord is disability-related (i.e., related to his alcoholism);
- he is no longer drinking; and
- there is a reasonable expectation that his poor behavior will not recur.

Bob can try to demonstrate his sobriety through written letters from substance abuse treatment providers such as the staff at his sober house, treatment groups he attends and/or his AA sponsor.

■ Service or companion animals

Sally is applying to a no-pets apartment building. Sally is a person with a cognitive disability and has a cat that is a companion animal. The building manager should allow Sally to keep the pet as a reasonable accommodation if she can demonstrate that she needs the pet because of her disability.

■ Personal Care Attendant

Ron is a person with AIDS. He has become very frail as a result of his disability and needs a live-in attendant to assist him with his personal care. When he applies to his PHA, he requests an accommodation to have a two-bedroom unit to allow his live-in attendant to live with him.

Discrimination When It Occurs?



- Seek assistance from an advocacy agency such as protection and advocacy organizations, disability advocacy agencies, legal services, independent living centers, clubhouses, or housing advocacy agencies.

Filing a formal complaint

If you are more certain that you have been discriminated against (for example, you have evidence or believe that you can obtain evidence of the discrimination), you should consider filing a formal complaint.

Violations of:	File with:
Fair Housing Amendments Act of 1988	HUD Any state or local agency with "substantial equivalency"
Section 504 of the Rehabilitation Act of 1973	HUD or Any state agency with "substantial equivalency"
ADA, Title II	HUD Any state or local agency with "substantial equivalency"

There is nothing to keep you from filing complaints with a number of different agencies and/or pursuing several courses of action at once. ■

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■ Parking

Stuart is about to rent an apartment. The manager tells him over the phone that the apartment building's policy is to assign parking by seniority. She tells Stuart that everyone wants the spaces near the front door and this is the only fair way to deal with requests. Stuart tells her that he has a physical disability and as a result needs a parking space close to the front door. He requests a reasonable accommodation to the building's parking policy.

II. Creating Accessible Housing

Another important aspect of the federal housing laws is their ability to promote (and enforce) the creation of accessible or adaptable housing. The laws are designed to ensure that people with physical disabilities and mobility impairments have an equal opportunity to live in the community.

NEW CONSTRUCTION

The federal housing laws are designed to ensure that additional accessible and adaptable housing is created over time by requiring that newly constructed or substantially rehabilitated buildings meet new access standards.

The FHAA requires that housing with four or more units first occupied on or after March 13, 1991 be designed to include:

- at least one building entrance on an accessible route;
- public and common use areas that are readily accessible and usable by people with disabilities;
- doors into and throughout the building wide enough to allow passage by someone in a wheelchair;
- dwelling units with:
 - accessible routes into and through the units;
 - light switches, outlets and thermostats in accessible locations;
 - reinforcement in the bathroom walls to allow later installation of grab bars; and
 - kitchens and bathrooms in which a person with a wheelchair can maneuver.

The design features required under the FHAA are referred to as "adaptable." This means that the unit can be used by someone who does not have a disability and can be adapted for use by someone who uses a wheelchair.

Section 504 has a different set of new construction requirements that must also be taken into consideration by

HUD-funded housing programs, including public housing, Section 202, Section 811 and HUD-funded private developments. In HUD-funded housing developments that are newly constructed or substantially altered at least 5% of the units must be wheelchair accessible, and at least 2% of the units must be accessible for persons with hearing or vision impairments.

REASONABLE MODIFICATIONS FOR CREATING ACCESSIBLE HOUSING

The federal housing laws also provide tenants with disabilities some opportunities to proactively make or request access modifications to existing buildings.

Private rental housing: The FHAA requires the owner of a private apartment building to allow a tenant to make reasonable modifications to his or her unit. The tenant, however, is responsible for making and paying for any modifications, and may have to restore the premises to its original condition when s/he moves.

Publicly-assisted rental housing: Many people with disabilities who have low-incomes cannot afford to make modifications to their rental units. In federally-assisted housing which is covered by Section 504, the landlord is often required to make and pay for the modifications if the cost is not prohibitive. A PHA, for example, may be required to put grab bars into a bathroom and/or build a ramp to a front door. Whether the cost of a modification is reasonable or not is evaluated on a case-by-case basis. Factors for consideration include: the size of the housing owner's budget, whether the housing owner has accessible units available, the cost of the modification, and other factors.

Section 8 rental assistance: A private landlord participating in the Section 8 program is generally not required to pay for modifications. However, the tenant can request that the PHA administering the Section 8 program provide a "reasonable accommodation," and pay a higher rent for the unit, in order to allow the landlord to pay for some modifications to the unit.

III. Siting Community Residences

Many people with disabilities, their advocates, and providers experience discrimination when they go to purchase or lease a property for use as a community residence. Some realtors refuse to show properties to social services agencies. Some realtors who have been willing to sell to consumer groups or service providers have been pressured by neighbors or community members to stop the sale. In some cases, neighbors have banded together and bought the house themselves to prevent people with dis-

abilities from moving in. Finally, some communities have established zoning rules they hope will keep group residences from being sited in their community. **All of these actions can be challenged under the Fair Housing Amendments Act.**

There are three ways in which these types of barriers may violate, and therefore be challenged under, the FHAA:³

- (1) The community's policy or practice has a **discriminatory intent on people with disabilities**: The policy or practice has the obvious intent of keeping people with disabilities out of the community. For example, a policy that requires all community residences to have public hearings might have a discriminatory intent under the FHAA.
- (2) The community's policy or practice has a **discriminatory impact on people with disabilities**: Some policies or practices are not obviously or blatantly discriminatory but have a discriminatory (or disparate) impact nonetheless. For example, policies which require community residences to be located 1,500 feet apart may intend to enhance integration, but if the impact is actually to keep people with disabilities out of certain neighborhoods, then the policy may be discriminatory under the FHAA.

- (3) The community did not provide a **reasonable accommodation to a local policy or practice which poses a barrier to people with disabilities**: As described above, the FHAA requires the provision of reasonable accommodations when needed to allow a person with a disability an equal opportunity to use and enjoy housing. If a local policy or practice creates a barrier for people with disabilities, they have the right to request an accommodation. If this accommodation is reasonable, the community must provide it. For example, if a community has a requirement that no more than five unrelated persons may live in a property, a community residence for people with disabilities may request an accommodation to this requirement. If such an accommodation is not provided, the community may be violating the FHAA.

Overall, court decisions on these issues have been favorable to people with disabilities. However, this area of the law is still evolving. State and local courts have not consistently interpreted or applied the FHAA. Furthermore, only one court case involving the FHAA, the *City of Edmonds vs. Oxford House*, has been decided by the U.S. Supreme Court.

Outlined below are some of the most common NIMBY (“Not In My Back Yard”) strategies used to prevent the siting of community residences and how the FHAA has been used to fight them.

■ **Limits on the number of unrelated persons living together**

Some communities seek to keep community residences out of “single-family” neighborhoods by capping the number of unrelated adults who can live in a home or by limiting the number of unrelated adults who constitute a “family.” These restrictions are problematic for siting larger community residences.

Many but not all courts have struck down rules capping the number of unrelated adults or restrictive definitions of family. Importantly, in 1995 the U.S. Supreme Court, in its first interpretation of the FHAA, ruled that restrictive definitions of “family” may be challenged under the Fair Housing Act (*City of Edmonds vs. Oxford House, Inc.*). The Court did not go so far as to rule whether any particular restrictions

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3. Adapted from “Fair Housing Law and the Siting of Community Residences.” Robert Fleischner, Esq. in *Housing and Disability*. Massachusetts Continuing Legal Education No. 97-19.07.

Fair Housing Web Sites

Here are some web sites that might be of interest. There is a lot more out there – this is just a start!

www.hud.gov/bshelf5.html. This is the Fair Housing Bookshelf on HUD's web site. The Bookshelf includes access to HUD's Fair Housing Clearinghouse where you can get copies of laws and regulations and other fair housing materials. The Bookshelf also provides a gateway to other fair housing web sites.

www.bazelon.org. The Bazelon Center for Mental Health Law has a number of publications available regarding fair housing for people with disabilities. These can be ordered through the web site, mail, phone or fax. The web site also has up-to-date information about the threats to the Fair Housing Act and other important fair housing legislation.

www.fairhousing.com. The web site for the National Fair Housing Advocate has a great deal of up-to-date information on fair housing issues including a case law database. The site also has current and back issues of the National Fair Housing Advocate newsletter.

www.adaptenv.org. The Adaptive Environments web site is one of a number of web sites with information on accessibility including universal design.

www.protectionandadvocacy.com. This web site provides a listing of the Protection and Advocacy agencies in each state. “P and A's” are the federally mandated programs that protect the rights of people with disabilities. Staff at these agencies can assist you in advocating for your fair housing rights.

Looking for a form to file a complaint with HUD? If you can get on the Web, you can download a form at www.hud.gov/hdiscrim.html. If you cannot get on the web, call or write your HUD Fair Housing Hubs listed on Page 12.

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are or are not illegal. More recently, a Pennsylvania community was sued for failing to allow a provider to locate a community residence for five adults with developmental disabilities in a single-family zone. The court ruled that the township's zoning requirement had a discriminatory effect and therefore violated the FHAA.⁴

■ **Special health or safety requirements for community residences**

Some communities impose more stringent health and safety requirements for community residences than for homes occupied by people without disabilities. Examples include requiring sprinkler systems, fire notification systems, additional exits and other items which are not required in other homes in the same neighborhood. Many of these items – such as a sprinkler system – are very expensive. Others – such as a large fire safety alarm on the outside of the house – serve to identify the house as a community residence and make it more difficult to integrate the residence into the community. The imposition of different health or safety requirements can be challenged under the FHAA and many courts have upheld such challenges.

■ **Rules requiring community residences to be dispersed**

Some communities have requirements that community residence be spaced apart or dispersed a certain distance such as 1,000 feet apart. This can make it difficult to site community residences in certain neighborhoods. Human services agencies have often agreed to such policies, seeing them as a better than complete exclusion from a community. Such rules, however, can be challenged under the FHAA. A court in Pennsylvania found that a requirement to space community residences 1,000 feet apart violated the FHAA because: (1) the rule treated people with disabilities differently than people who do not have disabilities; and (2) as a result of the rule, people with disabilities were limited in where they could live.⁵

■ **Restrictive covenants**

Restrictive covenants are a more direct way in which a community or neighborhood can seek to exclude community residences. A restrictive covenant, for example, might bar commercial activity from a certain residential zone. If a community residence is then classified as commercial rather than residential, it would be restricted from the neighborhood. These covenants can

be challenged under the FHAA. In 1996, a New Mexico Court found that the siting of a residence for people with HIV/AIDS did not violate a restrictive covenant limiting site to “single family residential purposes.” The Court found that enforcement of the covenant, without a reasonable accommodation interpreting the group residence as consistent with a “single family residential purpose,” would have a discriminatory effect on people with disabilities and thus would violate the FHAA.⁶

■ **Prior community notification requirements**

Some communities require that neighbors be notified when a property is being purchased as a community residence. In some cases state funders (e.g. state mental health agencies) require local providers to notify neighbors regardless of the local policy. Notification often has the negative impact of organizing the neighbors in opposition to a community residence. This is especially a problem where notification is required prior to purchase of a property. Such notification requirements violate the FHAA. In 1993, for example, a Maryland Court found that the County could not enforce a code provision requiring notification of the neighbors as part of an approval process “where no other county law or regulation imposes any similar requirement on a residence to be occupied by adult persons who do not have disabilities.”⁷

■ **Property Values**

It is important to note that one of the arguments used against the siting of a community residences - and one of the neighbors' great fears - is that the community residence will decrease the value of the neighbor's property. Many studies have been conducted and have shown that this fear is unfounded. Community residences have no impact on the value of neighboring properties and, in fact, in some places have raised property values and helped to spur neighborhood renewal.

D Conclusion

The Federal Housing Laws are critical tools to expanding housing opportunities for people with disabilities. The last ten years have seen tremendous gains in affordable and integrated housing for people with disabilities. These gains serve to underscore the on-going need for vigilance to ensure that people with disabilities continue to be afforded the rights and protections to live in housing and neighborhoods of their choice. ■

4. United States v. Schuylkill Township. Summarized from [Digest of cases and other resources on Fair Housing for People with Disabilities](#). Stein and Schofield and Bazelon Center for Mental Health Law. January 1998.

5. Horizon House Developmental Services v. Township of Upper Southampton. Summarized from [Highlights in Fair Housing Law](#). Beth Pepper. Clearinghouse Review. March 1993.

6. Hill v. Community of Damien of Molokai. Summarized from [Digest of cases and other resources on Fair Housing for People with Disabilities](#). Stein and Schofield and Bazelon Center for Mental Health Law. January 1998.

7. Potomac Group Home Corp. v. Montgomery County, Maryland. Summarized from [Barriers to Siting Community Residences in the 1990s](#). Maureen Drouin for Vinfen. January 1997.

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EFFORTS TO ERODE FHAA FOUGHT BACK

On February 12, 1988 Representatives Brian Bilbray (R-CA), Charles Canady (R-FL) and Jane Harman (D-CA) filed legislation, referred to as H.R. 3206, that would repeal important civil rights protections for people with disabilities and subject them to renewed discrimination by zoning officials and hostile neighbors. On February 25, 1998, the Subcommittee on the Constitution of the House Judiciary Committee reported out the bill without holding any hearings to seek input from the disability community and others on the potential impact of the legislation.

Fortunately, due to the hard work of advocates throughout the country, it appears that there will be no further action taken on the bill this legislative session (105th) because of the growing controversy surrounding the bill, and the increasing opposition from not only disability and civil rights organizations but also senior and religious groups. For more information on the bill and any future threats to the FHAA, contact your CCD Housing Task Force member listed on page 2 or check the web site www.bazelon.org.

HUD APPROPRIATIONS BILL CAUGHT IN THE MIDDLE

The House and Senate both completed work on their respective appropriations bills to fund the Department of Housing and Urban Development (HUD) for fiscal year 1999. The Senate bill (S.2168) proposes HUD funding at \$24,102 million (up from \$24,084 in 1998). The House bill (H.R. 4194) proposes HUD funding at \$26,554 million and includes increases in the Fair Housing Initiatives Program, Homeless Assistance Grants, and the Housing Opportunities for People with AIDS program (HOPWA). But some last minute changes to H.R. 4194 do not favor housing programs. Specifically, \$21 million was taken from HOPWA and moved to Veterans Administration health care facilities.

Both the Senate and the House appropriations bills include an additional \$40 million in Section 8 rental assistance for people with disabilities to offset the loss of housing due to the implementation of "elderly only" tenant selection policies. In addition, both bills fund the Section 811 program at \$194 million (level funding from last year) and earmark 25% of this appropriation for tenant-based Section 8 rental assistance.

A serious complication to passage of a HUD appropriations bill this year is the attachment of H.R. 2, a wide-ranging and controversial public and assisted housing reform bill, to the House appropriations bill. There is much to be concerned about in H.R. 2. H.R. 2 loosens the income targeting for public housing and Section 8 rental assistance allowing higher income people (with incomes between 50% and 80% of median) to qualify for these programs. H.R. 2 also further erodes the minimum safeguards for people with disabilities should a public housing authority elect to designate some of its housing "elderly-only."

The Senate and House will take these appropriation bills up in conference committee when Congress returns from recess in early September. For more information on the HUD appropriations bills and their progress, contact your CCD Housing Task Force member listed on page 2 or check the web site www.nlihc.org. ■

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Thomas P. O'Neill, Jr.
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10 Causeway Street, Room 321
Boston, Massachusetts 02222-1092
(617) 565-5308
1-800-827-5005
TTY (617) 565-5453

For New Jersey and New York:

Fair Housing Hub
U.S. Department of Housing and Urban Development
26 Federal Plaza, Room 3532
New York, New York 10278-0068
(212) 264-9610
1-800-496-4294
TTY (212) 264-0927

For Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia:

Fair Housing Hub
U.S. Department of Housing and Urban Development
The Wanamaker Building
100 Penn Square East
Philadelphia, Pennsylvania 19107-3380
(215) 656-0660
1-888-799-2085
TTY (215) 656-3450

For Alabama, the Caribbean, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee:

Fair Housing Hub
U.S. Department of Housing and Urban Development
Richard B. Russell Federal Building
75 Spring Street, SW, Room 230
Atlanta, Georgia 30303-3388
(404) 331-5140
1-800-440-8091
TTY (404) 730-2654

For Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin:

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U.S. Department of Housing and Urban Development
Ralph H. Metcalfe Federal Building
77 West Jackson Boulevard, Room 2101
Chicago, Illinois 60604-3507
(312) 353-7776
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TTY (312) 353-7143

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Fair Housing Hub
U.S. Department of Housing and Urban Development
1600 Throckmorton, Room 502
Fort Worth, Texas 76113-2905
(817) 978-9270
1-800-498-9371
TTY (817) 978-9274

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U.S. Department of Housing and Urban Development
Gateway Tower II
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Kansas City, Kansas 66101-2406
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1-800-743-5323
TTY (913) 551-6972

For Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:

Fair Housing Hub
U.S. Department of Housing and Urban Development
633 17th Street
Denver, Colorado 80202-3607
(303) 672-5437
1-800-877-7353
TTY (303) 672-5248

For Arizona, California, Hawaii, and Nevada:

Fair Housing Hub
U.S. Department of Housing and Urban Development
Phillip Burton Federal Building and U.S. Courthouse
450 Golden Gate Avenue
San Francisco, California 94102-3448
(415) 436-8400
1-800-347-3739
TTY (415) 436-6594

For Alaska, Idaho, Oregon, and Washington:

Fair Housing Hub
U.S. Department of Housing and Urban Development
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