

GENERAL

Question: What is Section 504?

Answer: Section 504 of the Rehabilitation Act of 1973 states: "No otherwise qualified individual with a disability in the United States. . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program, service or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." (29 U.S.C. §794). This means that Section 504 prohibits discrimination on the basis of disability in any program or activity that receives financial assistance from any federal agency, including the U.S. Department of Housing and Urban Development (HUD) as well as in programs conducted by federal agencies including HUD.

Question: Are there regulations that explain what needs to be done in order to comply with Section 504?

Answer: Yes. HUD's regulations for Section 504 that apply to federally assisted programs may be found in the Code of Federal Regulations at 24 CFR Part 8. There are also regulations that govern Section 504 in programs conducted by HUD which may be found at 24 CFR Part 9, however, this Web site focuses on Section 504's requirements for federally assisted programs, services and activities.

Question: Who is protected by the Law?

Answer: Persons with disabilities.

Question: How is disability defined?

Answer: An individual with a disability is any person who has a physical or mental impairment that substantially limits one or more major life activities. The term "physical or mental impairment" may include, but is not limited to, conditions such as visual or hearing impairment, mobility impairment, HIV infection, mental retardation, drug addiction (except current illegal use of or addiction to drugs), or mental illness. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. Section 504 also protects persons who have a record of such impairment, or are regarded as having such an impairment.

Question: Who are "recipients of federal financial assistance"?

Answer: 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. 24 CFR 8.3. Thus, a HUD funded public housing authority, or a HUD funded non-profit developer of low income housing is a recipient of federal financial assistance and is subject to Section 504's requirements. However, a private landlord who accepts Section 8 tenant-based vouchers in payment for rent from a low income individual is not a recipient of federal financial assistance. Similarly, a family that receives Community Development Block Grant (CDBG) or HOME funds for the rehabilitation of an owner-occupied unit is also not a recipient because it is the ultimate beneficiary of the funds.

[Return to top](#)

NONDISCRIMINATION

Question: What discriminatory practices does Section 504 prohibit?

Answer: Section 504 prohibits discrimination on the basis of disability in any program, service, or activity that receives federal financial assistance. This means, for example, that persons with disabilities may not be denied the opportunity to participate in a program, service, or activity; may not be required to accept a different kind or lesser program or service than what is provided to others, and may not be required to participate in separate programs and services, even if separate programs and services exist. In general, with respect to housing, it means that a housing provider may not deny or refuse to sell or rent to a person with a disability, and may not impose application or qualification criteria, rental fees or sales prices, and rental or sales terms or conditions that are different than those required of or provided to persons who are not disabled. Housing providers may not require persons with disabilities to live only on certain floors, or to all live in one section of the housing. Housing providers may not refuse to make repairs, and may not limit or deny someone with a disability access to recreational and other public and common use facilities, parking privileges, cleaning or janitorial services, or any services which are made available to other residents. People with disabilities may not be denied the opportunity to serve on planning or advisory boards because of their disabilities.

Question: Does Section 504 require a housing provider to accept every person with a disability who applies for the housing?

Answer: Section 504 does not require that a person with a disability be accepted without regard to eligibility requirements or his or her ability to meet standard, nondiscriminatory tenant selection and screening criteria. Rather, Section 504 requires that a person with a disability be evaluated using the same objective criteria that are applied to persons without disabilities. Applicants, with or without a disability, may be rejected if they have a record of adversely affecting others such as disturbing neighbors, destroying property, or failing to pay their rent on time. However, under Section 504, the housing provider must make sound and reasonable judgments based on objective evidence (current conduct or a history of overt acts). Subjective fears, unsubstantiated rumors, speculation and generalized suspicion do not constitute objective information that an applicant cannot meet the terms of tenancy.

Question: May a recipient refuse to rent to a person with a mental disability because he is uncomfortable with the individual?

Answer: No. Section 504, and related laws like the Fair Housing Act, make it unlawful for a housing provider to refuse to rent to a person simply because of a disability. Therefore, a housing provider may not refuse to rent to an otherwise eligible individual because of fears or concerns that may be based on myths or stereotypes about persons with mental disabilities.

Question: May a landlord charge a person who uses a wheelchair a higher security deposit because of concerns about damage to the dwelling unit?

Answer: No. A wheelchair user is no more likely than anyone else to cause damage, beyond typical wear and tear, to a dwelling unit. However, if a person who uses a wheelchair does cause damage to a unit that is beyond normal wear and tear, whether the damage is related to the wheelchair or not, that individual may be required to cover such damage out of a standard security deposit that is charged to everyone.

Question: What limits does Section 504 impose on the ability of federally assisted housing providers to require persons with disabilities to live in "segregated housing," i.e., housing for elderly and/or disabled individuals.

Answer: Section 504 limits housing providers from providing, or requiring persons with disabilities to accept, housing that is different or separate, and instead, requires that housing programs be integrated and offer the same benefits as provided to persons without disabilities, with only a few limited exceptions. These exceptions are (1) when it can be demonstrated that such segregation is necessary in order to provide persons with disabilities housing that is as effective as housing that is provided to others, or (2) when authorized by a Federal statute, such as the Housing Opportunities for Persons with AIDS (HOPWA) program, or the Section 811 Supportive Housing Program for Persons With Disabilities. Even under these programs, however, there are suggested options for providing the program in an integrated setting, such as scattered site units.

Question: What must a federally assisted housing provider consider to assure that housing is provided in the most integrated setting appropriate?

Answer: One of the basic tenets of Section 504 is that programs and services be conducted in the most integrated setting appropriate. In terms of housing, this means that the housing provided to disabled individuals is not separate or unnecessarily segregated. In other words, accessible units in a single elevator building should be located throughout the building, and not just on the first floor. In projects having multiple buildings, accessible units also should be interspersed throughout these buildings, rather than in just one or two buildings. For example, in housing serving elders and persons with disabilities, persons with mental disabilities or any other disabilities may not be segregated on any one wing, floor, or in one building.

Question: What steps must recipients take to ensure that information about their programs and services, and their communications with applicants and program participants, are accessible?

Answer: The Section 504 regulations require recipients to take steps to ensure effective communication with applicants, beneficiaries, and members of the public (24 CFR 8.6). This may include, but is not limited to, conducting outreach in a manner that will reach persons with disabilities, such as by working with State and local organizations that serve or represent persons with disabilities, and ensuring that information about their programs is disseminated in a manner that is accessible to persons with disabilities. For example, special communication systems (e.g., TTY for persons who are hearing or speech impaired, materials on tape or in Braille) can greatly increase the effectiveness of outreach and ongoing communication.

Question: How are recipients supposed to deal with the following fire emergency issues in a high-rise building: (1) If a HUD recipient cannot control where persons with disabilities live, during a fire, how do these tenants escape from a 14th floor unit? (2) If a HUD recipient cannot give out a list of where persons with disabilities live, how do rescue teams know where to go?

Answer: The recipient must permit the applicant to take responsibility for his/her own safety. Thus, an applicant with a disability may choose not to live above the ground floor because of possible inability to escape a fire. On the other hand, the applicant must be allowed to decide whether the opportunity to live in a 14th floor dwelling unit outweighs whatever safety concerns may exist.

Every HUD recipient should have an emergency evacuation plan for each of its buildings. In the preparation and updating of this plan, the HUD recipient should inform residents that with the resident's consent, they will provide information to the fire department which identifies residents with special needs in case of an emergency evacuation. Applicants should be given the opportunity to decide whether they want the recipient to provide this information to the fire department. The HUD recipient may share this information with the local fire and police departments provided consent is given.

[Return to top](#)

PROGRAM ACCESSIBILITY

Question: What is meant by "program accessibility"?

Answer: Program accessibility means that a program, when viewed in its entirety, is readily accessible to and usable by persons with disabilities. It applies under Section 504 to existing housing and non-housing programs. The concept recognizes that there may be some limits to the degree to which existing housing programs can be made accessible. Thus, under the concept of program accessibility, not every single building must be accessible, or every single dwelling unit, but there must be sufficient accessibility so that persons with disabilities have an equal opportunity to participate in and benefit from the program and the same range of choices and amenities as those offered to others. However, recipients must take steps to ensure that their programs and services are readily accessible to and usable by persons with disabilities to the maximum extent feasible, which means the recipient would be required to take all steps that provide the necessary access, but which would not constitute an undue financial and administrative burden, or require a fundamental alteration in the nature of the program. Achievement of program accessibility does not exempt recipients from meeting other requirements of the Section 504 regulations, particularly the broad nondiscrimination provisions, and the requirements that dwelling units be dispersed throughout buildings and sites. Likewise, recipients whose programs involve new construction or alterations, must meet the Section 504 regulation's requirements for those activities, as well as meeting other applicable requirements in the regulations, such as for dispersion of accessible units throughout buildings and sites.

Question: How can a recipient ensure that its existing housing or non-housing program meets the program accessibility provisions of the Section 504 regulations?

Answer: Here are some examples:

- To the maximum extent feasible, distribute accessible units throughout projects and sites, and make them available in a sufficient range of sizes and amenities so as not to limit choice.
- Adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with disabilities. Recipients must also take reasonable non-discriminatory steps to maximize use of such units by eligible individuals.
- When an accessible unit becomes vacant, before offering the unit to an individual without a disability, offer the unit: first, to a current occupant of the project requiring the unit's accessibility features; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features.
- When an applicant or tenant requires an accessible feature or policy modification to accommodate a disability, a federally assisted housing provider must provide the feature or policy modification unless doing so would result in a fundamental alteration in the nature of its program or an undue financial and administrative burden. See 24 CFR 8.4, 8.24, and 8.33 for further requirements and guidance.
- Recipients must ensure that activities and meetings are conducted in accessible locations.

Question: When a wheelchair accessible unit becomes available should it be offered to the first applicant on the waiting list, or the first person with a disability who requires the accessible features?

Answer: HUD's Section 504 regulations at 24 CFR 8.27 require recipients to take reasonable steps to assure that information on available accessible units reaches otherwise qualified individuals with disabilities who need the features of those units. The regulations provide that whenever a unit that meets the requirements of the [Uniform Federal Accessibility Standards \(UFAS\)](#) for a mobility-impaired person becomes available for occupancy, a recipient shall first offer the unit to a qualified individual with disabilities currently residing in a non-accessible unit in the same project or comparable projects, under common control, who requires the accessible features. If there are no such persons currently

residing in the recipient's projects, the recipient shall then offer the unit to the next available qualified individual with disabilities on its waiting list, provided that the person requires the accessibility features of the unit. The recipient shall skip over non-disabled applicants on the waiting list to offer the unit to the next qualified individual who requires the unit's accessibility features.

If no qualified applicant with disabilities requires the accessible features of a unit, and the recipient places a family where none of the family members have disabilities in that unit, the recipient may include language in the lease requiring this family to agree to move to a non-accessible unit, as soon as one becomes available that otherwise meets the family's needs.

FEDERALLY ASSISTED NON-HOUSING FACILITIES

Question: How does Section 504 affect the operation of a non-housing facility or program operated by a recipient of federal financial assistance?

Answer: All of Section 504's nondiscrimination, program accessibility, and reasonable accommodation requirements that apply to housing facilities and programs apply equally to the operation of non-housing facilities or programs. (24 CFR. 8.21)

Question: What requirements does Section 504 impose on new construction or alteration of existing non-housing facilities operated by a recipient of federal financial assistance?

Answer: New non-housing facilities constructed by recipients of federal financial assistance must be designed and constructed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must, to the maximum extent feasible, be made accessible to ensure that such facilities are readily accessible to and usable by persons with disabilities. [24 CFR 8.21(a) and (b).] In addition, each existing non-housing program or facility must be operated so that, when viewed in its entirety, the program or activity is readily accessible to and usable by persons with disabilities. [24 CFR 8.21(c).] For example, a newly constructed day-care center that is provided for use by residents of a housing project, must meet the design and construction requirements of the [UFAS](#). In addition, once the facility is completed, it would, of course, have to be operated in a non-discriminatory manner.

[Return to top](#)

REASONABLE ACCOMMODATION

Question: What is a reasonable accommodation under Section 504?

Answer: A "reasonable accommodation" is a change, adaptation or modification to a policy, program, service, or workplace which will allow a qualified person with a disability to participate fully in a program, take advantage of a service, or perform a job. Reasonable accommodations may include, for example, those which are necessary in order for the person with a disability to use and enjoy a dwelling, including public and common use spaces. Since persons with disabilities may have special needs due to their disabilities, in some cases, simply treating them exactly the same as others may not ensure that they have an equal opportunity to use and enjoy a dwelling.

In order to show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability. As discussed in the next question and answer, what is reasonable must be determined on a case-by-case basis. However, experience has shown that the following examples are often reasonable accommodations.

- A federally assisted housing provider has a policy of not providing assigned parking spaces. A tenant with a mobility impairment, who has difficulty walking, is provided a reasonable accommodation by being given an assigned accessible parking space in front of the entrance to his unit.
- A federally assisted housing provider has a policy of requiring tenants to come to the rental office to pay their rent. A tenant with a mental disability, who is afraid to leave her unit, is provided a reasonable accommodation by being allowed to mail her rent payment.
- A federally assisted housing provider has a no pets policy. A tenant, who uses a wheelchair and has difficulty picking up items off the ground, is allowed to have an assistive animal that fetches things for her as a reasonable accommodation to her disability.
- An older tenant has a stroke and begins to use a wheelchair. Her apartment has steps at the entrance and she needs a ramp to enter the unit. Her federally assisted housing provider pays for the construction of a ramp as a reasonable accommodation to the tenant's disability.

Question: How do you determine whether a request for a certain accommodation is reasonable?

Answer: Whether a particular accommodation is "reasonable" depends on a variety of factors and must be decided on a case-by-case basis. The determination of whether a requested accommodation is reasonable depends on the answers to two questions. First, does the request impose an undue financial and administrative burden on the housing provider? Second, would making the accommodation require a fundamental alteration in the nature of the provider's operations? If the answer to either question is yes, the requested accommodation is not

reasonable. However, even where a housing provider is not obligated to provide a particular accommodation because the particular accommodation is not reasonable, the provider is still obligated to provide other requested accommodations that do qualify as reasonable. For example:

As a result of a disability, a tenant is unable to open the dumpster provided by his housing provider for his trash. The tenant requests that the housing provider send a maintenance staff person to collect his trash from his apartment daily. Because the housing development is a small, low-budget operation and the maintenance staff are not on site daily, it is an undue financial and administrative burden for the housing provider to provide daily trash service to the tenant and the housing provider may refuse to provide the requested accommodation. However, the housing provider is obligated to provide the tenant with a requested alternative accommodation - providing either an open trash can or placing a trash can which the tenant can open in an accessible location so that the tenant can dispose of his trash.

Question: What happens if providing a requested accommodation involves some costs on the part of the federally assisted housing provider?

Answer: Section 504 requires that in making an accommodation, a federally assisted housing provider will be required to bear costs which do not amount to an undue financial and administrative burden. In application, this means that such a housing provider may be required to spend money to provide legally required reasonable accommodations.

Question: When and how should an individual request an accommodation?

Answer: An individual with a disability should request an accommodation as soon as it appears that the accommodation is needed. However, requests may be made at any time. For example, requests may be made when an individual is applying for housing, entering into a lease, or occupying housing. Individuals who become disabled during their tenancy may request accommodations, even if they were not disabled when they signed their leases.

Section 504 does not prescribe a uniform procedure for requesting a reasonable accommodation to be used with all housing providers. To request an accommodation, an individual need not mention Section 504 or use the phrase "reasonable accommodation." In general, a tenant or prospective tenant should make clear to the housing provider that s/he is requesting that an exception, change, adjustment, or modification be made to a rule, policy, practice, service, building or dwelling unit because s/he has a disability. S/he should explain what type of accommodation is requested and explain the relationship between the requested accommodation and his or her disability. In order to facilitate the process and consideration of the request, tenants or prospective tenants may wish to check with a housing provider in advance to determine whether that housing provider has established any specific procedures regarding requests for reasonable accommodation. Although the Section 504 regulations do not require it, it is usually helpful that the request be made in writing, so there will be documentation that the request was actually made in the event of a later dispute.

Question: Must a federally assisted housing provider adopt formal procedures for processing requests for a reasonable accommodation?

Answer: No. Section 504 does not require that a housing provider adopt any formal procedures that an applicant for housing or a tenant must follow to request a reasonable accommodation. However, having such a procedure will probably aid both the individual in making the request and the housing provider in assessing it and responding to it in a timely fashion.

Question: Is a federally assisted housing provider obligated to provide an accommodation to a tenant or applicant if s/he has not requested it?

Answer: No. Such a housing provider is only obligated to provide an accommodation if s/he is on notice of the request. However, a person with a disability will be considered to have asked for an accommodation if s/he indicates that a change or exception to a policy, practice, or procedure or a modification would assist him or her in making more effective use of his or her housing, even if the words "reasonable accommodation" are not used as part of the request.

Question: What happens if a federally assisted housing provider fails to act on a request for an accommodation?

Answer: If a housing provider delays responding to a request for an accommodation, after a reasonable amount of time, that delay may be construed as a failure to provide a reasonable accommodation. A tenant or applicant may choose to seek legal assistance or [file a complaint](#)

with HUD. For further information, please see the section of this Web site that describes the complaint process.

Question: When can a federally assisted housing provider insist on an alternative to the accommodation requested by a tenant?

Answer: If the housing provider believes the requested accommodation is unreasonable, the housing provider may, but is not required to, propose a substitute accommodation. In doing so, the housing provider should give primary consideration to the accommodation requested by the tenant or applicant because the individual with a disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective. If the housing provider suggests an alternative accommodation, the tenant may reject it if s/he feels it does not meet his or her needs.

[Return to top](#)

PHYSICAL ACCESSIBILITY

Question: With respect to Section 504's requirements, what is an accessible unit?

Answer: The Section 504 regulations define an accessible dwelling unit as a unit that is located on an accessible route and can be approached, entered, and used by individuals with physical disabilities. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in 24 CFR 8.32 is accessible. In addition, the Section 504 regulations impose specific accessibility requirements for new construction and alteration of housing and non-housing facilities in HUD assisted programs. Section 8.32 of the regulations states that compliance with the appropriate technical criteria in the [Uniform Federal Accessibility Standards \(UFAS\)](#), or a standard that is equivalent to or stricter than the UFAS, is an acceptable means of meeting the technical accessibility requirements in Sections 8.21, 8.22, 8.23 and 8.25 of the Section 504 regulations.

Question: What accessibility requirements must a new federally assisted housing development meet in order to be in compliance with Section 504 requirements?

Answer: For a federally assisted new construction housing project, Section 504 requires 5% of the dwelling units, or at least one unit, whichever is greater, to meet UFAS or a standard that is equivalent or stricter, as explained in the question and answer above this one, for persons with mobility disabilities. An additional 2% of the dwelling units, or at least one unit, whichever is greater, must be accessible for persons with hearing or visual disabilities.

Question: Are there other accessibility requirements that apply to federally funded new construction?

Answer: If a new construction project has four or more dwelling units and is built for first occupancy after March 13, 1991, it is also subject to the accessibility and adaptability requirements of the FHAct, regardless of whether it receives federal financial assistance. The FHAct's accessibility requirements are not as strict as those for Section 504 and the UFAS, however, the FHAct's accessibility requirements apply to a broader number of dwelling units. Under the FHAct's new construction requirements, if the building has an elevator, all of the dwelling units must meet the FHAct's design and construction requirements; if there is no elevator, all of the ground floor dwelling units must meet the FHAct's requirements. A unit that meets the FHAct's accessibility requirements will be one that does not have as great a degree of accessibility as a UFAS-complying unit, but is one that may be easily adapted to be fully accessible without significant costs and the need to do significant structural modifications. More information on the FHAct may be obtained by going to HUD's web page for "[Persons with Disabilities](#)," and specifically to the statute, the regulations implementing the Act, the Fair Housing Accessibility Guidelines, and the Supplemental Notice with Questions and Answers about the Guidelines. A Fair Housing Act Design Manual is available by calling the [HUD Distribution Center](#) at 1-800-767-7468.

Question: If a federally financed housing project is targeted for substantial alteration, what does Section 504 require in terms of accessible units?

Answer: Under Section 504, alterations are substantial if they are undertaken to a project that has 15 or more units and the cost of the alterations is 75% or more of the replacement cost of the completed facility. [See 24 CFR 8.23(a)]. The new construction provisions of 24 CFR 8.22 apply. Section 8.22 requires that a minimum of 5% of the dwelling units, or at least one unit, whichever is greater, shall be made accessible to persons with mobility disabilities and an additional 2% of the dwelling units, or at least one unit, whichever is greater, shall be made accessible to persons with hearing or visual disabilities.

Question: What does Section 504 require when a recipient undertakes alterations of existing housing facilities that do not qualify as

substantial alterations?

Answer: If the project involves fewer than 15 units or the cost of alterations is less than 75% of the replacement cost of the completed facility and the recipient has not made 5% of its units in the development accessible to and usable by individuals with disabilities, then the requirements of 24 CFR 8.23(b) - Other Alterations apply. Under this section, alterations to dwelling units shall, to the maximum extent feasible, be made readily accessible to and usable by individuals with disabilities. If alterations to single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire unit shall be made accessible. Alteration of an entire unit is considered to be when at least all of the following individual elements are replaced:

- renovation of whole kitchens, or at least replacement of kitchen cabinets; and
- renovation of the bathroom, if at least bathtub or shower is replaced or added, or a toilet and flooring is replaces; and
- replacement of entrance door jambs.

When the entire unit is not being altered, 100% of the single elements being altered must be made accessible until 5% of the units in the development are accessible. However, the Department strongly encourages a recipient to make 5% of the units in a development readily accessible to and usable by individuals with mobility impairments, since that will avoid the necessity of making every element altered accessible, which often may result in having partially accessible units which may be of little or no value for persons with mobility impairments. It is also more likely that the cost of making 5% of the units accessible up front will be less than making each and every element altered accessible. Alterations must meet the applicable sections of the UFAS which govern alterations.

Question: When a recipient plans alterations, are there areas of a building which are not required to be made accessible under Section 504?

Answer: Mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of individuals with physical disabilities are not required to be made accessible in projects undergoing either substantial or other alterations. [see 24 CFR 8.32 (6)]

[Return to top](#)

OTHER DISABILITY CIVIL RIGHTS LAWS AFFECTING FEDERALLY ASSISTED HOUSING PROVIDERS

Question: What is the Federal Fair Housing Act and what types of discrimination does it prohibit against persons with disabilities?

Answer: The Federal [Fair Housing Act \(FHAct\)](#), 42 U.S.C. §§ 3601-19, prohibits discrimination in housing practices on the basis of race, color, religion, sex, national origin, familial status, and disability. (FHAct uses the term "handicap," however, this document uses the term "disability," which has the same legal meaning.) The Act prohibits housing providers from discriminating against persons because of their disability or the disability of anyone associated with them and from treating persons with disabilities less favorably than others because of the disability. The Act also requires housing providers "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person(s) equal opportunity to use and enjoy a dwelling." In addition, the Act requires that housing providers allow tenants to make reasonable modifications to units and common spaces in a dwelling. The Act applies to the vast majority of privately and publicly owned housing including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance. HUD's regulations implementing the disability discrimination prohibitions of the Act may be found at 24 CFR 100.201-205.

Question: Is the [Americans with Disabilities Act \(ADA\)](#) applicable to housing, and if yes, does the ADA supersede Section 504?

Answer: In most cases, the ADA does not apply to residential housing. Title III of the ADA prohibits discrimination against persons with disabilities in commercial facilities and public accommodations. However, Title III of the ADA covers public and common use areas at housing developments when these public areas are, by their nature, open to the general public or when they are made available to the general public. For example, it covers the rental office, since, by its nature, the rental office is open to the general public. In addition, if a day care center, or a community room is made available to the general public, it would be covered by Title III. Title III applies, irrespective of whether the public and common use areas are operated by a federally assisted provider or by a private entity. However, if the community room or day care center were only open to residents of the building, Title III would not apply.

Title II of the ADA covers the activities of public entities (state and local governments). Title II requires "public entities to make both new and existing housing facilities accessible to persons with disabilities." Housing covered by Title II of the ADA includes, for example, public housing authorities that meet the ADA definition of "public entity," and housing operated by States or units of local government, such as housing on a State university campus.

The ADA, when it is applicable to a residential housing project, does not "supersede" Section 504, assuming Section 504 is also applicable. Instead, where both laws apply to a housing project, the project must be in compliance with both laws.

Question: What is the Architectural Barriers Act and what does it cover?

Answer: The Architectural Barriers Act of 1968 (ABA) (42 U.S.C. §4151-4157) requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA requires that covered buildings comply with the Uniform Federal Accessibility Standards (UFAS). The ABA does not cover privately-owned housing, but covers buildings or facilities financed in whole or in part with Federal funds. The ABA applies to public housing (24 CFR 40), and to buildings and facilities constructed with CDBG funds (24 CFR 570.614). In practice, buildings built to meet the requirements of Section 504 and Title II of the ADA will conform to the requirements of the ABA.