

# Who's Responsible for FHA Compliance and Who Can Sue?

Litigation and governmental enforcement actions often encompass both the ADA and the Fair Housing Act ("FHA") due to an overlap in the subject matter of those two acts, particularly since the FHA was amended in 1988. The original Act, which became law in 1968, protected against discrimination based on race, religion, national origin and sex. The 1988 amendment added disability and family status to the list of those protected by the Act.

The purpose of the FHA is to eliminate housing discrimination against multiple classes of individuals, including disabled individuals, and to promote residential integration. The FHA applies to all single family homes owned by private persons where a real estate broker is used, and all single family homes owned by corporations or partnerships. However, it does *not* however require single family homes to be accessible to the disabled. Rather, one cannot *discriminate* against the disabled (among other classes) in any transaction covered by the Act.

The FHA applies to all "multifamily dwellings", including townhouses, condominiums and apartments. A certain percentage of the dwelling must be modifiable to accommodate the disabled. There are however exemptions:

1. If the dwelling has four or less units and if the owner lives in one of the units;
2. Qualified senior housing; and
3. Private clubs and organizations (if limited to members only).

"Direct providers" of housing must comply with the FHA, including, but not limited to, landlords, real estate companies, municipalities, banks and other lending institutions, and homeowners' insurance companies. In addition, those who must comply with the FHA could also include the same universe of entities who must comply with the ADA, including the entire design and construction team. There is also an express "catch all" provision in the FHA, which encompasses any person or entity who has "engaged in a pattern or practice of discrimination or where denial of rights to a group of persons raises an issue of general public importance." This "catch all" provision could substantially broaden the class of individuals and organizations which may be subject to FHA compliance.

Those who clearly have standing to sue under the disabilities provision of the FHA include:

1. Individuals with disabilities (or their parents and associates);
2. Housing providers which were prevented from building or operating housing; and
3. Fair Housing organizations representing the disabled or others denied housing.

From the foregoing, typical scenarios in which architects are sued for ADA or FHA violations include:

1. A direct suit by disabled person;
2. A direct suit by an organization representing the disabled;
3. A direct suit by Department of Housing and Urban Development ("HUD");
4. An action by the DOJ as the enforcement arm for the ADA and FHA; or
5. A cross-action by others who have been sued directly by one or more of the above.

Thus, architects can be sued a number of ways by a number of parties for a number of violations, all relating to the same design of one or more projects. They can be sued directly by multiple classes of plaintiffs, and they have historically been sued by owners and developers who hired them and are seeking indemnity for their damages.

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