

## **UNDERSTANDING THE BASIC DIFFERENCES BETWEEN THE FHA AND THE ADA**

As a multi-family property owner/manager, it's important to understand the compliance requirements of the Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA) to avoid expensive penalties. Landlords will sometimes find themselves non-compliant because of a misinterpretation of the regulations and may spend thousands of dollars correcting a problem that really does not exist. How these laws apply specifically to multifamily properties can be a complex issue, leading to confusion and misinformation—sometimes disseminated by auditors, inspectors, and even regulatory agencies. Although both the FHA and the ADA are federal civil rights acts that were created to provide protected classes with equal access to public and private housing, and public accommodations, there are fundamental differences between these two laws.

The FHA was enacted in 1968 to outlaw discrimination in public and private housing and related facilities and services based on race, color, religion, sex, and national origin. It was amended in 1988 to include familial status and disability. The ADA was adopted in 1990 to ensure equal opportunity for individuals with disabilities, and protect them in part from discrimination in the use and enjoyment of places identified as public accommodations. Thus, the FHA protects a broader class of individuals and addresses a broader scope of housing issues that include, but are not limited to, leasing and selling practices, and zoning ordinances.

Although both of these laws were enacted to protect against discrimination in accessibility and created federal enforcement mechanisms and penalties for noncompliance there are distinct differences in the scope of who is covered, private housing versus public accommodation, accessibility and enforcement of these laws.

The FHA protects a broader class of individuals from discrimination based on race, sex, religion and other class attributes. The FHA affects both public and private housing for protected classes and requires certain accessibility features but does not require retrofitting for properties constructed prior to March 13, 1991. The Department of Justice, City and County Human Rights Commissions, State and Local Fair Housing Boards, and the Department of Housing and Urban Development all enforce FHA compliance.

The ADA prohibits discrimination in employment, public accommodations, transportation, state and local government services, and telecommunications only for individuals with disabilities and is limited in scope to public accommodations, and does not cover a property's dwelling units. The ADA requires certain accessibility features, and ongoing updates and modifications when readily achievable. Whereas FHA compliance enforcement is under the jurisdiction of multiple Federal, State and Local agencies, ADA compliance enforcement for public accommodations is the responsibility of only one Federal Department ---the Department of Justice.

One of the most common misunderstandings about accessibility at multifamily properties is that they must have mandatory ADA units. There is no such thing as an ADA apartment unit. The ADA applies to public accommodations. Examples of public accommodations are hotel rooms, restaurants, convention centers, convenience stores and government-owned housing like

university dorm rooms. Thus, while the ADA – signed into law in 1990 – applies to multifamily properties, it does not apply to the dwelling units. All areas of public accommodation must be fully accessible. Public areas at a multifamily property include the rental office. A community room might fall under ADA if it is available to more than the residents and their guests (i.e. used for town meetings or leased out).

The ADA also applies to the parking areas at leasing offices. The act requires that a certain number of accessible parking spaces be van-accessible. The access aisle for a van-accessible space is required to be 96 inches or 8 feet wide. Standard access aisles have to be 60-inches or five-feet wide. Multifamily properties are also required to have “Van Accessible” signage at the space. If you do not have a van-accessible space at your property, chances are that you are out of compliance. A Fair Housing tester need not get out of the car at your property to determine that you are not abiding by Fair Housing laws.

Another common misunderstanding in the multifamily housing industry is the difference between accessible units and adaptable units. The Fair Housing Amendments Act of 1988 (FHAA) added disability and familial status as federally protected classes and the FHAA also requires that buildings built after March 13, 1991, be constructed with specific design features, and to be adaptable. The design features of these adaptable units allow an owner to quickly adapt a unit if someone with a physical disability needs accessible features. For example, the difference between an adaptable unit and an accessible unit is: An adaptable unit has reinforced walls at the toilets and tub/showers to accommodate the installation of grab bars if needed by the resident, while a fully accessible unit has those grab bars already installed. Another interesting twist is that townhouses (or units with living spaces on multiple floors) are not covered by these regulations (unless the building they are in has an elevator).

The Fair Housing Act also requires owners of housing facilities to make reasonable exceptions in their policies and operations to afford people with disabilities equal housing opportunities and also requires landlords to allow tenants with disabilities to make reasonable access-related modifications to their private living space, as well as to common use spaces. (In most cases the landlord is not required to pay for the changes.) The Fair Housing Act further requires that new multifamily housing with four or more units be designed and built to allow access for persons with disabilities. This includes accessible common use areas, doors that are wide enough for wheelchairs, kitchens, and bathrooms that allow a person using a wheelchair to maneuver, and other adaptable features within the units.

Understanding the basics of the FHA and ADA-- their differences and the truth behind the misconceptions about these laws enables multifamily properties to stay within full compliance and potentially avoid a costly Fair Housing lawsuit. Because Fair Housing Compliance is one of the most important challenges in the Multi-Family Rental Industry, THS encourages all clients to be well informed and to keep on top of all of the evolving legal issues in the area of Fair Housing. We know that better-educated clients are less likely to get into legal trouble. And, if they do run into a problem, we can more successfully defend them knowing that they were in compliance with the law.

That is why we are fully committed to continually improve and update both our Fair Housing teaching materials and our workshop presentations to maximize the benefit to our clients who attend the classes. We do this by staying on top of all of the changes, case law, and nuances that are always evolving in the area of multifamily housing law. Clients can register for upcoming Fair Housing Workshops on our website ---[thslawfirm.com/ events](http://thslawfirm.com/events).