Accessibility for All

Fair Housing Rights in the Lower Hudson Valley

Westchester Residential Opportunities, Inc.
Introduction

All of us should have equal access to housing regardless of our physical and mental disabilities and capabilities. Yet people with disabilities face discrimination both in obtaining housing and in being granted permission by housing providers to make reasonable changes to their homes that may allow them to live safely and comfortably. Across the United States, fair housing enforcement agencies and the United States Department of Housing and Urban Development (HUD) report that the most common type of housing discrimination complaint they receive relates to disability.¹ In fielding inquiries and complaints from residents of the Lower Hudson Valley, Westchester Residential Opportunities finds that this pattern holds true.

This publication introduces the essentials of fair housing protections for people with disabilities under federal and New York State laws. It is intended for readers in the Lower Hudson Valley, specifically Putnam, Rockland, and Westchester counties. (The New York City Human Rights Law and the Building Code differ significantly from those of surrounding areas and are not discussed here.) This booklet also explains the obligations of housing providers and communities to expand opportunities for all to live in homes that meet their needs.

Westchester Residential Opportunities, Inc. (WRO), is a non-profit organization whose mission is to promote equal, affordable, and accessible housing opportunities for all residents of the Lower Hudson Valley region.

WRO helps individuals who are facing discrimination in housing by investigating incidents and advocating on their behalf. WRO also works to end discrimination through education, as it provides fair housing training to real estate agents, co-op and condominium boards, social service agencies, community groups, local leaders, and the general public on fair housing protections for all, including people with disabilities. Staff can also point building professionals in the right direction, if they seek guidance on Fair Housing Act design and construction requirements.

This publication was made possible by a grant from the United States Department of Housing and Urban Development.

The information in this publication should not be considered to be legal advice. While Westchester Residential Opportunities has made every effort to provide accurate and up-to-date information, statutes and regulations are subject to amendment, revision, and court interpretation.
People with disabilities are protected from housing discrimination primarily under three national laws: the Fair Housing Amendments Act (1988); the Rehabilitation Act (1973), as amended; and the Americans with Disabilities Act (ADA, 1990), as amended. New York State and local human rights laws also prohibit discrimination against this class. For more on the primary laws protecting people with disabilities in housing, see the box at right.

A disability is defined under federal law as “a physical or mental impairment which substantially limits one or more…major life activities,” such as walking, seeing, hearing, caring for one’s self, learning, and working. The definition also includes people with a history of such an impairment and those perceived by others to have a disability. New York State’s definition of disability is broader, protecting a wider range of people.

Under the Fair Housing Act (1968) and the Fair Housing Amendments Act, discrimination in housing because of someone’s membership in what is known as a protected class is prohibited. Individuals are only protected from discrimination in housing based on those classes, or characteristics, that are specifically identified in federal, state, and local laws. Since the Fair Housing Amendments Act went into effect, disability has been a protected class. (This booklet will subsequently use “Fair Housing Act” to mean the initial law of 1968 as well as the 1988 amendments.) In addition to disability, under federal and New York State laws, race, color, religion, national origin, sex or gender, familial status, marital status, sexual orientation, military status, and age are all protected classes. Many of these properties pertain to everyone, and all of us could potentially fall victim to discrimination.

The fair housing laws at federal, state, and local levels apply to the actions of everyone involved in housing transactions and related services, including developers, real-estate brokers and agents, landlords and property owners, co-op and condo boards, property managers, advertisers, banks and mortgage servicers, public housing authorities, and local governments. Moreover, the laws apply to most kinds of housing. The primary exemptions can be found in the box on page 4.

Individuals with disabilities must have the same opportunity as others have to secure housing and to use and enjoy their dwellings. Actions prohibited under the Fair Housing Act because of someone’s protected characteristics include: refusing to sell or rent a unit; providing misinformation about availability; offering different terms, conditions, or services; coercing, intimidating, and interfering before or after someone obtains housing; and creating and publishing ads that express a bias or preference. People with disabilities have the right to
Key Federal Laws

Fair Housing Act (Title VIII of the Civil Rights Act, 1968)
- Prohibits discrimination in the rental, sale, and financing of housing.
- Protected classes are race, color, religion, and national origin (sex added in 1974).

Fair Housing Amendments Act (1988)
- Added disability and familial status as protected classes.
- Established seven requirements for design and construction to enable people with disabilities access to housing in new buildings with four or more units.
- Housing provider cannot refuse requests for reasonable accommodations and modifications unless they would be an unreasonable administrative and financial burden or require a fundamental change in program.

Section 504 of the Rehabilitation Act (1973), as amended
- People with disabilities cannot be excluded from or denied the benefits of programs receiving federal financial assistance.
- Housing provider must pay for reasonable structural changes in federally assisted housing.
- Uniform Federal Accessibility Standards (UFAS) apply.
- 5% of units must be accessible to people with mobility impairments, and 2% of units to those with sight and hearing impairments.

Americans with Disabilities Act (ADA, 1990), as amended
- Title II: State and local governments cannot discriminate based on disability; they must provide program access.
- Public housing authority properties, state or locally funded housing, and university housing at public institutions are covered.
- Title III: Public-access portions of privately owned housing must be accessible.
- U.S. Department of Justice’s Standards for Accessible Design apply.

Additional Laws

New York State
- Protected classes: Same as federal plus marital status, sexual orientation, military status, and age.
- Housing provider must pay for reasonable structural changes to common spaces.
- New York State Building Code: In most cases, the standards for accessibility and usability are higher than the seven Fair Housing Act requirements for design and construction.

Putnam and Rockland Counties
- No additional protected classes

Westchester County
- Protected classes: Same as federal and state plus citizenship or alienage status; victims of domestic violence, sexual abuse, or stalking; gender identity; and source of income.
Fair housing laws apply to most kinds of housing. Exceptions include:

- The sale or rental of a single family house, if the owner does not have more than three houses, use a broker, or place ads expressing a bias
- Rental in an owner-occupied dwelling that houses two families living independently
- Rental of a room in an owner-occupied dwelling

be treated the same way as others are when they seek housing, without inquiries into their disability, stricter background or financial checks, higher security deposits, and so on.

The laws protect people with HIV/AIDS and those in recovery from alcoholism and drug use. In addition, people may not be discriminated against because someone in their household or among their circle has a disability. The laws, however, do not require that housing be made available to those who “pose a direct threat to the health or safety” of others, or to those who would cause “substantial physical damage to the property of others.” But any such threats need to be determined based on objective evidence about an individual rather than assumptions, fears, or stereotypes about people with certain conditions.

Under the laws, housing providers are able to give preferences to people with certain types of disabilities for units that include specific features designed to accommodate mobility or communications impairments, and housing that offers residents medical, social, or counseling services. In these instances, housing providers should inquire of all applicants if they need such features or programs. The provider must still comply with fair housing laws, limiting questions to only what is needed to ascertain whether someone is qualified for the dwelling and applying policies to everyone consistently. In terms of allocating scarce resources, it makes sense to assure that accessibility features, as well as supportive services, will be used by those in society who genuinely need them.

Accessible Residences

People with mobility impairments face challenges in finding accessible housing in Putnam, Rockland, and Westchester counties especially because of the age of much of the region’s housing stock. It is only since 1991 that new multifamily housing (buildings with four or more units) is required to meet certain minimum standards for accessibility.

The Fair Housing Act

The Fair Housing Act established seven requirements for the design and construction of new multifamily housing. The seven features, which are outlined elsewhere in this publication, should be thought of as a baseline or a bare minimum. Accessible is usually thought of as a lower standard than usable. While someone in a wheelchair will be able to get into and move through an accessible apartment if it is properly built, he or she may depend on grab bars and a roll-in shower in a bathroom, features that do not need to be incorporated under the Fair Housing Act’s requirements. Thus without further upgrades a
bathroom may not be truly *usable*, even if the dwelling complies with the Fair Housing Act. Units meeting the seven requirements allow individuals to adapt the home or make improvements tailored to their own needs.

This provision in the Fair Housing Act pertains to multifamily properties with four or more units built for first occupancy after March 13, 1991. Whereas in elevator buildings every unit must meet these standards, in buildings without elevators only units on the first floor must comply. HUD published compliance “guidelines,” and the Fair Housing Act specifically mentions American National Standards Institute A117.1 (ANSI A117.1) as an acceptable standard.7

The Fair Housing Act is not the only law with requirements for design and construction. New York State and local building codes need to be satisfied too. In areas where the laws conflict, the law with the most stringent requirements must be met. (The New York State Building Code generally is more demanding than the Fair Housing Act.8) Professionals in many capacities—including planners, architects, construction managers, builders, and owners—can be held legally responsible for new housing that is not built to the accessibility standards. It is therefore in everybody’s best interest to design and build homes properly from the outset. Over the long run, constructing accessible housing will benefit all stakeholders, protecting developers and others from legal liability and expanding housing options for people with disabilities.

**SECTION 504**

The source of funding for a building plays a role in determining which accessibility requirements apply and who must pay for the structural changes needed to make a dwelling accessible to someone with a disability. Section 504 of the Rehabilitation Act (hereafter Section 504) states that programs that receive *federal financial assistance*, that is, federal funds or subsidies, must not discriminate based on disability.9 The law encompasses housing that receives federal assistance, such as apartments operated by public housing authorities and senior housing assisted by HUD. While Section 504 does not require every unit in a development to be accessible, it does mandate that individuals with disabilities “have an equal opportunity to participate in and benefit from the program” supported by federal assistance.10 Some units in the development would thus need to be accessible.

Under Section 504, accessible homes should be dispersed throughout a development “to the maximum extent feasible,” so their occupants are integrated into the broader residential community.11 In most instances, at least 5% of units in new construction must be accessible to people with mobility-related disabilities, and 2% equipped for individuals with vision or hearing impairments. However, the Fair Housing Act also applies to newly constructed housing regardless of its source.
of funding: in an elevator building with more than four units (built for first occupancy after March 13, 1991), all apartments would have to be accessible under this law’s requirements.

What is important here is that the Section 504 level of accessibility—based on the Uniform Federal Accessibility Standards (UFAS)—is higher than that required by the Fair Housing Act. Whereas the specific features required under Section 504 are more user-friendly, the Fair Housing Act would in most cases require a greater number of units to be accessible, albeit at a significantly lower standard.12

Take the example of a developer who is planning a new apartment building. If it is to be privately owned and will receive federal subsidies but no New York State or local assistance, the developer must comply with both the Fair Housing Act and Section 504. Suppose the building will have sixty dwellings in total, with twenty units on a floor, three floors, and no elevator. Under the Fair Housing Act, twenty units on the first floor would have to meet that law’s relatively low accessibility standards. Under Section 504, three units (5% or more of sixty) would have to be accessible (at the more stringent UFAS standard) to individuals with mobility-related disabilities, and two units (2% of sixty; that is, 1.2 rounded up to the next whole number) would have to include communications features for people with vision or hearing impairments.

THE AMERICANS WITH DISABILITIES ACT

Under the ADA’s Title II, state and local governments cannot discriminate based on disability. They must provide access to everyone to their services, activities, and programs.13 Title III expands access for people with disabilities to commercial facilities and public accommodations (privately owned facilities offering services or goods to the public). In general, the ADA does not apply to housing.

That said, housing that is funded by state and local government—
such as public housing authority properties, subsidized affordable housing for rent or sale, and dorms at public universities—is covered by Title II and needs to comply with the ADA. Yet another set of standards is in place here: the U.S. Department of Justice’s current *Standards for Accessible Design*. In some cases, the Department of Justice’s *Standards and regulations refer to Section 504 requirements, which are under the purview of HUD. There is overlap because the ADA was intended to expand Section 504 protections for people with disabilities to a very broad range of state and local government programs and activities regardless of whether the governments receive federal financial assistance. Under Title III, the public portions, if any, of newly constructed residential buildings must be accessible. These might include a rental or sales office, a gym that allows non-resident access, or a ground-floor retail space in an apartment building. Similarly, a commercial facility, such as a hair salon or a medical office, within a private residence would need to meet ADA requirements.

Because the overlapping requirements are very complex and non-compliance is a serious matter, professionals in the building industries should consult technical and legal experts to make sure any new residential property or renovation will comply with all applicable laws. Any firm or individual planning or renovating housing that has or will receive any public financial assistance should be sure to consult Section 504 and ADA regulations, including the specific numbers of accessible features, such as entrances and parking spots, that need to be included. New York State and local codes apply as well.

**Reasonable Modifications and Accommodations**

We expect people with disabilities to be treated the same as anyone else is when they seek to rent or buy housing. However, they may need some changes or modifications to a building’s physical structure or to policies or procedures to be able to live safely and comfortably in their homes. Sometimes exceptions are needed so that people can have an “equal opportunity to use and enjoy a dwelling unit, including public and common use areas.”

Both the Fair Housing Act and Section 504 require housing providers to allow such changes. People with disabilities have the right to request and be granted permission to make what are known as *reasonable modifications*. These are changes to the structure of a unit and of shared spaces. Common examples include, in an apartment, the installation of grab bars in a bathroom, or, on a building’s exterior, the addition of an entrance ramp or an automatic door.
Put your request in writing. This is not legally required but is a good idea. You do not need to provide details about your disability, but you will need to demonstrate that the accommodation or modification is necessary for you to have an equal opportunity to use and enjoy your home as anyone else has.

Explain the structural or policy change you are requesting. If you will need to pay for a physical modification, you may need to assure your housing provider that the work will be done in a professional manner and that you will obtain any necessary local permits.

You do not need to reveal details about your condition, if you do not wish to, or provide any medical records. Your housing provider lawfully can ask only the minimum needed to determine whether your request is reasonable and connected to your disability. If your disability is obvious and the utility for the specific request apparent, your housing provider should not ask for documentation.

If your disability is not readily visible, your housing provider can, and likely will, request documentation from you as well as someone in a position to know that you have a disability and who understands your needs. If you receive Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), proof of that qualification in most cases will be sufficient to demonstrate a disability. Support for your specific request can come from a doctor, a social service provider, your caseworker, or another reliable individual. This person need not provide details about your disability, and your housing provider should not ask. Rather your reference can explain that you are disabled under the Fair Housing Act’s or Section 504’s definition and that the particular accommodation or modification desired will allow you to use and enjoy your home.

It is also a good idea—though not mandatory—to send a copy of your letter by regular mail and another by certified mail. Keep copies of your initial request and all related correspondence. If you have a conversation with someone, take notes on whom you spoke with and what was said. Hold onto these notes. (In the event the housing provider is not willing to grant the request, you will have all your communication documented.)

Be flexible, if possible. This process should be thought of by both sides as a dialogue, with some back and forth. If the housing provider suggests an alternative, could it work for you?

Follow up in a timely fashion. Lack of a response by a landlord may be considered by courts as a denial. If you get no response in a reasonable period of time or a negative response, contact Westchester Residential Opportunities, the U.S. Department of Housing and Urban Development (HUD), or a state or local human rights commission for assistance. (Contact information for these agencies appears in Resources at the back of this booklet.)

How to Request a Reasonable Modification or Accommodation

In New York State, since 2010, changes to the physical structure of common spaces, including entrances, must be paid for by the housing provider. The costs of modifications inside individual units are assumed by the resident, who may be required to restore the unit upon his or her departure. The landlord or owner can require the tenant to put money into escrow for the restoration. If one had kitchen counters lowered, for example, the landlord could require those to be returned to their previous height. Changes that would not hinder a later tenant without physical disabilities—such as the widening of doorways to
accommodate a wheelchair—need not be reversed. Similarly, the tenant is not responsible for reversing changes to common spaces, which may benefit future residents. The owner or landlord is obligated to allow these changes and to pay for those in common spaces, if they are genuinely reasonable and directly related to the person’s disability.

Under Section 504, there is an exception to the policies just outlined. If a resident of a federally assisted property needs a reasonable structural change in order to use and enjoy his or her home, the housing provider (such as a landlord, owner, or co-op board) has to pay for the necessary changes. This includes adaptations inside an individual unit.

By contrast, reasonable accommodations under the Fair Housing Act are changes, adjustments, or exceptions to policies or procedures that are necessary for someone to have the equal opportunity to use and enjoy a home. If there are costs involved, those must be borne by the housing provider. What is reasonable? There are numerous possibilities. A co-op board would most likely need to allow a service or assistance animal in a building that prohibits pets.21 It could be permitting someone to leave bagged trash in a corridor for pickup, or providing an easily opened bin, if the resident is unable to access the existing receptacle outside. It might be allowing a caregiver to live in an apartment without being on a lease.

Under the laws, a requested modification or accommodation must not create an “undue financial and administrative burden” (a very high standard) or demand a “fundamental alteration in the nature of the program” or operations of the housing provider.22 For example, a landlord of a typical market-rate apartment building could not be expected to provide health or social services to someone with a psychiatric disability.

The legal obligation to grant requests for reasonable accommodations extends beyond direct housing providers to municipalities. Cities, towns, and villages are expected under the laws to make reasonable accommodations in their zoning codes and other policies to allow for housing for people with disabilities. Such accommodation may be as extensive as allowing multifamily housing—including a supportive housing facility or a group home—in an area zoned for single-family homes. Policies that exclude people because of their disabilities, preventing them from having an equal opportunity to use and enjoy dwellings, are likely to be viewed unfavorably by courts and the Department of Justice, which has the authority to bring lawsuits based on patterns or practices of discrimination.23
The Seven Design and Construction Requirements

What follows on pages 12 and 13 is only a brief description of Fair Housing Act requirements. Design and construction professionals should consult the actual guidelines and laws and seek expert advice to make sure they are meeting all necessary accessibility provisions, including New York State and local codes, as well as Section 504, if relevant. HUD's Fair Housing Accessibility Guidelines can be used to meet the Fair Housing Act requirements; there are several other safe harbors, or alternate standards, that can be relied upon for compliance, as long as a single system is employed. HUD’s Fair Housing Act Design Manual is also a useful resource.

If you live in a multifamily building that has four or more apartments and is relatively new (first occupied after March 13, 1991), the building must include the elements outlined below. If your building does not seem to comply, reach out to Westchester Residential Opportunities or another agency for more information. (See the Resources at the back of this booklet.) If you are aware of newer properties that are not in compliance, feel free to contact us as well.

Very few new buildings with four or more units are exempt from the seven requirements; only extremely challenging topography or other site features may allow a property without elevators to be exempt from the requirement for an accessible entrance on an accessible route. Apartment buildings, condos, co-ops, single-story townhouses, dorms, nursing homes, and shelters, among other housing types, must be in compliance with the law.

Where to Go for Help

MODIFICATION ASSISTANCE

Public or private assistance may be available to help those with limited financial resources make modifications to their homes in order to live in them safely. New York State's Access to Home program is one possible source. You may contact Westchester Residential Opportunities for more information about such programs, a referral, or sample letters to request a reasonable modification or accommodation.
If you believe you have been discriminated against in housing because of a disability, Westchester Residential Opportunities may be able to help by investigating the incident, advocating on your behalf, informing housing providers of the laws, and helping you sort out the best place to file a complaint, if necessary. Statutes of limitations vary depending on where you file.

Complaints based on disability can be filed with HUD, the New York State Division of Human Rights, the Rockland County Commission on Human Rights, or the Westchester Human Rights Commission. Putnam County residents should turn to the federal or state government. Yonkers residents can contact that city’s Human Rights Commission for assistance. You generally have up to one year from the incident or events at issue to file a complaint.

You do not need an attorney to go through this process, but it may be helpful. While the procedures will vary somewhat depending on the agency involved, the agency you go to will investigate your claim. Simultaneously, it will bring the housing provider and you together to see if you can reach an agreement in what is called the conciliation process. If the investigating agency finds that there is reasonable cause to believe an act of discrimination occurred and no conciliation agreement is achieved, a hearing will be held in front of an administrative law judge. At the state or county level, the judge will ultimately make a recommendation to the human rights commissioner or commissioners, who will review the evidence and ultimately issue a ruling and remedy, if one is needed. If the decision is not in your favor, you may have the opportunity to appeal it. If a complaint is dismissed after an investigation, you are able to file a complaint in court.

Another possibility is to go to court initially, filing a private lawsuit under the relevant law or laws at the national, state, or county level. If you choose this route, you will want the help of an attorney. An advantage of court action is that the statute of limitations is longer: up to two years can elapse between the incident of discrimination and filing. A disadvantage of working through the courts is that litigation can be expensive.
The Aging Population

As the American population ages and our society moves toward an expansion of civil rights, we would all be better served if architects, builders, and officials, among others, were to think about expanding access to homes for both visitors and residents rather than merely complying with minimum standards. Many of us may some day experience mobility or sensory problems or have friends and relatives who do. According to the U.S. Centers for Disease Control, 20.6% of adults 18 years old and up in New York State have a disability. The likelihood greatly increases as we age.28 Population growth and changing demographics affect housing

The Fair Housing Act’s Seven Requirements

1 Accessible building entrance on an accessible route
   • If covered by the law, each building must have one entrance or more that can be accessed easily by people in wheelchairs. If there are separate entrances to individual first-floor units, each entrance must be accessible. The route from the property entrance to the building entrance must be continuous and free from obstructions.
   • People in wheelchairs must be able to reach all common use locations, such as parking, laundry and exercise facilities, and any public transit stop.
   • Sidewalk surfaces must be at least 36” wide, firm, and resistant to slips. They must be level, with no more than a 2% slope lengthwise. Ramps can have no more than a 5% to 8.33% lengthwise slope.

2 Accessible and usable public and common use areas
   • All kinds of common spaces and amenities must be accessible to people with disabilities, including:
     —Lobbies, hallways, and elevators
     —Lounges, community and common rooms, clubhouses, business centers, and common restrooms
     —Mailboxes, water fountains, trash and laundry facilities, and storage spaces
     —Exercise and recreational facilities, including swimming pools and playgrounds
     —Rental and sales offices
   • If parking is provided, accessible spots must be provided in specific numbers meeting requirements (generally 2% of total spaces).
   • Curb ramps must be provided as needed for access to parking and common facilities.

3 Accessible and usable doors
   • Doorways must be wide enough to allow a person in a wheelchair to maneuver through them easily: exterior doors need to have a clear, open width of at least 32”; doorways within a unit must be a “nominal 32” wide,” that is, with an unobstructed opening at least 31backs" wide.
   • Thresholds must have minimal protrusions: interior thresholds must be no more than ½” high with beveled sides.
   • Doors at the building and unit entrances must have opening hardware that is easy to operate (not knobs that need to be twisted).
   • Interior doors must not need more than 5 pounds of force to open.
4 Accessible route into and through the dwelling

- Primary entrance to the dwelling: Door threshold must not be higher than 1 1/4" (measured from the outside) and must be beveled to certain specifications.
- Level changes on the route through the unit can be no more than 1/4" or 1/2" if sides are beveled properly.
- Passageways in the unit must be 36" wide (with exception of doorways).

5 Accessible light switches, electrical outlets, and thermostats and other environmental controls

- Controls must be placed at heights and locations reachable by someone in a wheelchair (between 15" and 48" from the ground).

6 Reinforced walls in bathrooms to allow the installation of grab bars

- The grab bars do not need to be installed, but the walls must be able to bear the weight of bars in use around toilets, bathtubs, and showers.
- Specified heights and widths of reinforcements apply.

7 Usable kitchens and bathrooms

The standard here is low, providing a minimum of space for people in wheelchairs to maneuver, approach appliances, and close a bathroom door.

Kitchens

- There must be 30" x 48" clear floor space at each appliance.
- A minimum turning space of 60" in diameter or 40" between appliances (or between appliances and walls), depending on the kitchen layout, must be provided.

Bathrooms

- The minimum clear floor space for maneuvering must be 30" x 48" outside the space needed to close the door.
- Two options, known as Type A and B.
  - Type A has a perpendicular approach to bathtub.
  - Type B has a parallel approach to bathtub.
- With Type A, all bathrooms in a home must comply.
- Under Type B, which is a stricter standard, only one bathroom must comply. Any others must meet minimum requirements.

needs and housing developers’ responses. From 2010 to 2030, the growth rate of people 65 and up nationally is projected to be over 30%, more than three times the growth rate of the nation’s population as a whole. To put it another way, almost one-fifth of people in the United States will be over 65 by 2030. It is thus inescapable that more and more people, including the Baby Boom generation, will experience a decline in mobility and will benefit from housing that is easier and safer to navigate.

Government officials at all levels would be wise to keep abreast of these long-term trends and to assess housing needs for seniors. A study by the National Association of Area Agencies on Aging and its partners found that only a small percentage of local governments nationwide had assessed and strategically planned for the needs of older adults in their communities. Many individuals in suburban areas wish to “age in place,” staying in their homes. While some will choose to, or need to,
downsize for various reasons, they may still desire to stay in their communities. That study recommends: “Communities should ensure that their subdivision and zoning plans and building codes encourage the development of a range of housing types and universal design features that promote housing for a lifetime. Communities should seek collaborations with affordable housing providers to generate additional housing options for low-income seniors.” Inevitably, Lower Hudson Valley communities will face a much greater need for accessible housing, from subsidized senior housing to private-market assisted-living facilities. All such housing falls under the Fair Housing Act.

**GREATER ACCESS**

Advocates for universal design and what is called a visitability standard argue that accessibility features can promote independence and make daily living for people with disabilities easier without burdening others. Universal design proponents believe that features of the built environment should be designed to be usable by everyone, without adaptations, to the greatest extent possible.

Such features as entrances without any steps, sufficient space in which to maneuver, hardware that is easier to operate, and lever faucets may help a variety of people, such as senior citizens, adults toting grocery bags or pushing children in strollers, and those with temporary injuries. Universal design features may even be cost-effective in the long run, as retrofitting can be more expensive than incorporating accessible components from the start. Moreover, from a property owner’s and seller’s perspective, it makes sense to have a wider field of potential buyers rather than a narrower one.

The goal of visitability advocates is for homes—primarily single family but also two- and three-family—to be able to be visited by people with disabilities, thereby lessening isolation and providing greater integration of people into their communities. Some states and municipalities have adopted visitability standards, with either mandatory or voluntary compliance, for new houses. While the preferred requirements and goals of supporters vary, in general such standards include, at a minimum, having a step-free accessible entrance on an accessible route; hallways sufficiently wide to accommodate wheelchairs (32” or
Under the Fair Housing Act and the federal Housing for Older Persons Act (1995), housing providers are able to lawfully limit their properties to residents at least 55 years old under some conditions. The housing, whether it is rental, cooperative, or ownership, must be deliberately “intended and operated for” older people. Policies at such properties need to be clear and published. There are two options to qualify for the exemption: restricting residents to either 55 or 62 years of age and up. If an owner chooses to develop a property as housing for those at least 55, at least 80% of the units must be occupied by at least one person who is 55. Whether the remaining 20% of units are open to people of any age, including children, is up to that particular owner. With housing for people 62 and up, all occupants must be that age. Properties must comply with HUD regulations on verifying the ages of their residents.

With the exception of familial status and age, all protected classes apply in housing for older individuals. Property owners, as well as co-op and condo boards, must not discriminate against people based on disability, race, religion, sexual orientation, and so on. So-called active adult communities may not express a preference for able-bodied residents and need to welcome people who use wheelchairs or walkers. Housing providers may not ban caregivers, no matter their age, from providing services to residents. Similarly, advertising campaigns must comply with Fair Housing Act provisions: for example, images of people included in ads should reflect the variety of races and ethnicities who live in the entire region.
American society relies on all communities to offer housing opportunities for people with disabilities, be they physical or mental challenges. Valuing every member of our region means welcoming diverse populations. Inclusive communities benefit everyone, offering opportunities for both children and adults of different generations to learn from one another and prepare for acting in an increasingly globalized and economically interconnected world, as our nation’s population becomes both more diverse and older.

In the American federal system, numerous court decisions, laws, regulations, and conditions of federal grants support inclusiveness in our region’s communities. For example, the U.S. Supreme Court in the *Olmstead v. L.C.* decision (1999) held that, under Title II of the ADA, states “are required to provide community-based treatment for persons with mental disabilities when . . . such placement is appropriate,” can be reasonably accommodated by government, and is agreed to by the individuals involved. In keeping with the relevant regulations stating that people with various kinds of disabilities must be offered services in their communities “in the most integrated setting appropriate” to particular individuals’ needs in order to improve their quality of life, New York and other states are in the process of complying with this decision by planning more appropriate community-based settings instead of isolating individuals with developmental disabilities and mental illness in institutions.

In New York State, the court decision *Berenson v. New Castle* (1975) and subsequent cases require municipalities to provide for regional housing needs in their local zoning. Given the Lower Hudson Valley’s diverse population, encompassing various abilities, ages, incomes, and so forth, meeting regional housing needs means allowing an array of housing choices—like apartments, townhouses, supportive housing, assisted living, affordable housing, and accessory apartments—in every
community. Zoning that permits a variety of housing types besides single-family homes can allow seniors to remain in their communities and age in place, among other benefits. Given the high property taxes and the high cost of living in the Lower Hudson Valley, such options are likely to help retain our seniors, many of whom are on fixed incomes.

### MUNICIPALITIES’ OBLIGATION TO AFFIRMATIVELY FURTHER FAIR HOUSING

Under the Fair Housing Act and other federal laws, states, cities, counties, towns, villages, and institutions that receive federal money from HUD are obligated to advance open communities by analyzing local conditions, supporting an environment free from housing discrimination, and providing more opportunities for all—irrespective of disability, race, religion, national origin, gender, or family status—to access housing. The legal obligation applies to both direct grant recipients, such as states, counties, and cities, and grant subrecipients, like towns and villages, which receive federal aid passed down through their counties. This is known as “affirmatively furthering fair housing.”

Expanding fair housing opportunities has been a condition of receiving the federal grant money.

Particularly in places with older housing stock, the lack of accessible housing may be a barrier to fair housing. If little new housing has been built in a town or village in decades, for example, there is likely a dearth of accessible houses and apartments, particularly at lower price points. It would be wise for municipalities to analyze the availability of units in their borders that are accessible to those with disabilities and to take action to improve upon deficiencies, if they are found.

It is also important that housing providers in all communities be open to residents using Housing Choice Vouchers (Section 8) to help pay their housing costs. (In Westchester County, this is also mandatory: local law prohibits landlords from denying housing based on source of income.) Roughly 28% of Housing Choice Vouchers are held by disabled families, which comprise single-person households and
families that have a head of household or a head’s spouse with a disability. This figure does not take into account families with disabled children. Another 19% of voucher holders are elderly families, 40% of whom have at least one disabled member. Thus the refusal to accept vouchers may indicate that a landlord is discriminating against people with disabilities. Moreover, because there is a shortage of accessible units, such refusal—or a refusal to accept SSI or SSDI—makes it even more difficult for people with disabilities to find acceptable housing.

**INCLUSIVE COMMUNITIES**

It has been estimated that about 32%, almost one-third, of households in the U.S. include someone with a disability. In order to achieve inclusive communities, in which we can all exchange ideas and experiences, benefit from the increasing diversity of American society, and age with dignity, people with disabilities need to have the same opportunity to use and enjoy housing as anyone else does. Many seniors will want to remain in their communities well into retirement. They should have options, from remaining in their homes to moving into rental apartments or nearby assisted-living facilities. Our society benefits when we all have the right to choose the communities in which we wish to live and can obtain safe and secure homes in them. We can move closer to equity in opportunity by ensuring that housing rights under the Fair Housing Act, Section 504, and the ADA are upheld and that communities and housing developers do their part by fostering and creating housing that can allow everyone to feel at home.
Notes


2. For the definition, see 24 CFR § 100.210 and 42 USC § 3602. CFR stands for the United States Code of Federal Regulations, which brings together the regulations issued by executive branch departments and agencies, and USC is short for the United States Code, a compilation of the federal laws enacted by Congress. These regulations and statutes can be found online at, respectively, http://www.ecfr.gov and http://www.gpo.gov. The word section is symbolized by §.

3. Federal and state laws define disability differently. The Fair Housing Amendments Act (1988) mentions physical and mental handicaps (24 CFR § 100.210; 42 USC § 3602). New York State’s definition adds medical impairments to physical and mental ones and substitutes the prevention of a “normal bodily function” for a substantial limitation of at least one “major life activity” (New York State Executive Law § 292.21).

4. 42 USC § 3604(f)(9).


6. See, for example, Section 504 regulations at 24 CFR § 8.27.


8. Readers should note that this publication is not intended to apply to New York City housing and does not explain New York City laws, regulations, and codes.

9. What counts as federal financial assistance is legally defined and may change with a change in law. With some exceptions, housing built with Low-Income Housing Tax Credits (LIHTC), a program that many developers of affordable housing rely upon, does not need to comply with Section 504. Tenant-based Housing Choice Voucher subsidies (Section 8 vouchers) do not qualify as federal financial assistance to housing providers. HUD, “People with Disabilities: Section 504 Frequently Asked Questions,” http://portal.hud.gov/hudportal/HUD?src=program_offices/fair_housing_equal_opp/disabilities/sect504faq.

10. Ibid.


12. HUD, “People with Disabilities: Section 504 Frequently Asked Questions.”

13. This does not mean that literally every space must be usable by people with mobility impairments. However, accommodations must be made to make sure that programs, services, and activities offered by a public entity “when viewed in their entirety” can be accessed by people with disabilities. See, among other sources, DoJ, “The Americans with Disabilities Act: ADA Title II Technical Assistance Manual Covering State and Local Government Programs and Services,” Section II–5.1000. http://www.ada.gov/tam2.html#II–5.1000.


17. Determining the mandatory numbers of particular accessible elements is known as scoping. See Section 504 regulations (24 CFR Part 8) and DoJ, 2010 Standards for Accessible Design, Chapter 2.

18. 24 CFR § 100.204.

19. The Fair Housing Amendments Act distinguishes between reasonable modifications and accommodations, a distinction followed here. Section 504 simply uses reasonable accommodations for physical and policy changes.


21. Service and assistance animals are both recognized by HUD under the Fair Housing Act and Section 504. Assistance animals are also known as comfort, therapy, or emotional support animals. Under the ADA, only the use of service animals, including psychiatric service animals, is protected. However, court decisions may change how laws and regulations in this area are interpreted. See HUD, FHEO Notice 2013-01, “Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs,” April 25, 2013. http://portal.hud.gov/hudportal/HUD?src=press/press_releases_media_advisories/2013/HUDNo13-060A.


24. See HUD, *Fair Housing Accessibility Guidelines*, 24 CFR Ch. 1, Subchapter A, Appendices II and III. The safe harbors can be found listed on the website Fair Housing Accessibility First, a very useful resource, at http://www.fairhousingfirst.org/faq/safeharbors.html.


26. HUD, *Fair Housing Accessibility Guidelines*, Section 5. http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/fhguidelines/hefha5#req1. Determining whether group homes or residential facilities known as SROs (single room occupancies) qualify as “covered dwelling units” can be tricky. If a home with at least four rooms for sleeping but shared kitchen and bathrooms is viewed as functioning as one single household, it may be exempt from the Fair Housing Act’s seven design and construction requirements. A similar facility with at least four distinct households would not be exempt. See HUD and DoJ, “Joint Statement of the Department of Housing and Urban Development and the Department of Justice Accessibility (Design and Construction) Requirements for Covered Multifamily Dwellings under the Fair Housing Act,” April 30, 2013, no. 5, p. 5. http://www.ada.gov/doj_hud_statement.pdf.


31. Some 10,000 surveys were sent out—to jurisdictions of more than 2,500 people in the nation—with a 14% response rate. Ibid., pp. 43, 53.

32. Ibid., p. 17.


42. The percentage is for 2007. Ibid., p. 27.
Resources

For Fair Housing Assistance and Information on Filing Complaints
Westchester Residential Opportunities, Inc.
470 Mamaroneck Ave., Ste. 410
White Plains, NY 10605
914-428-4507
http://www.wroinc.org

For Fair Housing Information and to File Complaints

Federal Government
U.S. Department of Housing and Urban Development
New York Regional Office
Jacob K. Javits Federal Building
26 Federal Plaza, Ste. 3541
New York, NY 10278
Local office: 800-496-4294; 212-542-7109
National office: 800-669-9777 (English and Spanish); TTY: 800-927-9275
http://hud.gov/fairhousing
U.S. Department of Justice (for discrimination under ADA)
950 Pennsylvania Ave., NW
Civil Rights Division
Disability Rights Section, 1425 NYAV
Washington, DC 20530
Voice and TTY: 202-307-0663
ADA information: 800-514-0301; TTY: 800-514-0383
http://www.justice.gov/crt/about/drs

State Government
New York State Division of Human Rights (for all housing cases)
1 Fordham Plaza, 4th floor
Bronx, NY 10458
888-392-3644; 718-741-8400; TTY: 718-741-8300
http://www.dhr.ny.gov

New York State Division of Human Rights (for assistance in Putnam, Rockland, and Westchester counties)
8 John Walsh Blvd., Ste. 204
Peekskill, NY 10566
914-788-8050
http://www.dhr.ny.gov/how-file-complaint

New York State Office of the Attorney General
Civil Rights Bureau
120 Broadway, 23rd floor
New York, NY 10271
212-416-8250
http://www.ag.ny.gov/civil-rights/complaint-forms

Yonkers
City of Yonkers Human Rights Commission
87 Nepperhan Avenue, Room 310
Yonkers, NY 10701
914-377-6280
http://www.cityofyonkers.com/play/departments-g-w/human-rights-welcome

County Government
Rockland County Commission on Human Rights
50 Sanatorium Rd., Building G
Pomona, NY 10970
845-364-3886; TTY: 800-662-1220
http://rocklandgov.com/departments/human-rights

Westchester County Human Rights Commission
112 E. Post Rd., 3rd floor
White Plains, NY 10601
914-995-7710; TTY: 914-995-7754
http://humanrights.westchestergov.com

Other Government Agencies and Websites

Federal
National Council on Disability (policy)
202-272-2004; TTY: 202-272-2074
http://www.ncd.gov/policy/housing
U.S. Access Board (*UFAS standards*)
http://www.access-board.gov/
guidelines-and-standards/buildings-and-sites/
about-the-aba-standards/ufas
Technical assistance: 800-872-2253; TTY: 800-993-2822

**State**

New York State Justice Center (*special needs*)
Information and referrals: 800-624-4143; TTY: 800-624-4143
http://www.justicecenter.ny.gov

New York State Office for People with Developmental Disabilities
866-946-9733; TTY: 866-933-4889
http://www.opwdd.ny.gov

**County**

Putnam County Office for People with Disabilities
845-808-1641
http://www.putnamcountyny.com

Putnam County Office for the Aging
845-808-1700
http://www.putnamcountyny.com

Rockland County Department of Mental Health
845-364-2378
http://rocklandgov.com/departments/mental-health

Rockland County Office for the Aging
845-364-2110
http://rocklandgov.com/departments/aging

Westchester County Department of Community Mental Health
914-995-5220
http://mentalhealth.westchestergov.com

Westchester County Department of Planning (*affordable rental and ownership housing listings*)
914-995-4400
http://homes.westchestergov.com/homeseeker

Westchester County Department of Senior Programs and Services
914-813-6300
http://seniorcitizens.westchestergov.com

Westchester County Office for the Disabled
914-995-2957; TTY: 914-995-7397
http://disabled.westchestergov.com

**Useful Organizations and Websites**

**Affordable Housing Providers and Social Service Agencies**

A-HOME Housing (*supportive and senior housing*)
914-741-0740
http://www.a-homehousing.org

Allied Community Enterprises
914-295-0107
http://www.alliedcommunity.org

Community Housing Innovations
914-683-1010
http://www.chigrants.org

Homeseeker (*Westchester County’s listing of affordable housing for sale and rent*)
http://homes.westchestergov.com/homeseeker

Housing Action Council (*affordable housing*)
914-332-4144
http://housingactioncouncil.org

Hudson Valley Cerebral Palsy Association (*residential services*)
845-878-9078
http://www.hvcpa.org

Human Development Services of Westchester (*mental illness services, housing counseling*)
914-835-8906
http://www.hdsw.org
http://hdsw.org/neighborhood-preservation-company

Putnam County Housing Corporation
845-225-8493
http://www.putnamhousing.com
Rockland Housing Action Coalition  
845-708-5799  
http://www.rhachomes.org

Westhab (affordable housing, supportive housing)  
914-345-2800  
http://www.westhab.org

Disability Advocacy, Information, and Services
New York Association on Independent Living (advocacy and education)  
518-465-4650  
http://www.ilny.org/programs/housing-education-program

Putnam Independent Living Services  
845-228-7457; TTY: 866-933-5390  
http://www.putnamils.org

Rockland Independent Living Center  
845-624-1366; 845-639-2056  
http://www.rilc.org

United Spinal Association (advocacy and technical guidance)  
718-803-3782; 800-404-2898  
http://www.unitedspinal.org

Westchester Disabled on the Move  
914-968-4717  
http://www.wdom.org

Westchester Independent Living Center  
914-682-3926; TTY: 866-933-5390  
http://www.wilc.org

Westchester Institute for Human Development  
914-493-8150  
http://www.wihd.org

Fair Housing Organizations
Fair Housing Accessibility First (technical guidance on design and construction)  
Voice and TTY: 888-341-7781  
http://www.fairhousingfirst.org/index.asp

Fair Housing Justice Center  
212-400-8201  
http://www.fairhousingjustice.org

National Fair Housing Alliance  
202-898-1661; TTY: 202-898-1670  
http://www.nationalfairhousing.org

Westchester Residential Opportunities, Inc.  
914-428-4507  
http://www.wroinc.org

Home Modifications and Rehabilitation
New York State Access to Home program (financial assistance to property owners and residents who qualify) administered by:

Family Service Society of Yonkers (Yonkers and vicinity)  
914-963-5118  
http://www.fssy.org

Westchester Residential Opportunities, Inc.  
914-428-4507  
http://www.wroinc.org/services/accesstohome

Loans or grants may be available to residents of the following cities:

Mt. Vernon  
Residential Rehabilitation Program  
914-699-7230  
http://cmvny.com/departments/planning/residential-rehabilitation-program

White Plains  
Community Development Department  
914-422-1300  
http://www.cityofwhiteplains.com

Yonkers  
Family Service Society of Yonkers, Home Accessibility (City of Yonkers program)  
914-963-5118  
http://www.fssy.org

National Resource Center on Supportive Housing and Home Modification  
213-740-1364  
http://www.homemods.org/resources/index.shtml

National Spinal Cord Injury Association  
718-803-3782  

Legal Services
Legal Services of the Hudson Valley  
Main office: 914-949-1305; 877-574-8529  
Rockland: 845-476-3831  
http://www.lshv.org
Mental Illness

NAMI-FAMILYA of Rockland County
845-359-8787
http://www.namirockland.org

National Alliance on Mental Illness (NAMI) Putnam
845-363-1478
http://www.nami.org/sites/namiputnamcounty

National Alliance on Mental Illness (NAMI) Westchester
914-592-5458
http://www.namiwestchester.org

Supportive Housing (Single Point of Access)

Rockland County Department of Mental Health
845-364-2378
http://rocklandgov.com/departments/mental-health

Westchester County Department of Community Mental Health
914-995-5220
http://mentalhealth.westchestergov.com

Universal Design and Visitability

Center for Inclusive Design and Environmental Access, State University of New York at Buffalo
716-829-5902
http://idea.ap.buffalo.edu

Concrete Change
http://concretechange.org

Institute for Human Centered Design
Voice and TTY: 617-695-1225
http://www.humancentereddesign.org