

HOUSING

CHAPTER 6

INTRODUCTION

Many people find it difficult to obtain suitable housing. Problems are often multiplied for a person with disabilities. Landlords and loan organizations are sometimes more hesitant when renting or granting loans to a person with disabilities. Despite these obstacles, persons with disabilities have many legal rights regarding housing.

This chapter discusses the Federal and State laws designed to deal with discrimination often encountered by persons with disabilities in their efforts to secure suitable housing.

Both federal and state laws prohibit discrimination in the sale or rental of housing based on a disability. The laws also prohibit acts of interference, coercion, threats or intimidation in the exercise of anyone's right to secure suitable housing.

LAWS REQUIRING ACCESSIBILITY AND PROHIBITING DISCRIMINATION

The Fair Housing Act of 1988

In 1988, the United States Congress expanded the coverage of the 1968 Civil Rights Act by extending its protections in the area of housing to persons with disabilities. Congress described the Amendments as a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with disabilities from the American mainstream. The expanded Fair Housing Act covers nearly every kind of housing and protects individuals with virtually any kind of disability.

1. **Covered Housing:** The Act covers both public and private housing. It covers all apartment buildings except those that are owner occupied with four or fewer units. The rental or sale of a single-family home is covered if a real estate agent is involved, the owner has an interest in more than three houses, or the owner has sold a house within the previous 24 months.
2. **Covered Individuals:** Individuals protected by the Act are persons with a disability. Disability is defined by the Act as a physical or mental impairment which substantially limits one or more major life activities, a record of such an impairment, or being regarded as having an impairment. 42 USC 3602 (h). The Act indicates that current illegal drug use or addiction does not constitute a disability. The protections of the Act do not cover an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Congress indicated in the legislative history of the 1988 amendments that a landlord claiming that an individual would pose such a risk must rely on objective evidence of recent behavior, and not on generalized assumptions, subjective fears and speculation.

3. **Discriminatory Housing Practices:** The Fair Housing Act makes it illegal to discriminate based on disability in the sale or rental of housing, prohibits discrimination in advertising and in representations about the availability of housing. The Act defines discrimination to include the failure to make reasonable accommodations when necessary to afford a person with a disability equal housing opportunities. The discrimination may be on the basis that the buyer or renter has a disability, a person intending to reside or residing in the dwelling or any person associated with the buyer or renter. 42 USC 3604(f)(i). In addition, the Act outlaws governmental and private action that excludes people with disabilities because they live in group homes or other congregate living arrangements. The prohibitions of the Act apply to zoning and other public land use regulations and to private deed restrictions and covenants.
4. **Accessibility and Adaptability Requirements:** In newly constructed multifamily dwellings (with four or more units for first occupancy after March 13, 1991), the Act requires that common areas and outer doors be fully accessible, and that individual apartments contain features of adaptive design. Adaptive design requirements include an accessible route into and through the dwelling; light switches, electric outlets, and thermostats in accessible locations; reinforcements in bathroom walls for installation of grab bars; and kitchens and bathrooms that can be used by individuals in wheelchairs. For buildings with elevators, all units must include adaptable features; otherwise only ground floor units must have those features. 42 USC 3604(f)(c).

With respect to existing housing, the Fair Housing Act requires landlords to permit tenants to make reasonable modifications to dwellings. Tenants may be required to make physical modifications at their own expense. If reasonable, the landlord may require the tenant to agree to restore the unit to its original condition, and under certain circumstances the landlord may require the tenant to establish an escrow account to cover the cost of restoration. 42 USC 3604(f)(3)(A).

5. **Enforcement of the Fair Housing Amendments Act of 1968:** Individuals who believe their rights may have been violated under the Fair Housing Act may seek additional information from and file a complaint with the United States Department of Housing and Urban Development (HUD). The individual has one year to file such a complaint. Individuals may also file a lawsuit in court within two years of an unlawful practice without first filing a complaint with HUD.

Persons may obtain more information regarding the details of the Fair Housing Amendments Act of 1988 and how to enforce their rights from the HUD office in

Kansas City or Saint Louis depending on their location. The Kansas City office is for the western region of the state and can be reached at (913) 551-5644. The Saint Louis office serves the eastern region of the state and can be reached at (314) 539-6583. A list explaining which counties are served by either the Saint Louis or Kansas City office can be found at:

<http://www.hud.gov/local/mo/working/missourioffices.cfm>. Information and assistance may be available from an advocacy or legal services organization, or from a private attorney (**Chapter 15**).

Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 is a federal law that prohibits discrimination based on disability in any program or activity receiving federal financial assistance. Like the Fair Housing Act, complaints under Section 504 are investigated by the United States Department of Housing and Urban Development (HUD), which has an office in Kansas City. Housing covered by Section 504 includes buildings constructed with federal grants or loans. Many federally assisted housing programs are described below.

Missouri Human Rights

Missouri state law prohibits discrimination in housing against persons with disabilities. Therefore, in Missouri it is unlawful for a(n):

1. Person to refuse to negotiate a sale or rental of any dwelling place because a person has a disability;
2. Individual to refuse to sell or to rent a dwelling to a person with a disability after the person has made a good faith offer (however, if other bona fide offers to rent or buy have been made, the owner or lessor may accept such offer without violating the law), § 213.040, RSMo (2000);
3. Owner or lessor to discriminate against any person with a disability in the provision of services or facilities in connection with sale or rental, or discriminate against any person with a disability in the terms or conditions of sale or rental of a dwelling, § 213.040.2, RSMo (2000);
4. Owner or lessor to bring any notice or advertisement regarding the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based upon a person's disability, or an intention to make such a preference over individuals with a disability, § 213.40.3, RSMo (2000);
5. Owner or lessor to represent to any person with a disability that a dwelling is not available for inspection, sale, or rental when, in fact, the dwelling is available, § 213.040.4, RSMo (2000);
6. Bank, loan organization, or any business, which, as part of its business, makes commercial loans, to deny a loan or other financial assistance because a person with disabilities is applying. This provision also applies to loans for the purpose of construction, improving, repairing or maintaining any dwelling. All lending agencies are forbidden by law to discriminate against the individual with a disability in fixing the interest rate, the duration or other terms or conditions of the loan solely because of the disability, § 213.045, RSMo

(2000); or

7. Multiple listing service or real estate brokers association or other service organization or any facility relating to the business of selling or renting dwelling places to deny any person with disabilities access to, or membership, or participation because of the individual's disability. § 213.050, RSMo (2000).

Complaint Procedure

Individuals may complain about such discriminatory housing practices to the Missouri Commission on Human Rights. Complaints should:

1. Be written;
2. Include the individual's name and address and telephone number. If the individual does not have a telephone, he or she may give a telephone number where he/she could be reached;
3. Include the name, address and telephone number of the person, or agency with whom the concern arose;
4. Explain the details of the discriminatory action; and
5. Be filed within 180 days of the alleged discrimination. § 213.075, RSMo (2000).

In the alternative, the complainant may call the Toll Free Hotline where somebody with the Missouri Commission on Human Rights will discuss your complaint with you.

The Toll Free Hotline is 1-800-877-MCHR, or individuals may call a local office of the Missouri Commission. Listed below are the telephone numbers of the four offices of the Commission:

St. Louis Office	(314) 444-7590
Kansas City Office	(816) 472-2491
Sikeston Office	(314) 471-7185
Jefferson City Office	(573) 751-3325

After the complaint is filed, the staff of the Commission on Human Rights will conduct an investigation. If the chairperson of the Commission determines that the allegations made against the individual or agency are true, the chairperson will attempt to eliminate the discriminatory practice by conference and conciliation.

If the Commission is unable to eliminate such practice by conciliation, or if, in the chairperson's judgment, the circumstances warrant it, the Commission will issue and serve on the alleged infringer charges of discriminatory housing practices. The respondent will then have to appear at a hearing before the Commission. The hearing will be held in the office of the Commission or in the county where the infringer resides. § 213.075, RSMo (2000).

After the hearing, if the Commission finds that the alleged discriminator has engaged in a discriminatory housing practice, the Commission shall have the power to issue a cease and desist order or other affirmative action against the discriminator. This may include an award of damages to the complainant and a requirement of compliance. If the Commission finds that the alleged

infringer has not engaged in discriminatory housing practices, the Commission shall dismiss the complaint.

Court Enforcement

In addition to complaining to the Commission on Human Rights, one can bring a civil action in a circuit court in this state. In doing this, one should consider the assistance of an attorney. Once a complaint is made to the commission on Human Rights, the complainant can request, in writing, a letter indicating his right to bring civil suit. The civil suit must be made within 90 days of such notice against respondent in complaint. § 213.111.1., RSMo. If a violation is determined by the court, it has the power to make the infringer cease all illegal activities and also to award the complainant actual damages and punitive damages.

Missouri Zoning Law

Zoning has been a problem for parents and individuals who work in setting up community residence homes, group homes, or family homes in restrictive zoning ordinances that are used to exclude such homes from desirable residential areas in the community. Community concerns may arise in the following areas:

1. A group home or a community home does not conform to the term family as defined in local and municipal ordinances. This matter has been addressed by passage in 1985 of a law discussed below;
2. An individual not wanting a community residence home in a certain neighborhood may argue that the group home is not a single housekeeping unit as defined in a local ordinance;
3. Residents may argue that it is a nursing facility; and
4. Residents may argue that a group home is an institution.

The Missouri Constitution allows municipal home rule. This is a system of powers, including zoning powers, conferred upon cities by the Constitution. It is largely up to city zoning boards and city councils to determine the validity of their zoning ordinances. The state has conferred upon the cities, through their police power, the right to enforce and interpret local zoning ordinances, subject to the state and federal constitutions and statutes. § 89.020 RSMo. (2000).

A Missouri law passed in 1985 addressed the problem of zoning for group homes in residential areas. It requires that, for zoning purposes, the classification single family dwelling must include any home in which eight or fewer unrelated persons with mental or physical disability reside. There also is a provision that two additional persons may live in the home acting as house parents or guardians. Additional provisions of the bill allow that local zoning authorities may require the exterior appearance of the home and property to be in reasonable conformance with the general neighborhood standards. Further, the local zoning authority may establish reasonable standards regarding the density of such homes in any specific neighborhood. § 89.020.2, RSMo (2000).

HOUSING ASSISTANCE

Housing and Community Development Act of 1974

The Housing and Community Development Act of 1974 authorizes the Secretary of the Department of Housing and Urban Development (HUD) to make direct government loans to communities for housing for persons with a disability or the elderly. 42 USC 5305(a)(5). The Act also broadens the definition of disability to cover specifically persons with physical or mental disability, including those with developmental disabilities. 42 USC 5309.

All housing facilities under this law are to meet the needs of the occupant, including the special needs of those with disabilities. Community development programs assisted by funds provided under this Act include special projects to remove material and architectural barriers that restrict mobility and accessibility of elderly and persons with physical disabilities. 42 USC 5305 (a)(5). The primary objective of the program is the development of viable urban communities by providing decent housing, a suitable living environment, and expanding economic opportunities for persons with low or moderate incomes. 42 USC 5301.

Other Federal Programs

The goal of several housing programs is to assist in the provision of adequate and necessary housing for persons who cannot independently afford housing. For more information about any of these programs contact the United States Department of Housing and Urban Development (HUD) or visit the HUD website at www.hud.gov.

Section 8 Housing

The Section 8 program is a HUD program established to assist families with low income, the elderly and individuals with disabilities with safe and affordable housing. The local agency that provides the benefits of Section 8 is usually the Public Housing Authority (PHA). The program assists individuals by providing part of the housing costs for households that qualify.

In order to be eligible for Section 8, a household must have an income less than 50% of the area median income. The amount of money that will be provided by the PHA depends on the amount of the income of the household (usually households are required to pay 30% of their monthly adjusted income as rent). PHA will provide the rest of the rent through a Section 8 "voucher" or subsidy. PHA pays their portion of the rent directly to the landlord.

The most common component of the Section 8 program is Tenant-Based rental assistance. This component of the program allows an individual or household to use their voucher on a housing unit of their choice. This can be on an apartment or a rental house. It should be noted that not all landlords will accept Section 8 vouchers. If an individual or household decides to move, they can take the voucher with them to another dwelling.

The other components of the Section 8 program include project-based rental assistance and homeownership assistance. In project-based rental assistance, the voucher stays with the unit of housing and cannot be moved to another unit. The homeownership assistance component aids individuals who want to buy a house.

The law enacting the Section 8 program defines a person with a disability as an individual who:

1. Has a disability as defined by Section 223 of the Social Security Act; or
2. Is determined to have a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; and
 - a. substantially impedes his or her ability to live independently; and
 - b. is of such a nature that such ability could be improved by more suitable housing conditions; or
3. Has a developmental disability as defined in Section 102 of the Developmental Disabilities Assistance and Bill of Rights Act.

In order for a family or household to be considered disabled under the Act, the head, co-head, spouse or sole member must be an individual with a disability. Therefore, if the only individual with a disability is a minor child, the household/family is not considered disabled under the Act.

Section 8 Housing involves leased housing, in which a person lives in a private apartment, but a local housing authority pays part of the rent. Families must meet financial eligibility criteria established by HUD and be certified by a local housing authority. According to the law, a family includes:

1. One person with a disability or an elderly person living alone;
2. Two or more elderly people or people with disabilities living together;
3. One or more such individuals living with another person who is essential to their care or well-being; or
4. A person who was living with an eligible elderly or handicapped person at the time of his or her death.

In all cases, however, the family must have lower income. To be eligible for Section 8 assistance, the lower-income handicapped or elderly household must have an income below 80% of the median income for the area. There are other income requirements that are considered for eligibility. For further information, contact your local housing authority.

Public Housing Developments

Public Housing Developments are low-income housing units that are built, rehabilitated and/or leased by local public housing authorities with federal assistance. Tenants may include those who are elderly or individuals with a disability. There are income limits for occupancy, and the Public Housing Authority fixes the rents. For eligible tenants, rents are usually 30% of the tenant's income. A single person who has a disability is considered a family. Handicapped means having an impairment which:

1. Is expected to be of long or indefinite duration; or
2. Substantially impedes the ability to live independently and is of a nature whereby dependence would be decreased by more suitable housing conditions. Persons with developmental disabilities are considered handicapped. Some of the units must be wheelchair accessible. As stated before, eligibility for these units is based upon income

and rent needs. Contact the local Public Housing Authority for application and eligibility requirements.

Farmer's Home Administration (FHA)

The FHA has available direct government loans that can be used for new construction, rehabilitation or purchase of existing housing in rural areas. Loans may be made to families, builders, non-profit corporations, communities and others. Loans can be used to finance small group homes. For further information, contact Farmer's Home Administration, 1206 A Business Loop 70 West, Columbia, MO 65202. The telephone number is (573) 875-5271.

COUNTY DEVELOPMENTAL DISABILITY BOARDS

In 1969, the Missouri Legislature enacted a law, RSMo § 205.968, 971, that allows a governing body of a county or a city not within a county, upon approval by a majority of the voters at a duly held election, to collect a tax to be used to establish county facilities for the care and employment of persons with developmental disabilities.

The purpose of the law is to set up community-based self-help programs, and the money can be used to develop housing, day centers, sheltered workshops and transportation for handicapped persons.

If you would like information on how this law operates or are interested in putting this issue on the ballot in your county, contact: Missouri Department of Mental Health, Division of Mental Retardation and Developmental Disabilities, Post Office Box 687, Jefferson City, Missouri 65102.

If you do not know whether such a proposition has been adopted in your county, contact your county clerk for that information.

THE MISSOURI DEPARTMENT OF MENTAL HEALTH

The Missouri Department of Mental Health (DMH) provides community housing for persons with developmental disabilities through the Division of Mental Retardation and Developmental Disabilities and for persons with mental illness through the Division of Comprehensive Psychiatric Services.

Missouri state law provides that all patients and clients of DMH have a right to safe and sanitary housing. DMH provides housing in a variety of settings, including group and individual homes, with support services depending on the needs of the person with a disability. Information about eligibility for community housing services available from DMH may be obtained by contacting the appropriate Division of DMH. Access to services from the Division of Mental Retardation and Developmental Disabilities is provided through the Regional Centers located throughout the state. The Division of Comprehensive Psychiatric Services operates its housing programs from its three regional offices. DMH also has a Housing Team to assist individuals with mental illness, developmental disabilities and/or substance abuse or addictions to find and maintain housing. For

more information, individuals should contact DMH at one of its local facilities or its headquarters in Jefferson City.

GENERAL HOUSING PROBLEMS

After moving into a unit, several problems may arise between the landlord and any tenant. Some of these problems may be

1. Habitability problems;
2. Eviction problems;
3. Rent payment concerns;
4. Getting your security deposit back when your lease ends;
5. Leaving before your lease ends;
6. Improper termination of tenancies;
7. Unlawful retainer and rent and possession court actions.

In each of these cases, you may have legal rights that you could assert. If as a tenant you encounter any legal problem with your landlord, contact your nearest Legal Services office in your area, a private attorney if you can afford one, or the Lawyer's Referral Services nearest you. See Chapter 15 for more information about seeking such legal assistance.