

The Fair Housing Act and the Americans with Disabilities Act: *What Senior Living Providers Need to Know*

The following guidance summarizes the Fair Housing Act (FHA) and Americans with Disabilities Act (ADA) and should help members answer the following questions:

What are the protected classes of individuals under the FHA?

Are senior housing providers exempt from part of the FHA?

Does the ADA apply to senior housing situations?

Overview

The FHA and the ADA are the two main anti-discrimination statutes that affect senior living providers. Knowing how these statutes apply to various settings is important to all staff – from marketing personnel at the beginning of the process through the front-line and maintenance staff upon move-in.

The Fair Housing Act (FHA) was originally passed as Title VIII of the Civil Rights Act of 1968 and prohibits discrimination in the sale or rental of housing. It was amended in 1974 and 1988 and, as amended, the FHA makes it illegal to discriminate in the terms, conditions, or privileges of the sale or rental of a dwelling or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, national origin, or handicap. 42 USC Section 3604. The FHA applies to multi-unit residential housing that has four or more units.

Protected Classes

The FHA identifies seven protected classes. Handicap (or more commonly called disability) applies most often in the senior housing context and is defined as:

1. A physical or mental impairment which substantially limits one or more of such person's major life activities;
2. A record of having such an impairment; or
3. Being regarded as having such an impairment.

This definition excludes the current and illegal use of or addiction to a controlled substance. This broad definition of disability encompasses many residents of senior housing providers.

It is important to also analyze whether your state or municipality has any additional protected classes under a state or local Fair Housing law or ordinances. The most common additional protected classes include sexual orientation, creed, gender identity, gender expression, age, marital status, medical condition, source of income, and ancestry.



The Housing for Older Persons Act of 1995 – Exemption for Senior Housing

Although the FHA prohibits discrimination based on familial status (families with children under 18), the FHA specifically exempts some senior housing facilities and communities from liability for familial status discrimination under the Housing for Older Persons Act of 1995 (HOPA). Senior housing facilities or communities may lawfully refuse to sell or rent dwellings to families with minor children under certain circumstances. In order to qualify for the “housing for older persons” exemption, a community must prove that its housing is:

- Provided under any state or federal program that HUD has determined to be specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or
- Intended for, and solely occupied by persons 62 years of age or older; or
- Intended and operated for occupancy by persons 55 years of age or older.

To qualify for the “55 or older” housing exemption, a facility or community must satisfy each of the following requirements:

- At least 80 percent of the units must have at least one occupant who is 55 years of age or older; and
- The facility or community must publish and adhere to policies and procedures that demonstrate the intent to operate as “55 or older” housing; and
- The facility or community must comply with HUD’s regulatory requirements for age verification of residents.

The “housing for older persons” exemption does not protect senior housing facilities or communities from liability for housing discrimination based on race, color, religion, sex, disability, and national origin or for those classes protected by a state or local law.

For more information on this exemption, view [HUD’s Question and Answers document](#) on HOPA.

The Americans with Disabilities Act

The ADA was enacted in 1990 and specifically prohibits discrimination on the basis of disability in employment, state and local government activity, public accommodations, commercial facilities, and telecommunications. The ADA definition of disability is the same as under the FHA.

The ADA applies in places of “public accommodations operated by private entities.” The ADA defines a place of public accommodation as a facility whose operations affect interstate commerce and includes an inn, hotel, motel, or other place of lodging, which denotes a shorter duration of occupancy than does “residence.” A senior citizen center or other social service center, and other service establishments, such as professional offices of a health care provider or hospital, are also considered places of public accommodations. In addition, long-term care organizations and nursing homes are expressly covered by ADA regulatory guidelines.

Properties that are purely residential (like senior apartments with no services) will fall under the Fair Housing Act’s disability discrimination provisions rather than the ADA.

Where a retirement community has elements that include both residential dwellings and service facilities or other areas that may be considered public accommodations, such as life plan communities, a hybrid analysis under both the FHA and ADA should be applied. Because the requirements regarding disability under both acts apply essentially the same analysis, it makes little difference which act is technically applicable when determining how to deal with a situation or operational policy.

Stay tuned for additional guidance on Fair Housing Issues as the Fair Housing Act celebrates its 50th Anniversary this year.