

## An Historical Perspective On Civil Rights and People With Disabilities

By Marc Dubin, Esq.<sup>1</sup>

Imagine that it is the year 1954. You listen in awe as the United States Supreme Court rules in the Brown vs. Board of Education case that segregation in public schools is illegal. You wonder whether your child, with a disability, will ever be allowed to go to public school, segregated or not. And you wait, and wait.

Imagine that you are in a wheelchair, and that you want to rent or buy a home. You also want to ride the bus, shop, go to a movie, eat at a restaurant, and travel with your friends. You observe a great civil rights movement occurring, as blacks organize boycotts of buses and restaurants that require blacks to be segregated from whites. You hear Martin Luther King speak of equality, and of hope, and are inspired by his words:

“Injustice anywhere is a threat to justice everywhere”. (Letter from a Birmingham Jail).

<http://www.mlkonline.net/jail.html>

He speaks of hope, of promises made, and of promises broken:

In the course of the negotiations, certain promises were made by the merchants --- for example, to remove the stores’ humiliating racial signs. On the basis of these promises, the Reverend Fred Shuttlesworth and the leaders of the Alabama Christian Movement for Human Rights agreed to a moratorium on all demonstrations. As the weeks and months went by, we realized that we were the victims of a broken promise. A few signs, briefly removed, returned; the others remained....As in so many past experiences, our hopes had been blasted, and the shadow of deep disappointment settled upon us.

<http://www.mlkonline.net/jail.html>

You hear Dr. King speak of oppression, and think of your own experiences:

“We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed.” <http://www.mlkonline.net/jail.html>

You hear Dr. King speak of waiting, and waiting, for equality:

We have waited for more than 340 years for our constitutional and God-given rights. The nations of Asia and Africa are moving with jetlike speed toward gaining political independence, but we stiff creep at horse-and-buggy pace toward gaining a cup of coffee at a lunch counter. Perhaps it is easy for those who have never felt the stinging

dark of segregation to say, "Wait." But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate-filled policemen curse, kick and even kill your black brothers and sisters; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the midst of an affluent society; when you suddenly find your tongue twisted and your speech stammering as you seek to explain to your six-year-old daughter why she can't go to the public amusement park that has just been advertised on television, and see tears welling up in her eyes when she is told that Funtown is closed to colored children, and see ominous clouds of inferiority beginning to form in her little mental sky, and see her beginning to distort her personality by developing an unconscious bitterness toward white people; when you have to concoct an answer for a five-year-old son who is asking: "Daddy, why do white people treat colored people so mean?"; when you take a cross-county drive and find it necessary to sleep night after night in the uncomfortable corners of your automobile because no motel will accept you; when you are humiliated day in and day out by nagging signs reading "white" and "colored"; when your first name becomes "nigger," your middle name becomes "boy" (however old you are) and your last name becomes "John," and your wife and mother are never given the respected title "Mrs."; when you are harried by day and haunted by night by the fact that you are a Negro, living constantly at tiptoe stance, never quite knowing what to expect next, and are plagued with inner fears and outer resentments; when you no longer fighting a degenerating sense of "nobodiness" then you will understand why we find it difficult to wait. There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of despair. I hope, sirs, you can understand our legitimate and unavoidable impatience. <http://www.mlkonline.net/jail.html>

As a man or a woman in a wheelchair, you wonder why he does not speak of your experience. As a person who is deaf, you wonder why he does not speak of your experience. As a person with a vision disability or a cognitive disability, or a mental illness, or diabetes, or any other disability, you wonder why he does not speak of your experience. And, as a woman, with a disability or not, you wonder why he does not speak of the inequality you experience. As a gay or lesbian, you wonder why the federal government offers no protections against discrimination on the basis of sexual preference.<sup>2</sup> Decades later, you continue to wonder, and wait.<sup>3</sup>

So you wait. And wait. You find it difficult to wait, but you wait. Dr. King tells you that "Oppressed people cannot remain oppressed forever", <http://www.mlkonline.net/jail.html> and you continue to hope, and continue to wait.

You hear a young new President speak of equality, and of the need to end practices that result in injustice:

"The Negro baby born in America today, regardless of the section of the nation in which he is born, has about one-half as much chance of completing high school as a white baby born in the same place on the same day; one third as much chance of completing college; one third as much chance of becoming a professional man; twice as much chance of becoming unemployed; about one-seventh as much chance of earning \$10,000 a year; a life expectancy which is seven years shorter; and the prospects of earning only half as much." (President Kennedy, June 11<sup>th</sup>, 1963)

<http://www.spartacus.schoolnet.co.uk/USAcivil64.htm>

You wait for the President to speak of your experience, and wait, and wait. You wait for the laws to change, and wait, and wait. You send your child to school, and if she has a disability, see her excluded, without a violation of the law. You go to the school to speak to her teacher, and cannot get in because of steps blocking your entrance. You try to take a bus, and find it has no lifts, and that you cannot board. You go shopping, and cannot access the store. If you are deaf, you find that no sign language interpreters are offered to you by your doctor, or your lawyer<sup>4</sup>, or by anyone else. If you have a vision disability, you find that no one offers you printed material in alternative formats. If you have a child with a cognitive disability, you find your options very limited, and find no supportive services in the community, forcing you to place your child in an institution. If you have a mental illness, you find yourself isolated and without services in the community. And, you learn that it is not illegal to deny you these essential services. And you wait, and wait.

Tragically, President Kennedy is assassinated on November 22, 1963. President Johnson, reversing a long personal history of opposing civil rights legislation, secures passage of the 1964 Civil Rights Act. [http://www.historylearningsite.co.uk/Lyndon\\_Baines\\_Johnson.htm](http://www.historylearningsite.co.uk/Lyndon_Baines_Johnson.htm) . The Act addresses racial inequality, but had severe limitations.<sup>5</sup>

A year later, he helps secure passage of the Voting Rights Act. Nevertheless, polling places remain inaccessible to people in wheelchairs, ballots remain inaccessible to people with vision disabilities, transportation to the polls remains inaccessible, and people with disabilities in institutions remain disenfranchised. It remains legal to have segregated housing, and inaccessible housing.

As racial integration occurs in neighborhoods across America, you go to the real estate broker's office, trying to get a home that is accessible to you. The year is 1968, and Congress has just passed the Fair Housing Act. The Act prohibits discrimination on the basis of race, color, religion, sex

or national origin in housing sales, rentals or financing.

The real estate broker tells you that she will not help you because she feels it is not worth her time. She tells you that there simply aren't enough accessible apartments available for her to spend time trying to find them for you.

[http://www.unitedspinal.org/pdf/fair\\_housing\\_amendment.pdf](http://www.unitedspinal.org/pdf/fair_housing_amendment.pdf) You go to a lawyer, and complain that your rights have been violated, and that you want help. To your dismay, you learn that Congress did not include people with disabilities among those protected.

You wait. And wait. And hope.

On April 4<sup>th</sup>, 1968, Dr. King is assassinated.

On June 5<sup>th</sup>, 1968, Robert Kennedy is assassinated.

You wait. And hope. And wait.

The year is 1973. Congress passes the Rehabilitation Act, which, among other provisions, prohibits discrimination on the basis of disability by recipients of federal financial assistance. However, unless one received federal financial assistance, refusing to serve a person on the basis of their disability was not illegal.

It was four years before regulations implementing Section 504 were finally issued by the Carter Administration. The publication of the regulations occurred only after an aggressive national campaign by disability rights advocates to prevent weakening of the regulations and further delay in their implementation. The highlight of the campaign was an occupation of the U.S. Department of Health, Education and Welfare (HEW) offices in San Francisco by people with disabilities which lasted for approximately four weeks. <http://www.adata.org/whatsada-history.aspx>

Litigation by private attorneys in the early 1970s began identifying a national shame – children with disabilities were still being excluded from public schools. Many were suspended or expelled from school as a result of behaviors directly related to their disability, and many were dumped into state institutions. See

[http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1023&context=cong\\_tlst](http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1023&context=cong_tlst)

Also see <http://www.adata.org/whatsada-history.aspx>:

In 1975, the Education for all Handicapped Children Act was passed. Since renamed the Individuals with Disabilities Education Act (IDEA), Public Law 94-142, as it is commonly known, mandated that all children with disabilities receive a free, appropriate public education in the *least restrictive* environment. The Education for All Handicapped

Children Act of 1975 was the first federal law mandating that children with disabilities be provided an education.

And so you wait. And hope. And wait.

The year is 1978. Businesses that do not receive federal financial assistance can still exclude you, and refuse to provide sign language interpreters, and not allow you to enter with your service dog, and refuse to provide printed material in alternative formats. Unless they received federal financial assistance, businesses can still refuse to serve you based on your disability, and unless they received federal financial assistance, builders and real estate developers can still build buildings that are inaccessible.

You wait. And hope. And wait.

The year is 1988. It has been 20 years since the Fair Housing Act was passed, and fifteen years since the Rehabilitation Act was passed. Discrimination against people with disabilities remains rampant, across the United States. Builders continue to build inaccessible buildings, schools, restaurants, and county and state buildings. Sign language interpreters are not provided, and printed material remains inaccessible to people with vision disabilities. State building codes contain provisions that allow buildings to be approved that people in wheelchairs cannot enter, and allow bathrooms to be built that people in wheelchairs cannot use. People with service animals are routinely turned away.

And you wait. And hope. And continue to wait.

On September 13th, 1988, the President signed the Fair Housing Amendments Act into law. It became effective on March 12<sup>th</sup>, 1989. The law amended the Fair Housing Act, and for the first time, prohibited discrimination on the basis of disability (the law still used the term handicap) in housing sales, rentals and financing.<sup>6</sup>

You go back to the restaurant to celebrate, and find you still cannot get in. The restaurant receives no federal funds, and you find that their exclusion of you on the basis of disability is still not illegal

And so you wait, and hope, and wait.

The year is 1990. Congress passes the Americans with Disabilities Act. President Bush signs it into law, and it goes into effect in 1992.<sup>7</sup> For the first time, private businesses, even those not receiving federal money, are prohibited from discriminating on the basis of disability.

It was Congress' hope and intention that people with disabilities would be protected from discrimination in the same manner as those who had experienced

discrimination on the basis of race, color, sex, national origin, religion, or age.

[http://www.c-c-d.org/task\\_forces/rights/ada/SenFeldblum.pdf](http://www.c-c-d.org/task_forces/rights/ada/SenFeldblum.pdf)

Prior to passing the ADA, Congress made specific findings concerning the prevalence and nature of discrimination against people with disabilities:

...(2)historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;....

<http://www.dlrp.org/html/topical/adafindingspurposes.html>

As the ADA regulations came into effect, in 1992, the Justice Department created a new Section within the Civil Rights Division, called the Disability Rights Section, to enforce the law, and to provide technical assistance. See [www.ada.gov](http://www.ada.gov).<sup>8</sup> An extensive library of technical assistance was developed, and litigation was engaged in designed to enhance the lives of people with disabilities.

Other federal agencies and the private bar were also given authority to enforce the ADA, and a body of technical assistance, case law, and settlement agreements slowly developed. Perhaps the waiting was finally over.

No. Unfortunately not.

In recent years, the Supreme Court has restricted the reach of the ADA's protections by narrowly construing the definition of disability contrary to Congressional intent. As a result, people with a wide range of impairments whom Congress intended to protect, including people with cancer, epilepsy, diabetes, hearing loss, multiple sclerosis, HIV infection, intellectual disabilities, post-traumatic stress disorder (PTSD), and many other impairments, are routinely found not to be "disabled" and therefore not covered by the ADA. [http://www.c-c-d.org/task\\_forces/rights/ada/SenFeldblum.pdf](http://www.c-c-d.org/task_forces/rights/ada/SenFeldblum.pdf)

Despite the hopes of people with disabilities, the ADA did not end discrimination, and in many cases, did not adequately address discrimination on the basis of disability. Much remained to be done.

"...studies show that plaintiffs lose 97% of ADA employment discrimination claims, frequently on the grounds that they do not meet the definition of "disability."" (Footnote omitted). [http://www.c-c-d.org/task\\_forces/rights/ada/SenFeldblum.pdf](http://www.c-c-d.org/task_forces/rights/ada/SenFeldblum.pdf) See also footnote 16 at [http://www.c-c-d.org/task\\_forces/rights/ada/SenFeldblum.pdf](http://www.c-c-d.org/task_forces/rights/ada/SenFeldblum.pdf).

Over the years, the Courts narrowed the effectiveness of the ADA<sup>9</sup>.

Over the past several years, the Supreme Court and lower courts have narrowed coverage under the ADA by interpreting *each and every component* of the ADA's definition of disability in a *strict and constrained fashion*. This has resulted in the exclusion of many persons that Congress intended to protect. [http://www.c-c-d.org/task\\_forces/rights/ada/SenFeldblum.pdf](http://www.c-c-d.org/task_forces/rights/ada/SenFeldblum.pdf)

In 2008, Congress amended the ADA to address the weakening of the law by the courts.

President Bush signed the [ADA Amendments Act of 2008 \(ADA 2008\) \(S. 3406\)](#) into law on September 25, 2008. The ADA 2008 redefines the term "disability" by rejecting the limitations imposed by US Supreme Court decisions. While the ADA 2008 retained the three prongs of the definition of disability [1) an impairment that substantially limits one or more major life activities, 2) a record of such an impairment, or 3) being regarded as having such an impairment], it directs a broad interpretation of the definition when considering whether an individual is disabled. The ADA 2008 states that:

- a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- the determination of whether an impairment substantially limits a major life activity shall be made without considering mitigation measures (other than ordinary eyeglasses or contact lenses)

- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.  
[http://www.dredf.org/programs/public\\_policy.shtml](http://www.dredf.org/programs/public_policy.shtml)

(Then Senator) Obama was a co-sponsor of the Act, and in his Inaugural Address, said:

With nearly fifty-four million Americans living with disabilities, it must be a priority for our government to do everything it can to protect and respect the needs of these Americans. I am proud the Senate passed this Act today to reverse judicial decisions that permit discrimination against persons with disabilities.

<http://www.sedbtac.org/ada/training/trainingTemplate.php?ref=NQ#obamaB>

On June 22<sup>nd</sup>, 2009, in launching the Year of Community Living, President Obama told the nation:

I am proud to launch this initiative ["The Year of Community Living"] to reaffirm my Administration's commitment to vigorous enforcement of civil rights for Americans with disabilities and to ensuring the fullest inclusion of all people in the life of our nation.

<http://www.sedbtac.org/ada/training/trainingTemplate.php?ref=NQ#obamaB>

Perhaps the wait is over. Perhaps, for people with disabilities, things have finally changed. Maybe it really is change we can believe in.

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<sup>1</sup> Director of Advocacy, Center for Independent Living of South Florida. I also had the honor of serving on (then Senator) Obama's Campaign for the Presidency, as a member of his National Disability Policy Committee. This Paper is the property of Marc Dubin, and may be freely reproduced, with attribution. Comments are welcome. I can be reached at 305-896-3000 or at [mdubin@pobox.com](mailto:mdubin@pobox.com).

<sup>2</sup> History has also shown that gay people have always been discriminated against. Not only were gay people denied of equal treatment in court ("de jure"), but they also have been victims of violence and harassment in our own society on the base of their sexual orientation ("de facto"). Homosexuality was labeled a felony crime in the past, existing "Sodomy Laws" which prohibit oral and anal sexual intercourse, even between consenting adults, were primarily used to target homosexuals, and the current federal government denies openly gays employment to federal institutions like the CIA, FBI, the army -- nation's biggest employer in the United States -- or the National Security Agency. The government even regularly removes openly gay officials from public positions, and so do a lot of other employers in the private sector (Mohr 6).

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In individual cases, homosexuals are often harassed, insulted, kicked, punched, and thrown at by fellow classmates, coworkers, and even family members just for being gay. These discriminations are based on prejudices and stereotypes that society has of the gay community. <http://www.enderminh.com/minh/civilrights.aspx> . Also see <http://www.freedomtomarry.org/pdfs/dubin-june2008.pdf> (“Why People with Disabilities Should Support the Right of Gays and Lesbians to Marry”, by Marc Dubin, Esq.)

<sup>3</sup> In my view, Dr. King was a remarkable man, and a man I admire greatly. I think it is hard to overstate the debt people with disabilities, and others who have lived lives of oppression, owe to Dr. King. His eloquence and bravery served to enhance the lives of millions, and the movement he was such an integral part of was a model for the disability rights movement. Dr. King recognized, without question, that people with disabilities, gays and lesbians, women, and countless others were discriminated against, and I believe that he understood that challenging racist attitudes and policies also would eventually result in challenges to other oppressive attitudes. He was an ally, and a leader of the disability movement before there was a disability movement.

About my questioning of his failure to talk about people with disabilities, and the failure of President Kennedy and Senator Kennedy to talk about people with disabilities, and the failure of President Johnson to talk about people with disabilities -- these were men who lived in a time when consciousness about the oppression of people with disabilities was not as great as it is today, and I believe that they allied themselves with people with disabilities without talking about it. My questioning is also undoubtedly a product of my failure to do adequate research on the subject. Has anyone written anything about the role of people with disabilities in the civil rights struggles of the 60s? Perhaps that is a book worth researching and writing.

I have been very fortunate in my life. I entered college in 1974, just when the Rehabilitation Act has just been passed, and when much of the seminal litigation concerning the exclusion of children with disabilities from public schools was occurring, when litigation about conditions of confinement of people with cognitive disabilities (what was then called mental retardation) was occurring, and when law schools were just beginning to have classes about the rights of people with disabilities.

I had extraordinary luck, and extraordinary mentors. My freshman year at Brandeis University, I was introduced to Gunnar Dybwad a Ph.D Professor at the Heller School for Advanced Social Welfare, and he took me under his wing and mentored me. He was teaching a course about people with cognitive disabilities, and was talking about his role as an expert witness in a series of landmark cases challenging

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conditions of confinement in state schools. Children and adults were being sent away to these institutions, and were being neglected and abused. Some were being raped, and some died. Dr. Dybwad had been hired by attorneys for these residents to challenge the conditions of confinement. He asked me to read his testimony and organize his files. He didn't really need the work done –he just wanted me to understand what was happening to the people stuck in these institutions. I read it all, and decided to become a lawyer working on behalf of people with disabilities.

Over the next four years, he introduced me to legends in the field of disability rights, as he knew them well. He introduced me to Stan Herr, who had litigated the Mills v. Board of Education case in Washington DC, a case which was instrumental in the passage of Public law 94-142, the "Education of the Handicapped Act", the precursor to I.D.E.A. he introduced me to Tom Gilhool, the Director of the Public Interest Law Center of Philadelphia (PILCOP), who had litigated the PARC case, the first case in the country to challenge the exclusion of students with disabilities from public schools, a case which along with Stan Herr's D.C. based case, served as the model for IDEA. He also litigated Pennhurst and several other landmark cases challenging conditions of confinement in institutions.

When I later attended law school, I interned with both of them, and they mentored me as well. They became lifelong friends.

The connections between the Civil Rights movement of the 60s and the disability community's civil rights movement of the 70 and 80's are strong, and there is no question that without leaders like Dr. King to show the way, and to design and implement the strategies, the disability movement would have much further to go. Leaders of the disability rights movement have gratefully acknowledged Dr. King's contribution:

"The disability rights movement modeled itself on the successes, vision and passion of the civil rights movements that preceded it. Dr. Martin Luther King, Jr. is a hero for disability rights activists around the world..."

Andrew J. Imparato  
President & CEO of the American Association of  
People With Disabilities (AAPD)

Thank you, Dr. King, and the thousands of others who shared a dream of equality.

See <http://www.nytimes.com/2001/09/20/us/gunnar-dybwad-92-dies-early-advocate-for-the-disabled.html>

<http://www.nytimes.com/2001/09/28/us/stanley-herr-56-dies-aided-the-retarded.html>

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<sup>4</sup> See <http://www.ada.gov/tirone.htm> and [http://searchjustice.usdoj.gov/search?q=hospital+interpreter&btnG=Search+ADA+Website&q=site%3Awww.ada.gov&sort=date%3AD%3AL%3Ad1&output=xml no dtd&ie=iso-8859-1&oe=UTF-8&client=default\\_frontend&proxystylesheet=default\\_frontend&site=default\\_collection](http://searchjustice.usdoj.gov/search?q=hospital+interpreter&btnG=Search+ADA+Website&q=site%3Awww.ada.gov&sort=date%3AD%3AL%3Ad1&output=xml+no+dtd&ie=iso-8859-1&oe=UTF-8&client=default_frontend&proxystylesheet=default_frontend&site=default_collection)

<sup>5</sup> **Major Features of the Civil Rights Act of 1964**

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(Public Law 88-352)

**Title I**

Barred unequal application of voter registration requirements, but did not abolish literacy tests sometimes used to disqualify African Americans and poor white voters.

**Title II**

Outlawed discrimination in hotels, motels, restaurants, theaters, and all other public accommodations engaged in interstate commerce; exempted private clubs without defining "private," thereby allowing a loophole.

**Title III**

Encouraged the desegregation of public schools and authorized the U. S. Attorney General to file suits to force desegregation, but did not authorize busing as a means to overcome segregation based on residence.

**Title IV**

Authorized but did not require withdrawal of federal funds from programs which practiced discrimination.

**Title V**

Outlawed discrimination in employment in any business exceeding twenty five people and creates an Equal Employment Opportunities Commission to review complaints, although it lacked meaningful enforcement powers.

NOTE: The text of the entire act is posted at

<http://usinfo.state.gov/usa/infousa/laws/majorlaw/civilr19.htm>

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<sup>6</sup> See <http://www.adata.org/whatsada-history.aspx>: FHAA prohibits discrimination towards people with disabilities in the sale or rental of housing and in the terms, conditions, services or facilities provided. The Act was signed into law by President Reagan in September 1988 and became effective on March 12, 1989. FHAA extends the civil rights protections of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, to two new protected classes: people with disabilities and families with children.

There are exemptions from coverage under FHAA for four or fewer rental units if they are owner occupied and for certain housing designed and operated for elders. There is also an exemption for single family housing sold directly by the owner if no advertising or other listing services are used.

The definition of disability under the FHAA is the same as the definition under the ADA. The ADA does not cover private housing. Congress addressed housing discrimination related to disability in FHAA. Also HUD's 504 regulations issued in 1988 include detailed requirements covering federally funded public housing.

FHAA has specific requirements related to disability in three areas:

- Reasonable accommodations in operating policies and procedures,
- Modifications to dwelling units and premises, and
- Design standards for new construction.

The landlord or rental agent may not refuse to make reasonable accommodations in rules, policies, practices, and services to afford a person with a disability equal opportunity to occupy and enjoy full use of a unit. It is unlawful under the FHAA for a landlord to refuse to permit a tenant to make reasonable modifications necessary to enjoy full use of the premises. Modifications must be made, however, at the tenants own expense.

The landlord has the right to require that the tenant:

- demonstrate that any modifications will be carried out competently and professionally,
- make reasonable restoration of the interior of the premises to its original condition, and, in some cases,
- establish an escrow account to cover the cost of the restoration.

### **FHAA Accessible Design Standards**

- At least one building entrance on an accessible route
- Accessible and usable public and common use areas

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- All doors in premises wide enough for wheelchairs
  - All ground floor units and all units on elevator floors must have:
    - An accessible route into and through dwelling
    - Accessible switches, outlets, and other controls
    - Reinforced bathroom walls at toilet, tub and shower
    - Wheelchair maneuverable kitchens and bathrooms

<sup>7</sup> See Remarks of President George H.W. Bush at the Signing of the Americans with Disabilities Act of 1990 (July 26, 1990), available at <http://www.eeoc.gov/ada/bushspeech.html>.

<sup>8</sup> I served as a Senior Trial Attorney in the Disability Rights Section from its inception in 1992 through January of 2005. In that capacity, I was responsible for nationwide enforcement of the ADA and the Rehabilitation Act on behalf of the United States.

<sup>9</sup> The Supreme Court has narrowed coverage under the ADA in three primary ways:

(A) In 1999, by requiring that courts take into account mitigating measures when determining whether a person is “substantially limited in a major life activity”;

(B) Also in 1999, by requiring people who allege that they are regarded as being substantially limited in the major life activity of working (because an employer has refused to hire them for a job based on an actual or perceived impairment) show that the discriminating employer believed them incapable of performing not just the one job they had been denied, but also a *broad range of jobs*; and

(C) In 2002, by requiring that the term “substantially limited” be applied in a very strict manner and that the term “major life activity” be understood as covering only activities that are of “central importance” to most people’s lives. [http://www.c-c-d.org/task\\_forces/rights/ada/SenFeldblum.pdf](http://www.c-c-d.org/task_forces/rights/ada/SenFeldblum.pdf)