

■ FREQUENTLY ASKED QUESTIONS (FAQ) ■

MULTI-FAMILY HOUSING

What are the Fair Housing Act's requirements for housing to be accessible?

The Fair Housing Act requires all "covered multifamily dwellings" designed and constructed for first occupancy after March 13, 1991 to be accessible to and usable by people with disabilities. Covered multifamily dwellings are all dwelling units in buildings containing four or more units with one or more elevators, and all ground floor units in buildings containing four or more units, without an elevator. Federal regulations adopted by the Department of Housing and Urban Development at [24 CFR 100.201](#) define covered multi-family dwellings.

Where can I find the accessibility standards for dwelling units required to be accessible under the Fair Housing Act's design and construction requirements?

The Fair Housing Act requires seven basic requirements that must be met to comply with the access requirements of the Act. Those Requirements are:

- Requirement 1. An accessible building entrance on an accessible route.
- Requirement 2. Accessible common and public use areas.
- Requirement 3. Usable doors (usable by a person in a wheelchair).
- Requirement 4. Accessible route into and through the dwelling unit.
- Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.

Requirement 6. Reinforced walls in bathrooms for later installation of grab bars.

Requirement 7. Usable kitchens and bathrooms.

These requirements are stated in the [Fair Housing Act, as amended, 42 U.S.C. 3604\(f\)\(3\)\(C\)](#). To describe these requirements in more detail, HUD published [Fair Housing Accessibility Guidelines \(the Guidelines\)](#) on March 6, 1991, and supplemented those [Guidelines with a Supplemental Notice: Questions and Answers About the Guidelines](#) published on June 28, 1994. The Guidelines are one of seven safe harbors for compliance that HUD has identified.

Why are there so many new townhouse developments that have more than one level and that aren't accessible? Doesn't the Fair Housing Act's design and construction requirements prohibit them?

The Fair Housing Act's design and construction requirements do not cover multistory townhouses--units that have two, three, or even four stories--unless the building has an elevator. There is a discussion of townhouses in the preamble to the Guidelines under "Section 2-Definitions [Covered Multifamily Dwellings]" at 56 FR 9472, 9481, March 6, 1991. A copy of the preamble to the Guidelines is contained in the [Fair Housing Act Design Manual in Appendix B](#).

Does the Fair Housing Act require any minimum number of

accessible dwelling units?

No, the Fair Housing Act's design and construction requirements do not require a minimum number of accessible dwelling units. If a building with four or more units that does not have an elevator is covered, all (100%) of the ground floor units must be accessible, and if the building has an elevator, all (100%) of the units in the building must be accessible. Other federal, state or local codes sometimes require a specified number of units to be accessible.

Do the Fair Housing Act's design and construction requirements require fully accessible units?

No, the Fair Housing Act does not require fully accessible units. Although the requirements apply to a broad number of dwelling units, the Act's design and construction requirements are modest and result in units that do not look different from traditional units but can be easily adapted by people with disabilities who require features of accessibility not required by the [Fair Housing Act](#).

The Fair Housing Act applies to covered multifamily dwellings built for first occupancy after March 13, 1991. What is acceptable evidence of "first occupancy"?

The determination of first occupancy is made on a building-by-building basis. The Fair Housing Act regulations provide that "covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991 (and therefore not covered by the Act's accessibility requirements) if they are occupied by

that date or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, county or local government on or before June 15, 1990." See [Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines, 59 FR 33362-33368, June 28, 1994, question 8.](#)

What kind of housing is covered by the Fair Housing Act's access requirements?

Almost all types of housing with four or more units in one building that have been designed and constructed since March 13, 1991 are covered. This includes condominiums, apartment buildings, vacation or other time share units, assisted living projects, public housing authorities, HOPE VI projects, projects funded with HOME or other federal funds, transitional housing, and SROs (single room occupancy units) designed for more than overnight stays, dormitory rooms, homeless shelters used as a residence, cooperatives, hospices, and more.

If there is at least one elevator in the building, all units must comply. If there is no elevator, all of the ground floor units must comply.

Are multistory townhouses that contain individual elevators considered to be covered multifamily dwelling units subject to the Fair Housing Act's design and construction requirements?

Yes. The Fair Housing Act defines "covered multifamily dwellings" as buildings consisting of four or more units, if such buildings have one or more elevators and ground floor dwelling units in other buildings consisting of four or more dwelling units. Covered multifamily

dwelling units must comply with the design and construction requirements of the Fair Housing Act.

A multistory dwelling unit (defined as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it, [Guidelines, Section 2, Definition of Multistory Dwelling Unit](#)) that is located in a building with four or more units is not covered by the design and construction requirements of the Fair Housing Act if the building does not have an elevator. A multistory townhouse is covered by the requirements if there are four or more units in the building and the building contains one or more elevators. [Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, 59 FR 33362-33368, June 28, 1994, question 13](#) and see [Preamble to the Fair Housing Act regulations, 54 Fed. Reg. 3244 \(1989\)](#), "the Department continues to believe that townhouses consisting of more than one story are covered only if they have elevators and if there are four or more such townhouses."

In addition, the Preamble to the proposed Guidelines, at 55 FR 24370, 24377, June 15, 1990, states:

"In the proposed and final rulemaking, the Department stated that a dwelling unit with two or more floors in a non-elevator building is not a "covered dwelling unit" even if it has a ground floor entrance, because the entire dwelling unit is not on the ground floor. (Of course, if the unit had an internal elevator, it would be subject to the Fair Housing Act requirements.)"

Therefore, multistory townhouses with private elevators are covered by the design and construction requirements, assuming that there are four or

more units in the building.

If the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Fair Housing Act requirements both apply to the same property, which standard should be used?

Title III of the ADA, in relevant part, applies to commercial facilities and public accommodations. Inns, hotels, motels, and other places of lodging are public accommodations under Title III of the ADA, as are dormitories, homeless shelters, nursing homes, and some timeshares. See [28 CFR 36.104](#). In addition, the common areas that are for public use at "covered multifamily dwellings" under the Act must meet the ADA Standards for Accessible Design (ADA Standards). For example, a rental office in a multifamily residential development or a convenience store located in that development would be covered under Title III of the ADA. [28 CFR 36.104](#). Common use areas that are for use only by the residents and their guests would not be covered by the ADA.

The Fair Housing Act's design and construction requirements do not preempt the ADA and in those cases where a development is subject to more than one accessibility standard, the laws and the standards must be read together and followed together.

There are certain properties, or portions thereof, that are covered by both the Act and Title II and/or Title III of the ADA. These may include certain timeshares, dormitories, residential hotels, boarding houses, nursing homes, homeless shelters, congregate care facilities, public use portions of private multifamily dwellings, and public housing. These properties must be designed and built in accordance with the accessibility requirements of both the Act and the ADA. In addition, to

the extent that the requirements of these various laws overlap, the more stringent requirements of each law must be met, in terms of both scoping and technical requirements.

In the preamble to its rule implementing Title III, DOJ discussed the relationship between the requirements of the Fair Housing Act and the ADA. The preamble noted that many facilities are mixed use facilities. For example, a hotel may allow both residential and short term stays. In that case, both the ADA and the Fair Housing Act may apply to the facility. The preamble to the Title III rule also stated that residential hotels, commonly known as "single room occupancies," may fall under the Fair Housing Act when operated or used as long term residences, but they are also considered "places of lodging" under the ADA when guests are free to use them on a short term basis. The preamble also discussed a similar analysis with respect to homeless shelters, nursing homes, residential care facilities, and other facilities where persons may reside for varying lengths of time. The preamble concluded that such facilities should be analyzed separately under both the Fair Housing Act and the ADA. [56 FR at 3551-52](#).

Do the Fair Housing Act's design and construction requirements require accessible routes between buildings that contain only covered multifamily dwellings?

No, accessible routes, walks, or paths between buildings containing only covered dwelling units are not required. [Fair Housing Act Design Manual, page 2.16](#). However, accessible routes between buildings with covered dwellings are encouraged on sites with slopes that do not exceed 8.33% between buildings. Such voluntary accessible routes should meet the same specifications as required accessible routes except that

handrails are not required. [Fair Housing Act Design Manual, page 1.8.](#)

If new covered multifamily dwellings are added to housing that was constructed before March 13, 1991 do the public or common use areas have to be retrofitted to be accessible?

No. Although new covered multifamily dwellings constructed after March 13, 1991 have to comply with the Act's access requirements, public and common use areas constructed before that date do not have to be modified to comply with the Act's requirements. On the other hand, where a new covered multifamily dwelling shares a non-accessible entrance with an existing building, an accessible entrance must be provided for the new building. [Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines, 59 FR 33362-33368, June 28, 1994, question 4\(c\).](#)