

What laws relate to accessible design and construction in residential buildings?

Americans With Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225)

Enacted in 1990, the ADA prohibits discrimination against persons with disabilities in areas of **public life**, including employment, education, public accommodations, telecommunications, and access to state and local government programs and services. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires an ongoing obligation to remove architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable - that is, easily accomplishable and able to be carried out without much difficulty or expense. The accessibility features are identified in the ADA Accessibility Guidelines (ADAAG).

ADA design and construction requirements apply to: Newly constructed buildings and alterations to existing buildings must comply with the 2010 ADA standards for Accessible Design. Also, the ADA addresses removing barriers in the built environment to assist in equal access to programs and services.

Fair Housing Act of 1968 (42 U.S.C. §§ 3601-19, Title VIII of the 1968 Civil Rights Act; Learn more at www.fhco.org and the City's [fair housing](#) website.)

The FHA prohibits discrimination against individuals in a protected class when they are renting, purchasing, or financing a home; and provide them with equal access to housing and to the facilities and services associated with housing, including community associations. Protected Classes include:

Federal: race, color, religion, sex, national origin, familial status, and disability. In Oregon, in addition to the federal protected classes; and

Oregon – adds source of income, marital status, sexual orientation, gender identity, Section 8 housing choice vouchers (as a source of income), and victims of domestic violence, sexual assault, and stalking.

The FHA accessible design and construction requirements apply to:

1. Public and common use areas used by residents; AND
2. "Covered" multifamily dwellings designed and constructed for first occupancy after March 13, 1991. Covered multi-family dwellings include:
 - All dwelling units in buildings containing four or more dwelling units IF the buildings have one or more elevators; AND
 - All ground floor units in buildings containing four or more units without an elevator.

The FHA accessible design and construction requirements include:

1. Public and common use areas must be readily accessible to and usable by persons with disabilities.
2. All doors designed to allow passage into and within all premises of covered dwellings must be sufficiently wide to allow passage by persons with disabilities, including persons who use wheelchairs.
3. All premises within covered dwellings must contain the following features:
 - An accessible route into and through the dwelling unit;
 - Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - Reinforcements in bathroom walls to allow the later installation of grab bars; and
 - Usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about and use the space.

Types of housing covered by the FHA's design and construction requirements: condominiums, cooperatives,

apartment buildings, vacation and time share units, assisted living facilities, continuing care facilities, nursing homes, public housing developments, HOPE VI projects, projects funded with HOME or other federal funds, transitional housing, single room occupancy units (SROs), shelters designed as a residence for homeless persons, dormitories, hospices, extended stay or residential hotels, and more.

The FHA requires that housing designed and constructed for first occupancy after March 13, 1991 have certain accessibility features, but does not require that the property be retrofitted with accessibility features if designed and constructed prior to March 13, 1991.

Architectural Barriers Act of 1968 (ABA) (§ 570.614, 42 U.S.C. 4151-4157)

The ABA requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of “residential structure” as defined in 24 CFR 40.2 or the definition of “building” as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

§ 40.2 Definition of “residential structure”:

(a) As used in this part, the term ***residential structure*** means a residential structure other than a privately owned residential structure and a residential structure on a military reservation:

- (1) Constructed or altered by or on behalf of the United States;
- (2) Leased in whole or in part by the United States after August 12, 1968, if constructed or altered in accordance with plans and specifications of the United States; or
- (3) Financed in whole or in part by a grant or loan made by the United States after August 12, 1968, if such a residential structure is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan.

(b) As used in this part, ***residential structure*** includes the following:

- (1) Any residential structure which, in whole or in part, is intended for occupancy by the physically handicapped or designed for occupancy by the elderly;
- (2) All elevator residential structures;
- (3) Any residential structure that contains 15 or more housing units, unless otherwise specifically prescribed by the Uniform Federal Accessibility Standards.
- (4) Nonresidential structure appurtenant to a residential structure covered under this part.

What ADA and FHA requirements apply to community associations?

Fair Housing Act (FHA): Many of the provisions of the FHA regarding renting, selling and advertising housing do not typically apply to community associations. Discrimination claims against community associations under the FHA are most often made under the following provisions of 42 U.S.C. § 3604(f)(3):

- (A) requires a community association to allow reasonable modifications to common elements, common area, units and/or lots to accommodate a disabled person; and
- (B) requires a community association to make a reasonable accommodation in its rules, policies, practices, or services to allow a disabled person equal opportunity to use and enjoy their home.

42 U.S.C. § 3604(f)(2) prohibits a community association from discriminating against any of the protected classes in the provision of services or the use of its facilities.

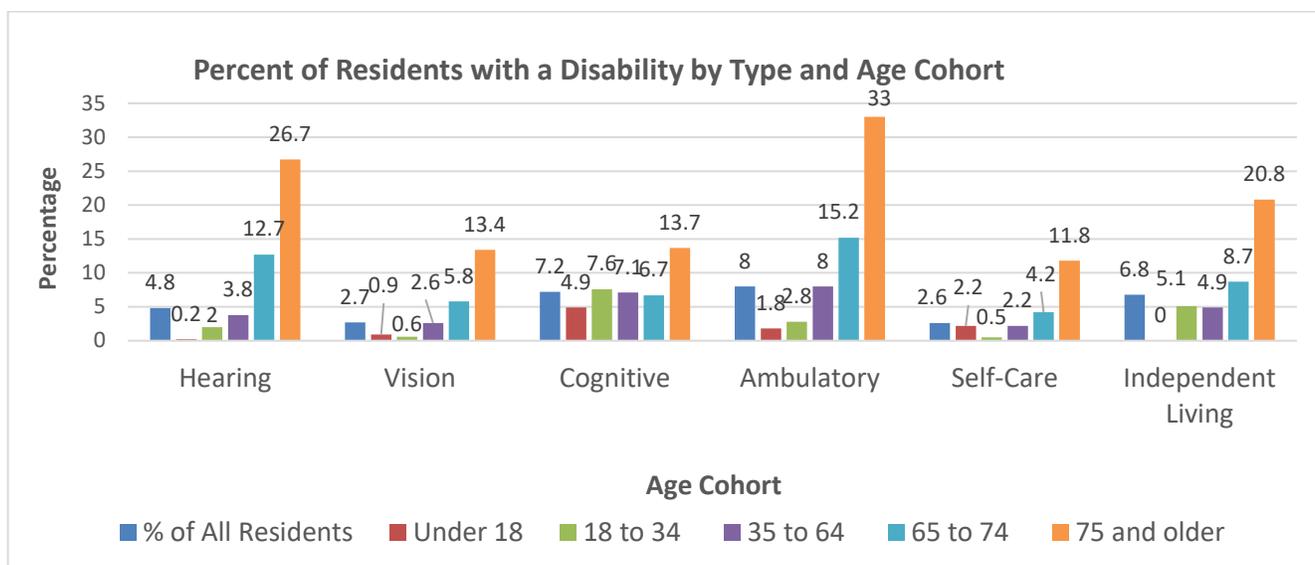
Because of these FHA requirements, a community association must be careful that the rules and regulations it adopts apply equally to all residents and that it cautiously analyzes requests for reasonable modifications and reasonable accommodation so as to avoid any claim of discrimination.

Americans with Disabilities Act (ADA): The ADA has less potential to impact the operation of a community association because it prohibits discrimination against disabled individuals in the use and enjoyment of places of **public accommodation**. 42 U.S.C. §12182(a.) Places of public accommodation are required to maintain certain accessibility features to allow disabled persons an equal opportunity to access and use the public accommodation.

Private community associations who facilities are only open to owners and residents do not qualify as places of public accommodation and are not subject to the ADA's requirements. The exception to this rule is if a community association opens up its facilities to the public, such as when a community association's pool is used for a swim meet with a team from another community. If a community association does engage in activities that make it a place of public accommodation, then it is subject to the requirements of the ADA for that portion of the property and may be required to install accessibility features.

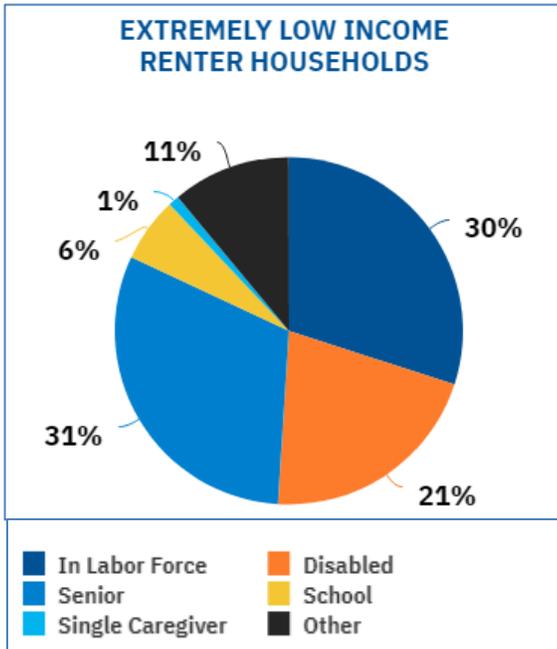
2020 Albany Disability Status (S1801, 2020 5-year American Community Survey)

Age Cohort	% with Disability	Estimate # w/Disability
< 5 years	0.3	14
5 to 17	8.5	814
18 to 34	11.7	1,448
35 to 64	15.3	2,989
65 to 74	27.9	1,337
75 + older	49.4	1,742



Oregon Statistics for Extremely Low Income Renter Households:

KEY FACTS	131,710 OR 22%	\$25,750	-98,949	\$52,296	77%
	Renter households that are extremely low income	Maximum income for 4-person extremely low income household (state level)	Shortage of rental homes affordable and available for extremely low income renters	Annual household income needed to afford a two-bedroom rental home at HUD's Fair Market Rent.	Percent of extremely low income renter households with severe cost burden



Note: Mutually exclusive categories applied in the following order: senior, disabled, in labor force, enrolled in school, single adult caregiver of a child under 7 or a person with a disability, and other. At the national level, 14% percent of extremely low income renter households include a single adult caregiver, more than half of whom usually work more than 20 hours per week. More than 10% of extremely low-income renter households are enrolled in school, 48% of whom usually work more than 20 hours per week.

Source: 2019 ACS PUMS.