

Law Help New Mexico

Advancing Fairness and Justice for All

www.lawhelpnewmexico.org



Housing for People with Disabilities

What laws protect the housing rights of people with disabilities?

People with disabilities have housing rights that are protected under both federal and state law. The state law is the New Mexico Human Rights Act. Two federal laws apply. One is the Fair Housing Act Amendments, which covers actual dwelling units. The other is the Americans with Disabilities Act, which applies to rental offices and services provided in addition to basic housing. There are other federal laws that protect people with disabilities in programs that are funded with federal or state money. Some of those programs require additional access rights in public and subsidized housing.

A housing provider or lender can refuse to accept—or can evict from a rental—an applicant with a disability for any reason that is not related to the disability. For example, a landlord can refuse to rent to anyone with a bad rental history, poor credit, inability to pay the cost of the housing or a criminal record.

What kinds of disabilities are covered by fair housing laws?

Under these laws, disability includes any physical or mental condition that is a “major life impairment”. A major life impairment significantly limits such functions as the ability to see, walk, work, think, learn, hear, care for oneself, speak, breathe, or perform manual tasks. The definition includes alcoholism and drug addiction.

The definition includes more than actual impairments. It also includes having a history of a disability, or someone’s mistaken belief that a person has a disability.

There are exceptions to what a housing provider must accept. For example, the provider does not have to provide housing to someone who is currently using unlawful drugs, nor to someone who is a direct threat to the safety of others. A provider does not have to offer housing to someone with a conviction for illegal manufacture or distribution of illegal drugs.

Do all housing providers have to follow these laws?

In general, the law in New Mexico does not cover sellers who own no more than three units and who sell only one property at a time within a two-year period without using a broker or an agent. Landlords who own no more than three rentals in a single complex do not have to follow the laws against discrimination, either, if the landlord lives in the complex.

Developers and builders do not have to follow these laws, either, if the properties they are building have no more than three units. The Americans With Disabilities Act may require builders and owners to make rental offices accessible regardless of the size of the building. Residential buildings completed for occupancy before March 14, 1991, do not have to be accessible no matter how big they are.

What are the design guidelines for multi-family housing to make it meet the requirements of the fair housing laws?

There are seven basic requirements:

1. At least one entrance to the building must be on a wheelchair accessible route.
2. All public and common-use areas must be readily accessible to and usable by people with disabilities.
3. Building entries must be wide enough and flat enough to allow passage by persons in wheelchairs.
4. Each unit in the building must have doorways wide enough for persons in wheelchairs to enter and travel through them.
5. Light switches, electrical outlets, thermostats, and other controls must be accessible.
6. Bathroom walls in every unit must be reinforced so as to allow installation of a grab bar around toilets and bathtubs or a shower seat in shower stalls.
7. Bathrooms and kitchens must be designed to allow a person in a wheelchair to move about the room.

What are the access requirements of housing that is covered by fair housing laws?

Housing providers subject to fair housing laws must take three steps to increase access to housing for people with disabilities: New construction of multi-family housing must have accessible common areas and ground floor units that can be easily adapted for use by those with disabilities. Tenants must be allowed to make reasonable structural changes to the property so the tenants can get full use of the unit. Tenants are responsible for the cost of these modifications in private rentals; in public and subsidized units, landlords are responsible for the cost of these changes. Housing providers must make reasonable adjustments (called "reasonable accommodations") in rules when necessary for someone with a disability to begin or maintain the tenancy.

What is a reasonable accommodation?

A reasonable accommodation is a change in rules, policies, practices, or services that are necessary to give people with disabilities equal opportunity to use and enjoy a dwelling unit. A person with a disability may ask for reasonable accommodation before or during a tenancy if the accommodation will help the person follow the requirements of the lease. The law does not limit the number of accommodations possible. The housing provider must consider any request for accommodation and must allow it unless the change would change the basic nature of the housing or result in an undue financial or administrative burden.

The housing provider can ask the person who wants an accommodation for proof that the

accommodation is necessary. The tenant can provide verification in the form of a letter from a doctor, a social worker, counselor, or other reliable representative who is familiar with the tenant and the tenant's needs. The housing provider also can ask for proof that the person has a disability that the fair housing law covers, but the provider can't force anyone to turn over medical records. Nor can the provider inquire about what the disability is or how serious it is.

What if the person's disability makes it difficult for him or her to know or describe what kind of accommodation is needed?

Once a person with a disability notifies the housing provider that he or she has a disability and needs a reasonable accommodation, the provider must work with the person to come up with a solution to the problem. They can get help to do this from a social or medical worker or other knowledgeable person or from one of New Mexico's Centers for Independent Living. To contact one of these five centers, go to www.ilru.org. If the solution doesn't work, provider and tenant should try to find another solution.

What are some typical kinds of accommodations the law supports?

Common accommodations include providing a designated parking space close to the tenant's unit; the right to have a companion animal that helps the tenant deal with anxiety; monthly reminders about when rent is due.

Another reasonable accommodation is for a live-in caregiver if a full-time person is needed. In some cases, this may mean that the tenant is entitled to move into a larger unit. It is unclear whether the landlord or the tenant would be responsible for any additional cost in rent in private housing. In public and subsidized housing, the landlord cannot charge extra for the move or for the extra person staying in the unit.

The housing provider has the right to find out if the proposed caregiver has a criminal record or other negative background. The provider does not have to accept a caregiver who has a history of dangerous or dishonest conduct.

Printed: January 18, 2019

<http://www.lawhelpnewmexico.org/node/38/housing-people-disabilities>

©Law Help New Mexico