

The background of the slide is a blurred photograph of a construction site. It shows wooden framing for a building, with a prominent yellow measuring tape in the foreground. The tape is partially unrolled, showing markings for 3, 4, and 5 feet. The overall scene is brightly lit, suggesting an outdoor or well-lit indoor construction environment.

Iowa Civil Rights Commission

Disclaimer

The information contained in this presentation is a brief overview and should not be construed as legal advice or exhaustive coverage of the topic.

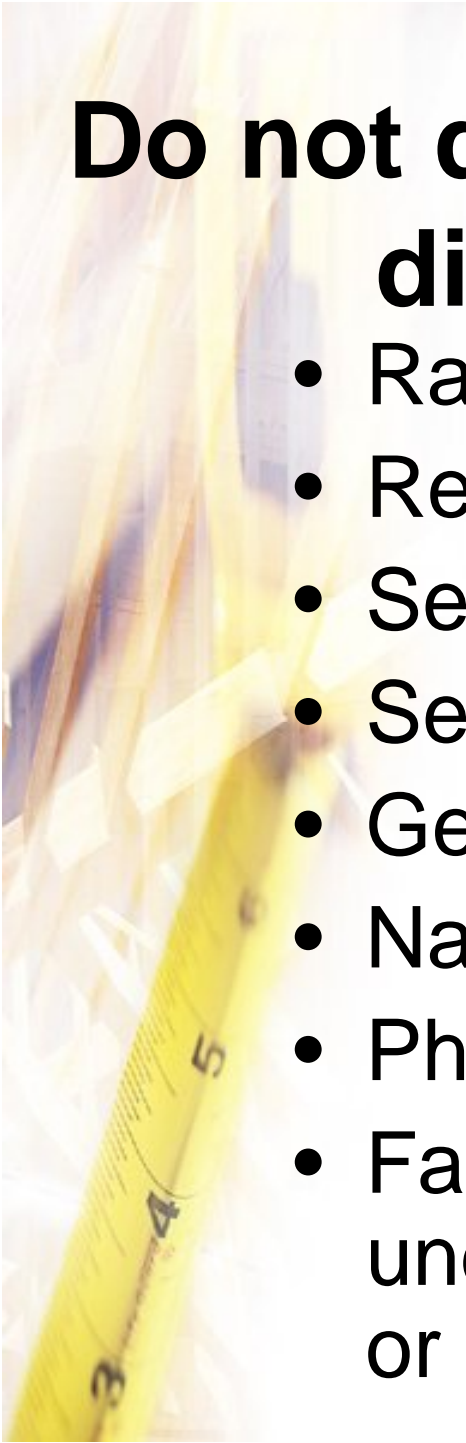
A background image showing a construction site with wooden framing. A yellow measuring tape is prominently displayed in the foreground, partially obscuring the view. The tape shows markings for 3 and 4 feet. The overall scene is brightly lit, suggesting a sunny day.

Fair Housing in Iowa

Fair Housing Laws



- **Federal laws**
 - Civil Rights Act of 1866
 - Civil Rights Act of 1968, Title VIII
 - Fair Housing Amendments Act of 1988 (FHAA)
- **State law**
 - Iowa Civil Rights Act, Chapter 216 of the Iowa Code and Chapter 161 of the Iowa Admin Code
- **Local (city or county)** ordinances may also apply



Do not discriminate (treat someone differently) because of:

- Race or Color
- Religion or creed
- Sex
- Sexual Orientation
- Gender Identity
- National Origin
- Physical or mental disability
- Familial status (presence of children under the age of 18 living with parents or legal custodians; pregnant women)



Accessibility Laws

Three Levels of Jurisdiction:

- *Federal*
- *State*
- *Local (city or county)*

A yellow measuring tape is positioned vertically on the left side of the slide, with the numbers 3, 4, and 5 visible. A pencil is also visible, partially obscured by the tape. The background is a plain white surface.

Overview

- I. Background of FHA/ADA
- II. Overview of FHA/ADA Requirements
- III. FHA/ADA Design and Construction Requirements.



FHA/ADA ARE CIVIL RIGHTS LAWS, NOT BUILDING CODES.

FHA – FHA amendments enacted in 1988 prohibit discrimination based on disability in leasing or sale of multi-unit housing.

ADA – Prohibits discrimination based on disability in public accommodations.



Overview of FHA/ADA Requirements

Design and Construction Requirements

- **FHA – All covered multi-family dwellings designed and constructed for first occupancy after March 13, 1991.**
 - **No retrofitting of pre-March 13, 1991 buildings.**



Overview of FHA/ADA Requirements (cont.)

Design and Construction Requirements

- **ADA – Public accommodations (e.g. leasing office, model units) occupied after January 26, 1993.**
 - **Alterations to public accommodations made after January 26, 1993.**
 - **Continuing obligation to remove structural barriers, where “readily achievable,” in all public accommodations, whenever built.**



Overview of FHA/ADA Requirements (cont.)

Operations Requirements (apply to all developments, whenever built)

- Individuals may not be denied access to housing because of disability (exception for health and safety).
- Owner/manager must make reasonable accommodations in policies to permit full enjoyment by individuals with disabilities.
- Owner/manager must permit reasonable modifications to premises, at tenant's expense.




FHA/ADA Design and Construction Requirements

- Intended to permit persons with physical disabilities opportunity to use homes and facilities.
- Covers accessible route to and within buildings and apartment units, accessible public and common use areas, usable doors, accessible environmental controls (e.g. light switches, thermostats, electrical outlets), and usable kitchens and bathrooms, including reinforced walls in bathrooms for grab bars.



FHA Implementation of Design and Construction Requirements by Department of Housing and Urban Development (HUD)

- No binding regulations.
- Guidelines issued in March 1991.
- Design Manual issued in 1996.
- Safe Harbors.



ADA Implementation of Public Accommodation Design and Construction Requirements by U.S. Department of Justice (DOJ)

- Requires compliance with ADA Accessibility Guidelines (ADAAG).



FHA/ADA Enforcement

- FHA – Private plaintiffs (individuals; groups)
 - HUD
 - DOJ
- ADA – Private plaintiffs (individuals; groups)
 - DOJ



Who is Liable for Design and Construction Deficiencies?

- FHA
 - Any person or entity involved in design and construction of a covered building (courts interpret “and” as “or”).
- ADA
 - Any person or entity that owns, operates, leases (or leases to), a public accommodation.
 - Any person or entity involved in design and (read “or”) construction of a covered property.
 - Any person or entity that makes noncompliant alterations to any public accommodation.
 - An owner/operator that fails to remove barriers in a public accommodation, whenever built, where it is “readily achievable” to do so.

Statute of Limitations

(how long after a violation occurs can someone file a lawsuit)

- Private plaintiffs

FHA – Plaintiff must file suit within two years after occurrence or termination of an alleged discriminatory housing practice.

ADA – Has no statute of limitations for public accommodations, so appropriate state statute of limitations applies.

U.S. Department of Justice

- FHA – No statute of limitations for injunctive relief related to pattern and practice of discrimination and cases of public importance; five years for civil penalties.
- ADA – No statute of limitations.



Remedies for Design and Construction Violations

- FHA/ADA – Injunctive relief that can include a requirement that every deficiency in every covered property be remediated to FHA and ADA accessibility standards.
- FHA – Compensatory and punitive damages.

The background is a collage of construction-related images. It features a yellow measuring tape in the foreground, showing markings for 3, 4, and 5 feet. Behind the tape are various wooden planks and beams, some of which are part of a building's structural frame. There are also architectural blueprints and a pencil visible in the background, suggesting a design or planning phase. The overall color palette is warm, dominated by yellows, oranges, and browns.

**WHAT DEVELOPERS,
BUILDERS & ARCHITECTS
NEED TO KNOW ABOUT
THE FEDERAL FAIR
HOUSING ACT**



What is the Fair Housing Act?

- The Fair Housing Act (FHA) is a federal statute that prohibits discrimination in housing on the basis of disability and other protected classes.
- The FHA defines discrimination to include a failure to comply with its design and construction requirements.
- The FHA applies to anyone involved in the design or construction of multi-family housing (e.g., developers, builders, architects, civil engineers).
- The FHA requires that multi-family dwellings containing four or more units constructed for first occupancy after March 13, 1991 have certain accessibility features, primarily for the benefit of people who use wheelchairs.



What is the Fair Housing Act?

- The mandatory features include:
 - an accessible entrance on an accessible route;
 - accessible common and public use areas;
 - doors sufficiently wide to accommodate wheelchairs;
 - accessible routes into and through each dwelling;
 - light switches, electrical outlets, and thermostats in accessible locations;
 - reinforcements in bathroom walls to accommodate grab bar installations; and
 - usable kitchens and bathrooms configured so that a wheelchair can maneuver about the space



Why should the FHA be a priority?

- Non-compliance can lead to expensive lawsuits by private plaintiffs for retrofits and other injunctive relief, attorneys' fees, and compensatory and punitive damages.
- In 2005, Archstone-Smith Trust, a national developer of apartment complexes, paid \$1.4M in fees and damages and agreed to make over \$20M in retrofits to 71 apartment complexes in 16 states to settle an FHA lawsuit brought by a disability rights organization.



Why should the FHA be a priority?

- The same organization also recently sued the following residential apartment developers:
 - September 2005: The Bozzuto Group, over 50 allegedly non-compliant apartment complexes on the East coast. The matter is pending in court.
 - September 2005: AvalonBay Communities, over 85 apartment complexes across the country. Settlement talks are underway.
 - April 2006: Equity Residential, over 300 apartment complexes across the country. The matter is pending in court.



Why should the FHA be a priority?

- Non-compliance can lead to Department of Justice enforcement actions in federal court for retrofits and other injunctive relief, compensatory damages, and civil penalties.
- During the Bush Administration, the DOJ filed 40 new cases and obtained 48 consent decrees involving violations of the FHA's accessibility requirements for new multi-family housing.

Why should the FHA be a priority?

- **Cases include:**

- *United States v. Edward Rose & Sons* (E.D. Mich.), a case alleging that a major housing developer and several architectural firms in Michigan, Indiana, Illinois, Ohio, Wisconsin, Virginia, and Nebraska, engaged in a pattern or practice of discrimination against persons with disabilities by failing to include accessibility features required the Fair Housing Act and the Americans with Disabilities Act in apartment complexes. Under the agreement, the developer and architectural firms agreed to **retrofit 49 apartment complexes and pay \$1,060,000.**
- *United States v. Cedar Builders, Inc.* (E.D. Wash.), a case alleging that the developers and architect failed to design and build multi-family housing in compliance with the accessibility requirements of the Fair Housing Act. Under the agreement, the defendants paid up to **\$500,000 to individuals who were harmed by the lack of accessible features at the properties.** The balance of the fund, if any, will be used to provide accessible housing in the community. The agreement also provides for the **retrofitting of more than 700 ground floor units at 10 properties, a \$25,000 civil penalty, and a \$15,000 fund** for accessibility training for local designers and developers of multi-family housing.



What kinds of buildings does the FHA cover?

- Every new multi-family building that has more than four dwelling units is covered, regardless of the form of ownership
- Condominiums
- Rental apartment buildings
- Single-story town homes that are attached in groups of four
- Common indoor and outdoor facilities that serve covered multi-family buildings



What dwelling units must be accessible in a covered building?

- If the building has no elevator, all single-story ground floor units.
- In an elevator building, all units served by an elevator.



Common FHA pitfalls

- Compliance with local building codes does not necessarily ensure compliance with the FHA.
- Many plans do not contain enough information to ensure that builders know how to comply with the statutory requirements.
- Even if plans do comply, minor changes made in the construction process can result in non-compliant dwelling units.

A yellow measuring tape is positioned vertically on the left side of the slide, set against a background of crumpled white paper. The tape shows markings for 3, 4, and 5 feet. The main title of the slide is overlaid on the right side of this background.

Fair Housing Act – Seven Design and Construction Requirements

The first is that all covered multifamily dwellings must have **at least one building entrance on an accessible route** unless it is impractical to do so because of the terrain or unusual characteristics of the site.



Fair Housing Act – Seven Design and Construction Requirements

- An accessible route means a continuous, unobstructed path connecting accessible elements and spaces within a building or site that can be negotiated by a person with a disability who uses a wheelchair, and that is also safe for and usable by people with other disabilities.
- An accessible entrance is a building entrance connected by an accessible route to public transit stops, accessible parking and passenger loading zones, or public streets and sidewalks.



Common mistakes

Requirement 1: An accessible entrance on an accessible route:

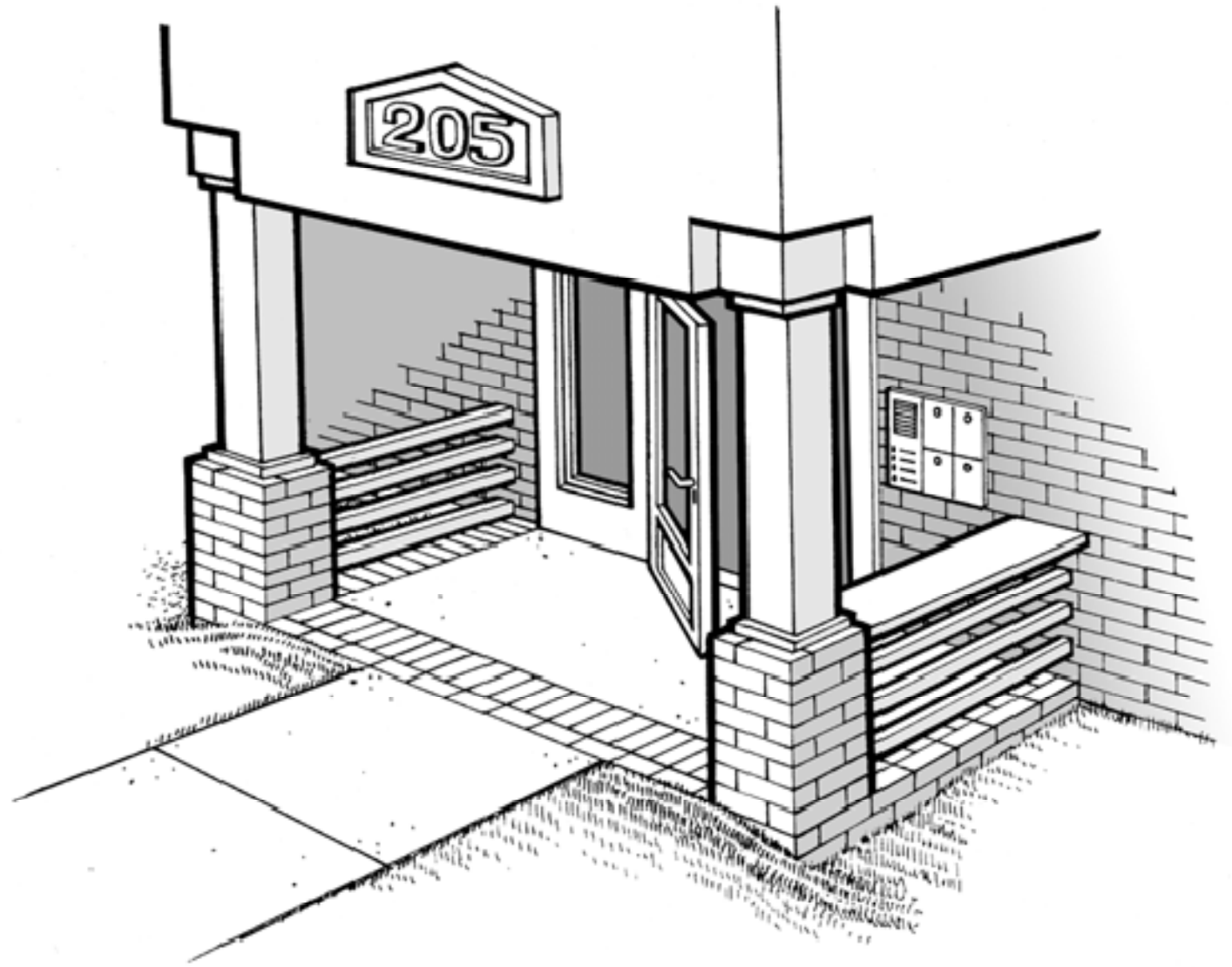
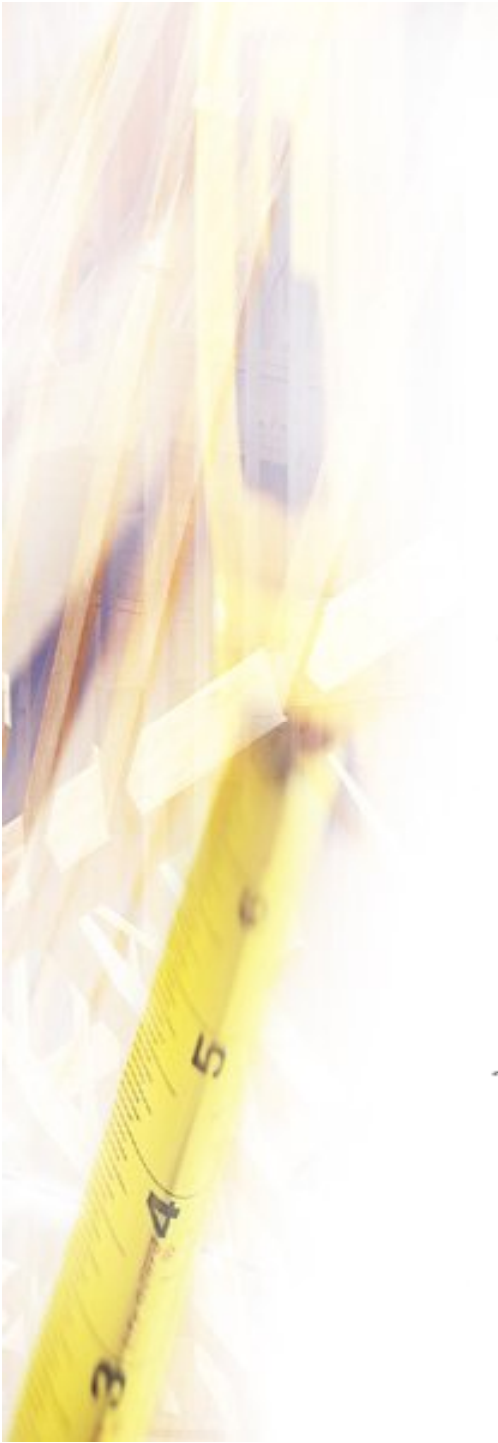
- sidewalks with excessive slopes and cross slopes;
- non-compliant ramps;
- curb ramps that are too steep; and
- steps to front entrance





Entrances

- Low or no threshold (ANSI 4.13.8)
- Door closer with safe sweep period (ANSI 4.13.10)
- Maneuvering space next to latch side of door (ANSI 4.13.6)
- Clear width of open doorway at least 3" (ANSI 4.13.5)
- Low force to open door (ANSI 4.13.11)





Fair Housing Act – Seven Design and Construction Requirements

The second requirement is that **covered housing must have accessible and usable public and common use areas**. Public and common use areas cover all parts of the housing outside individual units. They include, for example: building-wide fire alarms, parking lots, storage areas, indoor and outdoor recreational areas, lobbies, mailrooms and mailboxes, and laundry areas.



Common mistakes

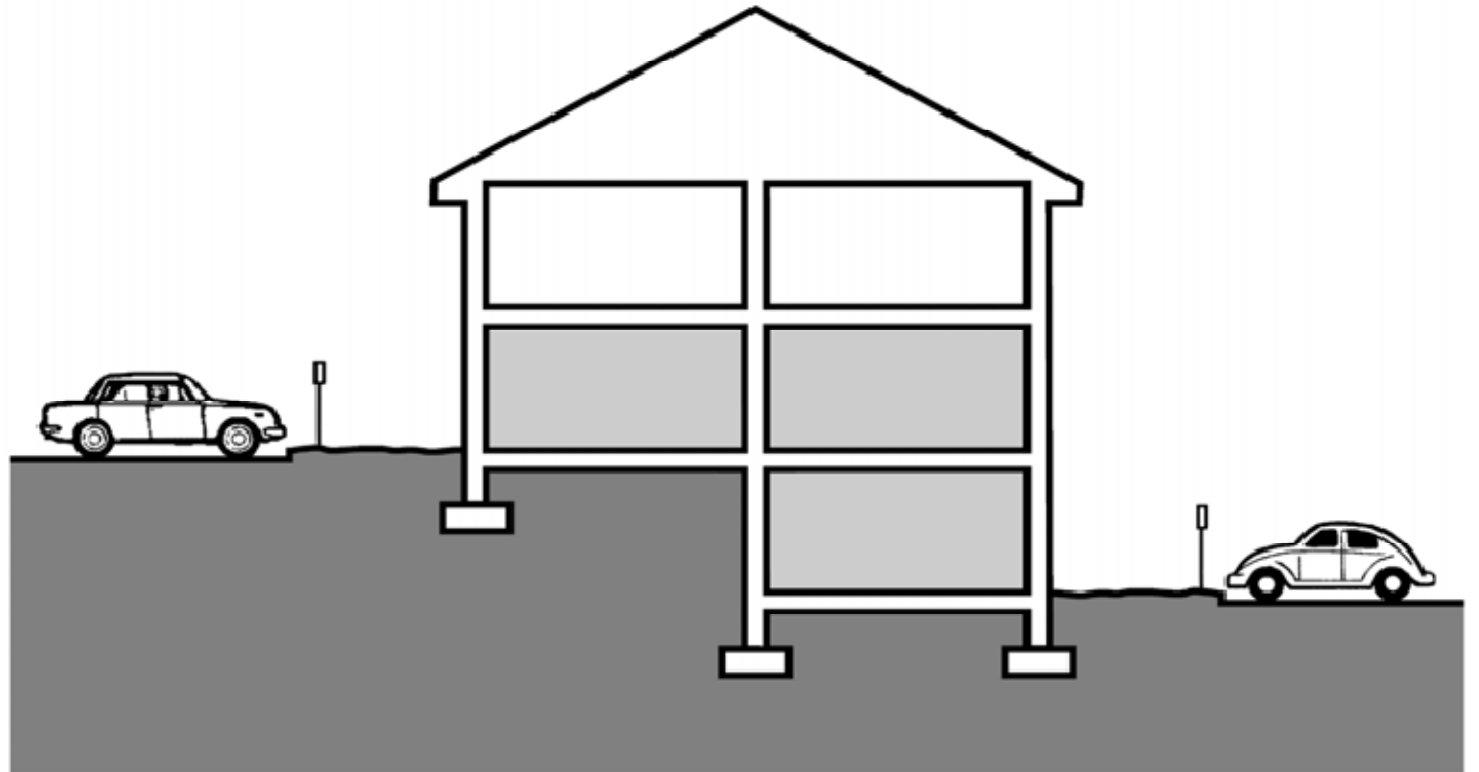
Requirement 2: Accessible common and public use areas:

- Lack of accessible route from the covered unit to the common and public use areas (see requirement 1)
- Lack of accessible parking
- Thresholds that are too high
- Restroom accessibility
- Reach range
- Counter heights
- Storage areas



Pathways

- ANSI 4.3 provides specifics on accessible pathways and routes
 - Paths width varies depending on the situation, consult ANSI
- Paths with grades between 5 and 8.33% must use handrails
 - Grades higher than 8.33% are not accessible.



Common and Public Spaces in Covered Buildings

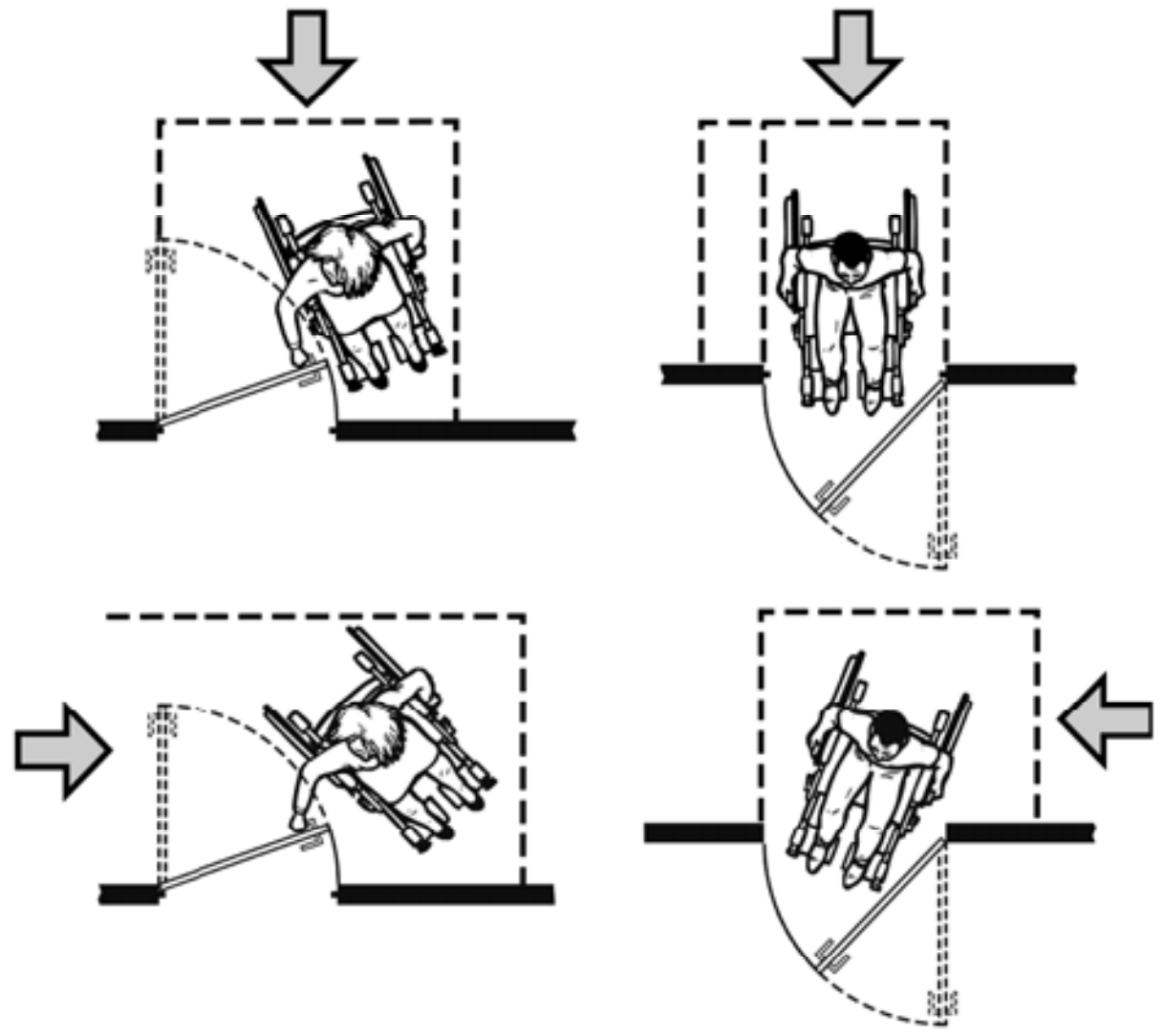
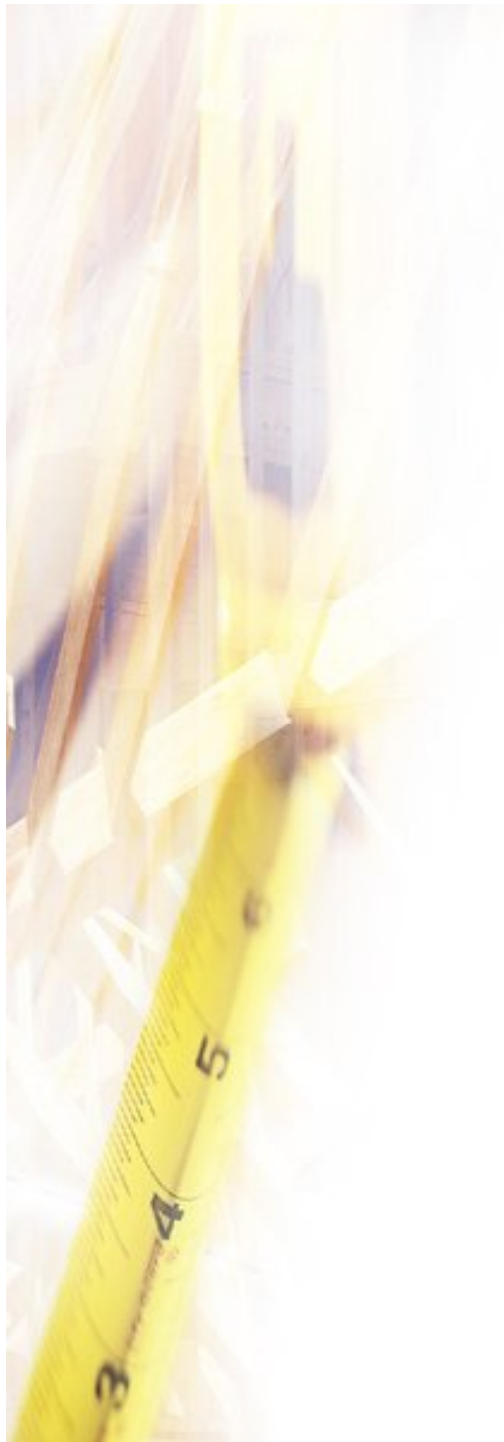
- Hallways
 - At least 36 inches wide, smooth, level
 - Doorways must be at least 32 inches wide and 80 inches high and 24 inches deep
 - Must be free from hazardous protruding objects (ANSI 4.4)
 - Passing spaces at least every 200 feet (recommended)
- Laundry Rooms
 - At least one of each appliance must be accessible
- Recreation and multi-purpose rooms
- Exercise rooms
- Kitchens



Fair Housing Act – Seven Design and Construction Requirements

The third requirement is that all **doors that allow passage into and within all premises must be wide enough to allow passage by persons using wheelchairs.**

The fourth requirement is that **there must be an accessible route into and through each covered unit.**

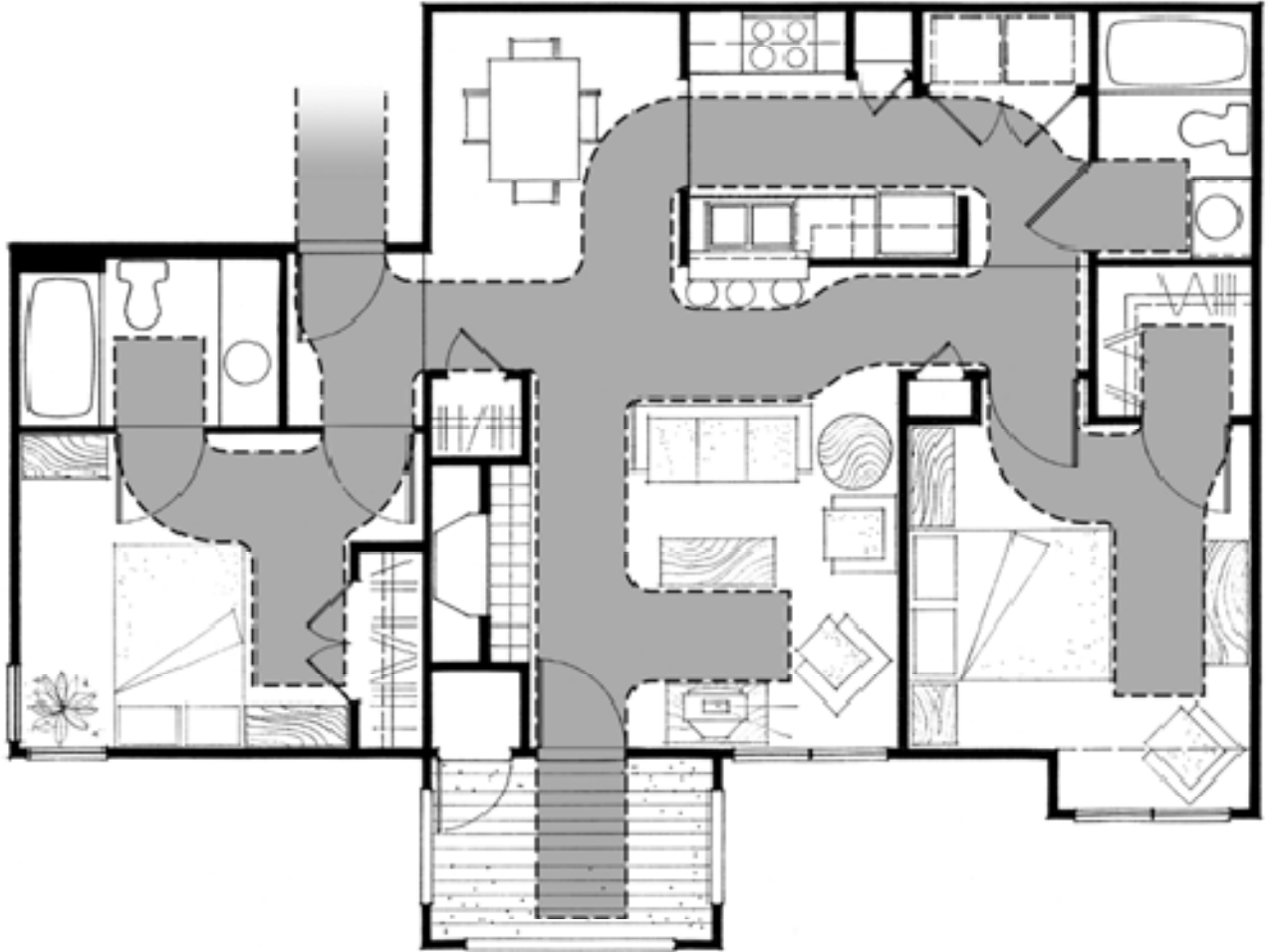




Common mistakes

Requirements 3 & 4: Doors sufficiently wide to accommodate wheelchairs and accessible routes into and through each dwelling:

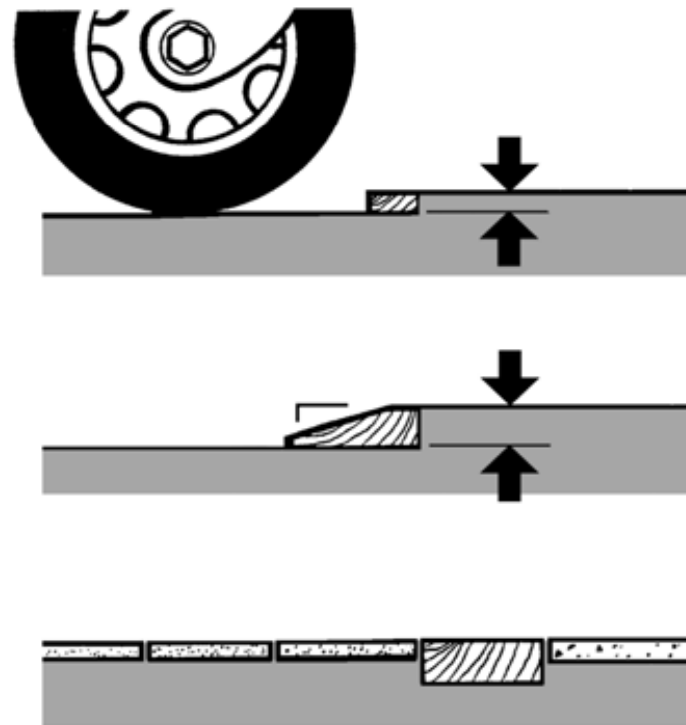
- Doors that do not provide a minimum of 32” clear width when open so a wheelchair can pass through.



Within dwelling units, small level changes that meet the following requirements are allowed:

- $\frac{1}{4}$ " maximum vertical level change
- Level change between $\frac{1}{4}$ " and $\frac{1}{2}$ " must be beveled 1:2 or less
- Level changes greater than $\frac{1}{2}$ " must be sloped 1:12 or less

A smooth transition between different areas is most usable.





Covered Dwelling Units

- Accessible route into and throughout entire unit
 - **Sufficiently wide**
 - 36 inches, with at least 32 inches at doors
 - **Lacking in abrupt changes in level**
 - Maximum allowable change in level is $\frac{1}{4}$ inch (with a tapered threshold, $\frac{1}{2}$ inch is allowable)
 - **So that residents and guests with disabilities can safely use all rooms and spaces**, including kitchen, storage, balconies, porches
 - Does not include basement
 - May not include smaller areas within accessible rooms



Fair Housing Act – Seven Design and Construction Requirements

The fifth requirement is that **light switches, electrical outlets, thermostats and other environmental controls must be in accessible locations.**

Controls Not Covered

The following items are not covered under Requirement 5:

- Controls on movable appliances
- Hoods over ranges
- Special use wall outlets, such as refrigerator and electric range outlets
- Telephone jacks
- Circuit breaker panels

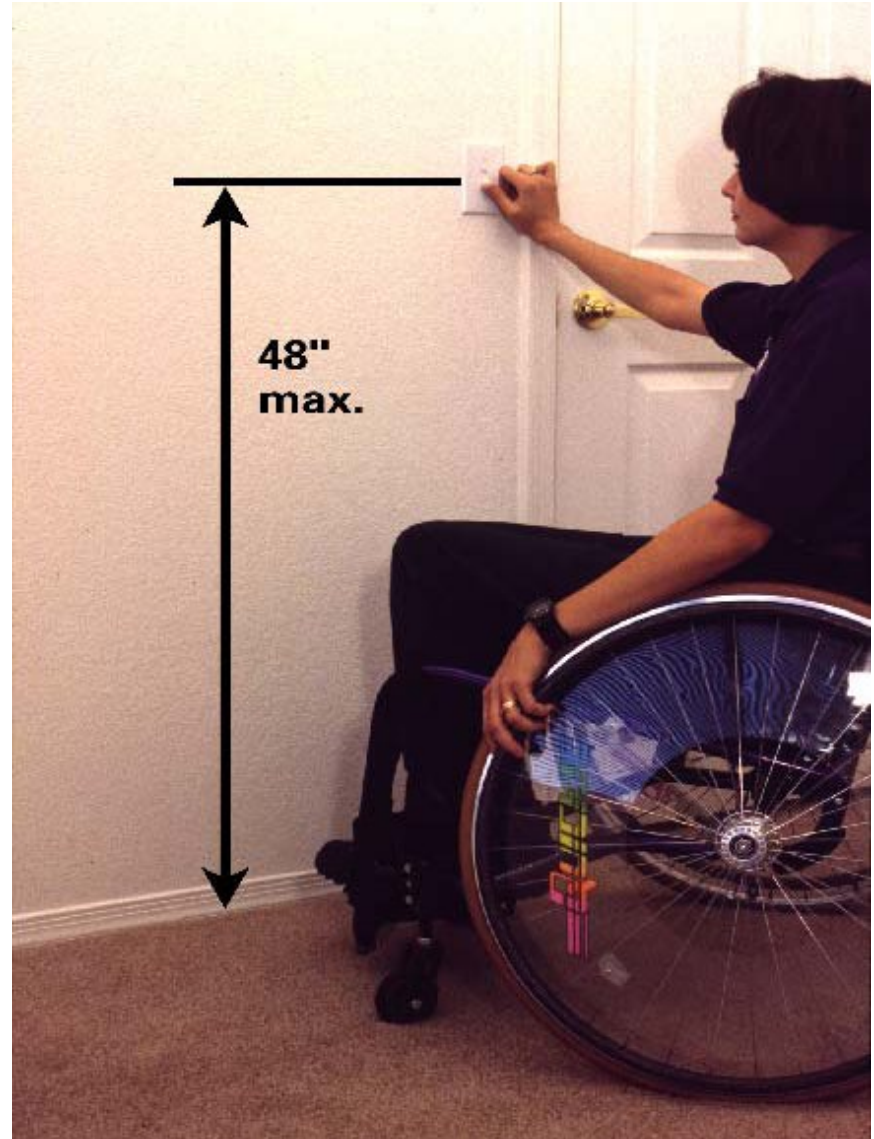
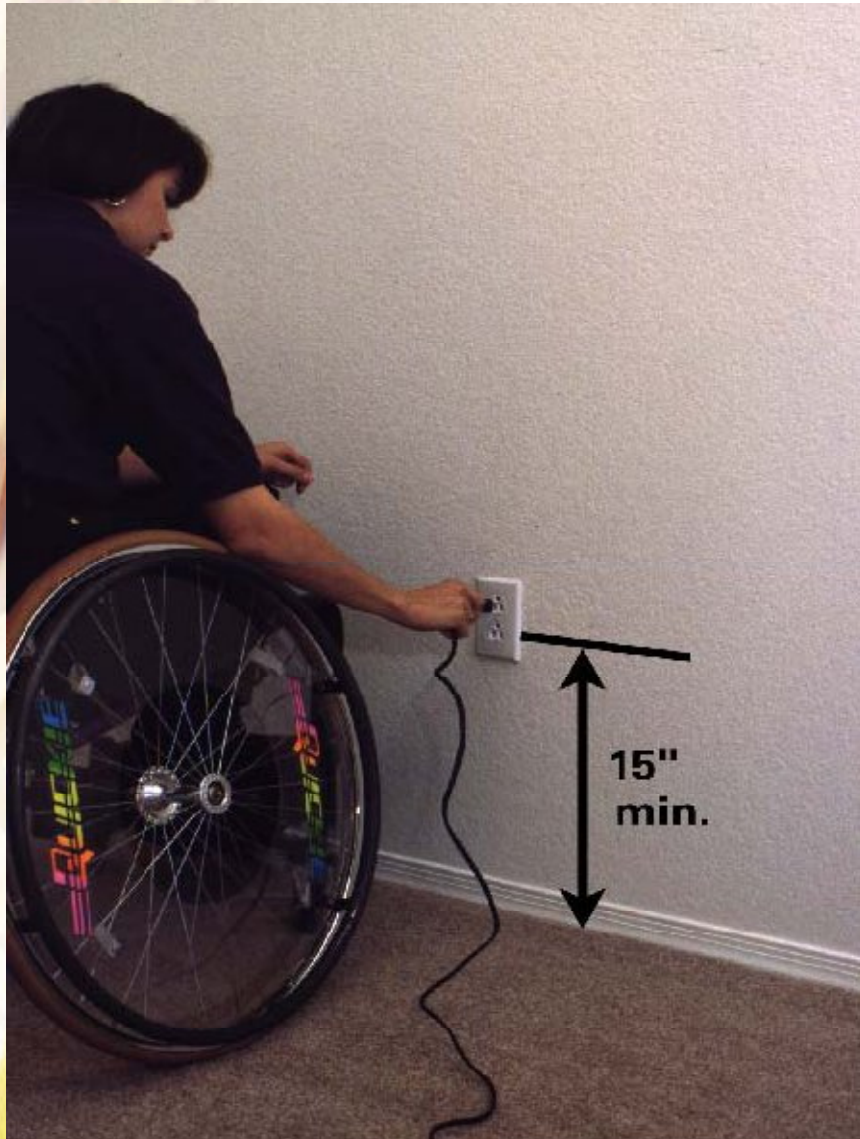
If there is a range (with an oven) or wall-mounted oven in a kitchen, then microwave ovens located in range hoods or mounted to the underside of upper cabinets are not covered.



Common mistakes

Requirement 5: Light switches, electrical outlets, and thermostats in accessible locations.

The general rule is that all of these elements must be located between 15" and 48" from the finished floor. There are special rules for over the counter locations for outlets and switches.



Controls and Outlets

- When no obstruction exists
 - controls may be mounted between 15 and 48 inches off the floor
 - There must be a clear floor space of 30 x 48 inches perpendicular to the wall
- When there is an obstruction
 - Allowable if there is a minimum of 30 inches clear knee space for perpendicular approach; for parallel approach, obstruction must not be larger than 24 inches wide.
 - The maximum height diminishes with width of obstruction



Fair Housing Act – Seven Design and Construction Requirements

The sixth requirement is **reinforcements in bathroom walls so that grab bars can be added when needed**. The law does not require installation of grab bars in bathrooms.



Common mistakes

Requirement 6: Reinforcements in bathroom walls to accommodate grab bar installations:

- Builders forget to put them in, or they are in the wrong place.

Usable Bathrooms

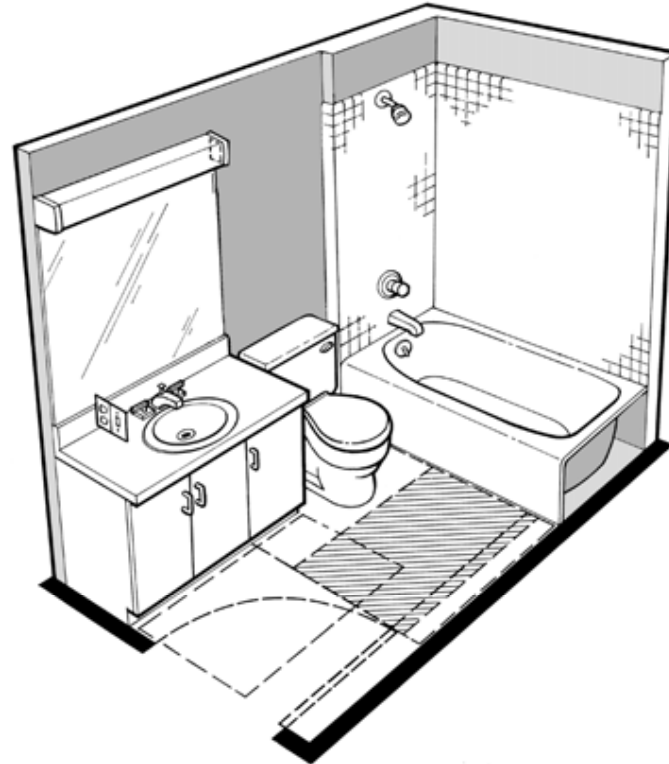
- Reinforced Walls for Grab Bars in all bathrooms and powder rooms in some situations
 - Permanently mount directions describing type of construction, location of reinforcing, and suggestions for most effective installation in each covered unit.
 - HUD encourages compliance with ANSI A117.1 or greater
 - Minimum reinforcing 6 x 24 inches (42 preferred) behind and beside toilets
 - Minimum reinforcing 33-36 inches above floor and 24 inches wide for tubs
- Maneuvering space: A+B
 - A: 30x48 inches at each fixture; 30x48 clear door space (toilet and tub may be near each other and may share clear space)
 - B 30x48 inches at each fixture; 30x48 clear door space (toilet and tub must not be next to each other)



Fair Housing Act – Seven Design and Construction Requirements

The seventh requirement is that **kitchens and bathrooms must be usable** — that is, designed and constructed so an individual in a wheelchair can maneuver in the space provided.

Example “A” Bathroom



This illustration shows a conventional in-line bathroom design that would comply with Specification “A”. A distinguishing feature of a Specification “A” bathroom is that a toilet (or lavatory) is permitted to be located within the clear floor space adjacent to the bathtub. In this illustration a toilet is allowed to be positioned next to the bathtub, making access to the bathtub limited.



Example “B” Bathroom

This illustration shows a bathroom design that would comply with Specification “B”. The key feature is a 30”x48” clear floor space adjacent to the bathtub. Neither a lavatory base cabinet nor a toilet are allowed to encroach on this clear floor space. Greater access is achieved for people using wheelchairs to transfer into and out of bathtubs.



Common mistakes

Requirement 7: Usable kitchens and bathrooms configured so that a wheelchair can maneuver about the space:

- When there is only a front approach to a kitchen or bathroom sink, failing to provide knee and toe space for people in wheelchairs.
- Lack of centered clear floor space in front of sinks in kitchens and baths.
- Lack of centered clear floor space in front of kitchen appliances.
- Lack of 5' turning radius in U-shaped kitchens with a range at the base.
- Lack of 40" of space between counters in galley kitchens.



Usable Kitchens

- Doorways must be a minimum of 32 inches wide
- There must be a minimum of 40 inches clearance between opposing cabinets, countertops, walls, and appliances.
- There must be at least 30 x48 clear floor space at each fixture and appliance
- Unless knee space is provided in the design, users must be able to use a parallel approach to appliances
- Standard 36 inch counters are acceptable



Steps to minimize litigation risk

- Familiarize yourself with the FHA's requirements so you can spot issues and problems early.
- Have consultants specializing in the FHA's requirements conduct a pre-construction review of the plans.
- To minimize the risk of having to produce adverse information in subsequent litigation, consider using a law firm to conduct the pre-construction review with the assistance of an FHA consultant.
- Builders should consider requesting indemnification from owners/developers for FHA liability.

FHA Safe Harbors

- HUD recognizes ten safe harbors for compliance with the Fair Housing Act's design and construction requirements. They are:
- [HUD Fair Housing Accessibility Guidelines](#) published on March 6, 1991 and the [Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines](#), published on June 28, 1994.
- [HUD Fair Housing Act Design Manual](#)
- [ANSI A117.1 \(1986\)](#), used with the [Fair Housing Act](#), HUD's regulations, and [the Guidelines](#).
- [CABO/ANSI A117.1 \(1992\)](#), used with the Fair Housing Act, HUD's regulations, and the Guidelines.
- [ICC/ANSI A117.1 \(1998\)](#), used with the Fair Housing Act, HUD's regulations, and the Guidelines.
- [Code Requirements for Housing Accessibility 2000 \(CRHA\)](#).
- [International Building Code 2000](#) as amended by the 2001 Supplement to the International Codes.
- [International Building Code 2003](#), with one condition*.
- [ICC/ANSI A117.1 \(2003\)](#) used with the [Fair Housing Act](#), HUD's regulations, and [the Guidelines](#)
- [International Building Code 2006, with the January 31, 2007 Errata](#)
- * Effective February 28, 2005 HUD determined that the IBC 2003 is a safe harbor, conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, "ICC interprets Section 1104.1, and specifically, the exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7."



**For more information about
housing rights, contact:**

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Des Moines, Iowa 50319
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800-457-4416 (toll free)
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