

## Bridging the Gap Between Housing and Human Services

A *Primer on Housing and Independent Living Law* was developed by CILCP's Housing Department. For an electronic version and for additional disability related housing topics look under the Publications/Brochures/Housing link at [www.cilcp.org](http://www.cilcp.org).

The Center for Independent Living of Central Pennsylvania (CILCP) is a nonprofit, community-based resource and advocacy center, which is managed by and for people with disabilities.

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*One Call. Countless Resources. Endless Opportunities.*

## A Primer on Housing and Independent Living Law

Much of human service work is the direct result of laws devised to make sure that people with disabilities can live integrated in their communities. There is great value in gaining perspective in order that we can better understand our profession.

Having a home is a universal human need. Without a place to call home, people with disabilities have trouble recovering or maintaining their health, becoming self-sufficient, and reclaiming valued roles in their families and communities. Unfortunately, many people with disabilities are extremely poor. Poverty combined with a lack of affordable housing and support services causes people with disabilities to remain unnecessarily in institutions.

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Community integration for people with disabilities is not just a concept or an idea or a goal or a theory – it is the law! In every state, people with disabilities are leaving nursing homes and other institutions to live in the community – with the same opportunities as others to live, work, and play. Community integration is not possible for people with disabilities without access to accessible, affordable, and integrated housing.

Accessible housing is required by the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. According to Housing and Urban Development (HUD) guidelines, accessible homes facilitate the ability of persons with disabilities to enjoy their full use and are essential for equal access. Access addresses de facto exclusion of people with disabilities. While many communities have made progress in the development of accessible housing, there is not enough to meet the need, and many of the accessible units are too expensive for people on a Social Security Income (SSI) or Social Security Disability Income (SSDI) to afford.

Decent affordable housing is in short supply in every community. The lack of affordable housing has been driven by both market forces and by public divestment from housing development for those living below the poverty line. The result is an extreme shortage of units that are within the means to people at an SSI level income. The remedy is housing assistance funds (either rental subsidies or funds to support development).

Integrated housing units are defined as homes typical of those found in and scattered throughout the community. One measure of integration is physical – who are your neighbors? Another measure of integration is legal – do you have full rights of tenancy? Integration is important to the discussion of housing for people with disabilities.

## **New Freedom Commission**

President Bush created the New Freedom Commission on Mental Health in 2002. The President's directive for the Commission was to identify policies that could be implemented by Federal, State, and local governments to improve coordination of treatment and services and to promote community integration for people with mental illness.

In 2003, the Commission issued a report that emphasized the need to transform the nation's mental health care system. The report outlined several goals and identified model programs related to the transformation of the mental health system. Of the many goals in the report, one in particular supports the creation of more Permanent Supportive Housing: Goal 2, *Mental Health Care is Consumer/Family Driven.*

States have responded to the New Freedom Commission's report by requiring their Mental Health systems to create and implement plans that support these goals. Increasing options for receiving services in the community is a large part of this effort, including improving efforts to expand housing options.

## The Olmstead Decision

One of the most important pieces of case law regarding housing for people with disabilities is the Olmstead Decision. In the 1999 case of *Olmstead v. L.C. and E.W.*, the United States Supreme Court ruled against the State of Georgia's appeal to enforce institutionalization and affirmed the right of people with disabilities to live in the community.

In this case, the court concluded that, under Title II of the Americans with Disabilities Act (ADA):

*States are required to place persons with mental disabilities in community settings rather than in institutions when the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated....*

Because of this ruling, people with disabilities have the right to receive services in the community. All states are required to have a compliance plan in response to the Olmstead Ruling. These plans include details outlining how services will be provided in "the least restrictive setting."

## Legislation and Public Policy Supporting Housing for People with Disabilities

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The idea that people with disabilities can and should live in regular, integrated housing is not new, and its roots may be found in a variety of laws and social movements. However, several policy initiatives in the past have energized efforts to help people with disabilities choose, get, and keep regular, integrated housing. The most important of these initiatives are the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Supreme Court's Olmstead Decision, and the New Freedom Commission.

### Fair Housing Act

Title VIII of the Civil Rights Act of 1968, commonly known as the Fair Housing Act, prohibits discrimination in the sale, rental, and financing of housing based on race, color, national origin, religion, and sex. The Act was amended in 1988 to expand protection for families with children and persons with disabilities.

The Fair Housing Act covers all residential transactions with two exceptions. It does not cover the sale of a home by its owner without the use of a real estate agent when that owner does not have an interest in more than three additional single family homes at a time. Nor does it cover landlords who live in their own buildings if the building has four or fewer apartments.

In addition, the Fair Housing Act requires landlords to make "reasonable accommodations" in their policies and rules, if that accommodation is necessary to allow the person with a disability to live in the unit.

The “reasonable accommodations” clause is one of the most useful aspects of the law, as it provides some leeway in rules and policies to accommodate the particular needs of a tenant who has a disability. For example, under the reasonable accommodation aspect of Fair Housing, a person who uses a service animal would be allowed to live in a building that usually has a “no pets” policy.

## Section 504

Section 504 of the Rehabilitation Act of 1973 was one of the first laws that specifically focused on persons with disabilities. Section 504 prohibits discrimination on the basis of disability in any program or activity that is conducted by the Federal government or that receives federal financial assistance. This includes housing, employment, education, and health care. Housing covered by Section 504 includes public housing, HUD-subsidized housing, transitional housing for the homeless that receives federal funding, and Supportive Housing programs for the elderly or persons with disabilities, which receive federal funding.

Section 504 does not apply to the private housing market. Landlords who lease units to tenants with Housing Choice Vouchers (Section 8) are not covered by Section 504. When Section 504 does apply to rental housing (units that have federal dollars for construction, for example), the landlord is required to make alterations in policies and procedures as well as to the physical structure (at his own expense) to make the housing accessible and usable by individuals with disabilities. Generally, this applies to a percentage of the units only.

## Americans with Disabilities Act

The Americans with Disabilities Act of 1990 or ADA provides a national mandate to end discrimination against persons with disabilities and clear, strong, enforceable standards. The ADA prohibits discrimination against individuals in public accommodations, private sector employment, all public services, transportation, and telecommunications.

As it relates to housing, the “public accommodations” aspect of the ADA is probably the most important. Under the ADA, any commercial facility or business that is open to the public is considered a public accommodation. This means that leasing offices, showrooms, and other places where housing is rented or sold must be accessible to people with disabilities. It also requires that owners of these buildings and facilities make reasonable accommodations and adaptations that are readily achievable, which will allow people with disabilities to use the building or services provided there.

A readily achievable accommodation or adaptation is one that is feasible, does not alter an establishment’s purpose and is not an undue financial hardship. This standard also applies to employment and the broad category of public services based on the principle that all of the public should have equal access.

While the applicability of ADA to residential buildings is somewhat unclear, hotels, motels, homeless shelters, and other similar facilities are covered. In addition, public areas, such as the laundry room, community center and mail facilities, must be accessible to persons with disabilities.