



Unit

10

The Americans with Disabilities Act

In This Unit

Americans with Disabilities Act • Florida Americans with Disabilities Act (Chapter 760, F.S.) • AIDS patients and housing (Chapters 689.25 and 760.50, F.S.)

Learning Objective

When you have completed this unit, you will be able to accomplish the following.

- Describe the major requirements of the Americans with Disabilities Act.
- Describe the major requirements of the Florida Americans with Disabilities Act.
- Discuss Florida's laws concerning AIDS patients and housing.

AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) prohibits discrimination based on *disability* in employment, programs, and services provided by state and local governments, as well as goods and services provided by private companies and commercial facilities. A disability is defined by the ADA as a physical or mental impairment that substantially limits a *major life activity*, such as walking, seeing, hearing, learning, breathing, caring for oneself, or working. The Department of Justice administers the law.

The ADA does not cover temporary impairments such as broken bones or behavioral disorders. Persons who are currently abusing drugs or alcohol are not covered by the act.

Full compliance with the ADA is required for new construction and alteration. Existing structures must be made accessible when that goal is readily achievable, meaning that the goal can be carried out without great difficulty or expense. The factors for determining whether changes are readily achievable are described in more detail in the ADA regulations issued by the Department of Justice. A tax deduction of up to \$15,000 is available for removing barriers at existing places of business.

The ADA requires that state and local governments provide access to programs offered to the public. The ADA also covers effective communication with people with disabilities and eligibility criteria that may restrict or prevent access, and it requires reasonable modifications of policies and practices that may be discriminatory.

IN PRACTICE

Contract contingency can protect buyers from unexpected ADA compliance costs

Licensees who are working with buyers purchasing a property that does not currently comply with the ADA should add a contingency in the offer so the buyer can get estimates of the cost to comply, with the right to cancel the contract if the cost exceeds a stated amount.



For more information, visit the Department of Justice's ADA webpage at www.ada.gov.

FLORIDA AMERICANS WITH DISABILITIES ACT (CHAPTER 760, F.S.)

The Florida Americans with Disabilities Act implements and mirrors portions of the Americans with Disabilities Act and includes other important provisions. Florida has its own act because suing in a state court gives victims of discrimination another remedy for violations.

It is unlawful to discriminate against any person in the terms, conditions, or privileges of residential sales or rentals because a buyer, renter, or one of their associates has a disability. Owners and managers must permit, at the expense of the handicapped person, reasonable modifications of existing premises to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises. Owners and managers may not refuse to make *reasonable accommodations* in rules, policies, practices, or services, when such accommodations may be necessary to afford people with disabilities an equal opportunity to use and enjoy a dwelling.

New multifamily dwellings must be designed and constructed to have at least one building entrance on an accessible route, unless doing so is impractical because of the terrain. All doors designed to allow passage into and within such dwellings must be wide enough to allow passage by a person in a wheelchair. Light switches, electrical outlets, thermostats, and other environmental controls must be in accessible locations. Reinforcements must be installed in bathroom walls to allow later installation of grab bars. Kitchens and bathrooms must be built so that a person in a wheelchair can easily maneuver in the spaces.

All new residential construction must have at least one bathroom that is "accessible" as defined by law. Any new or renovated building frequented by the public must comply in the areas of landings, curb ramps, low-pull-force doors, seating spaces, aisles, and public restrooms.

Service Animals

"Service animal" means an animal that is trained to perform tasks for an individual with a disability. A service animal is not a pet. Florida's Fair Housing Act prohibits a housing provider from denying housing or charging additional fees to a person with a disability or a disability-related need who has a service animal. However, such a person is liable for any damage done to the premises or to another person on

the premises by such an animal. A housing accommodation may request proof of compliance with vaccination requirements.

The housing provider may prohibit the animal if it poses a direct threat to the safety, health, or property of others and may request written documentation that reasonably supports that the person has a disability. The supporting information may be provided by any federal, state, or local government agency, specified health care practitioners, telehealth providers, or out-of-state practitioners who have provided in-person care or services to the tenant on at least one occasion.

A housing provider may not request information that discloses the diagnosis or severity of a person's disability or any medical records relating to the disability (Chapter 760, F.S.).

AIDS PATIENTS AND HOUSING (CHAPTERS 689.25 AND 760.50, F.S.)

The fact that an occupant of real property is infected with human immunodeficiency virus (HIV) or diagnosed with acquired immunodeficiency syndrome (AIDS) is not a material fact that must be revealed in a real estate transaction. An owner of real property or his or her agent may not be sued for the failure to disclose to the buyer or tenant that an occupant of the property was infected with HIV or AIDS (689.25, F.S.).

Such disclosure also would violate the law that prohibits discrimination against people who have AIDS and an HIV infection. Any person with or perceived as having AIDS or HIV is entitled to every protection available to people with disabilities, including fair housing protections (760.50, F.S.).

Practice Questions

1. One of the major life activities as defined by the ADA is learning.
 - a. True
 - b. False
2. The ADA covers temporary impairments such as broken bones.
 - a. True
 - b. False
3. "Service animal" means an animal that is trained to perform tasks for an individual with a disability.
 - a. True
 - b. False
4. If asked, a real estate sales associate must tell a buyer whether an occupant of a house has been infected with the AIDS virus.
 - a. True
 - b. False

Case Study

LANDLORD CHARGES TENANT \$1,000 PET FEE FOR SERVICE DOG

● **Facts:** The owner and managers of a rental property rented an apartment to Martha, a woman who had been in an automobile accident some years before. She suffered a traumatic brain injury. Martha told the owner that she had a service dog named Riley who was important for her well-being.

The landlord explained that it was the policy of the company that no dogs were allowed on the property because it would increase insurance rates, create a nuisance for other tenants, and potentially damage the apartment. Martha said because Riley was a service dog, she had the right to keep Riley. The landlord threatened to evict her for the problems, but finally said Riley could stay if Martha paid a pet fee of \$1,000. Martha told the owner she would not pay the fee and reported the issue to the housing authority.

● **Practice Questions:**

5. Does the landlord have to allow Martha to keep her service dog?
 - a. Yes
 - b. No
6. Can landlords charge a pet fee for persons with disabilities who have a service dog?
 - a. Yes
 - b. No

● **What Really Happened?** A jury returned a verdict of \$37,343 against the landlord for charging a resident with disabilities a \$1,000 pet fee.