



# Senior Supplement

An Educational Service of Legal Resources for the Elderly Program (LREP)

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## Fair Housing Law

For more information call the LREP toll-free Legal Helpline at 1-800-876-6657 or 505-797-6005 (Albuquerque area) [www.nmbar.org/public/LREP](http://www.nmbar.org/public/LREP)

### What does Fair Housing mean?

Fair Housing refers to the set of state and federal laws that prohibit discrimination in housing (including rental and sales) and housing-related transactions (such as mortgages, homeowner's insurance, etc.).

### How do I know if I have been discriminated against?

You won't always know, although sometimes it is obvious. The legal term "discrimination" refers to adverse or inferior treatment *because of* race, color, national origin, religion, gender, disability (physical or mental), family status, sexual orientation, gender identity, serious medical condition, or spousal affiliation. These 11 categories are known as "protected classes". The first 7 classes listed here are protected by the federal Fair Housing Act. The last 4 classes are protected by the New Mexico Human Rights Act. Note that age is not a protected class under Fair Housing laws (unlike employment discrimination laws).

### What does "family status" refer to?

This term refers to the presence of children in a family under the age of 18 or a family member being pregnant. Family status discrimination is only permitted in housing that is dedicated to older persons (55 or over).

### What is the legal meaning of "disability"?

A person is considered disabled under Fair Housing laws if a medical condition perma-

nently (or for the foreseeable future) causes the substantial impairment of one or more major life activities. Examples of disability are hearing loss, mobility impairment, vision impairment, chronic alcoholism (if being treated), substance abuse (if rehabilitated), major depression, PTSD, bipolar, schizophrenia, developmental disability, disfigurement, cancer, and learning disability.

### What are some examples of discrimination?

Examples include refusing to rent or sell housing, falsely denying that housing is available, charging higher rent or a larger damage deposit, different terms or conditions, "steering" a person to a different part of town or a particular part of the apartment complex, and discriminatory advertising or statements. Keep in mind that these activities only constitute discrimination if they are done *because of* a person's membership in a protected class. That must be proven when a person files a discrimination complaint or lawsuit. Other examples of discrimination are sexual harassment, and retaliation for complaining of discrimination or for educating others about Fair Housing.



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## FAIR HOUSING LAW, continued

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### **If I refuse to rent to smokers or restrict where tenants can smoke, I am in violation of the Fair Housing laws. Correct?**

No. Smokers are not a protected class under Fair Housing laws. On the other hand, people with respiratory and other disabilities may, under certain circumstances, have Fair Housing rights to avoid tobacco smoke.

### **Well, if I give special privileges to people with disabilities, then I would definitely be violating Fair Housing laws. Wouldn't I?**

In some cases a housing provider must make exceptions to its rules, policies, practices, and services for people with disabilities when those people require the exceptions in order to have an equal opportunity to use and enjoy their housing. Such exceptions are called "reasonable accommodations", provided, of course, that they are reasonable and that the person with disabilities can obtain a note from a health provider supporting the need for the accommodation.

### **What are some examples of reasonable accommodation?**

- Allowing a service or therapy animal in an apartment complex with a "no pet" policy
- Providing an assigned parking space to a tenant even where there is a "first-come, first-served" policy for parking spaces
- Providing an opportunity for a tenant to get a behavioral disorder under control
- Agreeing to a lease rescission if the living environment makes a disability worse

### **If I need a ramp for my mobility impairment, must the landlord install one?**

Not if the landlord is a private, non-federally subsidized landlord (even if he or she is accepting a Section 8 voucher). The same goes for grab bars, widened doors, or other physical modifications required by the person with disabilities. However, the landlord must allow the tenant to make reasonable modifications at his or her own expense, provided that the work is done by a licensed contractor and there is a way to guarantee that certain modifications can be restored upon move-out.

### **Does Fair Housing apply to all rentals?**

Almost all, but not to a four-plex if the landlord resides in one of the units and not to a single family dwelling if the landlord rents out 3 or fewer such dwellings.

### **What are my rights to accessible housing?**

Apartment complexes that were built for occupancy after March 13, 1991 must have handicap accessible apartments at least on the ground floor and an accessible route through the complex. Complexes that are government owned or federally subsidized (but not those that merely accept Section 8 vouchers) must provide enough accessibility and accessible apartments so that people with disabilities are not at a disadvantage compared to those without disabilities. Other landlords are not required to provide accessibility, except in areas that are open to the general public.