



## A CIVIL RIGHTS TESTING INVESTIGATION

ABOUT ONLINE AND IN-PERSON  
HOUSING ACCESSIBILITY FOR PEOPLE  
WITH DISABILITIES



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## ABOUT THE EQUAL RIGHTS CENTER

The Equal Rights Center is a civil rights organization that identifies and seeks to eliminate unlawful and unfair discrimination in housing, employment, and public accommodations in its home community of Greater Washington, D.C. and nationwide. The ERC's core strategy for identifying unlawful and unfair discrimination is civil rights testing. When the ERC identifies discrimination, it seeks to eliminate it through the use of testing data to educate the public and business community, support policy advocacy, conduct compliance testing and training, and if necessary, take enforcement action.

The ERC may be able to assist individuals who believe they have experienced housing discrimination in Greater Washington, D.C. by:

- Conducting civil rights testing
- Submitting reasonable accommodation and modification requests
- Assisting with filing a housing discrimination complaint
- Providing referrals to other local resources

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## PROJECT STAFF

**Kate Scott**, Deputy Director

**Katherine Pearson**, Director of Accessibility Rights

**Brian McKenzie**, Training and Compliance Program Manager

**Chelsea Sullivan**, Program Assistant

**Aastha Uprety**, Program Assistant

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## EXECUTIVE SUMMARY

Washington, D.C. has been at the center of many discussions about new housing construction and neighborhood change in the past few years. When discussing new housing development, experts and advocates often rightfully talk about displacement and exclusion in the context of race and socioeconomic status. However, it is important not to overlook the experiences of people with disabilities in these discussions, especially as the barriers they face commonly intersect with poverty and racial disparities. The new construction of multifamily housing offers a key opportunity for enhancing housing accessibility in the region overall.

In order to capture the potential barriers that people with disabilities face when seeking housing both in person and online, the ERC designed a two-part testing investigation that gathered specific information about testers' experiences when visiting recently constructed multifamily housing properties and their websites in the Greater Washington, D.C. region. For this testing investigation, the ERC conducted 50 tests in total: 25 in-person tests and 25 online tests.

### In-Person Testing

The focus of in-person testing was to evaluate compliance with accessible design and construction requirements at recently constructed multifamily housing properties and to evaluate the experiences of testers posing as friends of an individual with a physical disability looking for a home.

#### **Fair Housing Act (FHA) Compliance Concerns:**

- *Design and Construction:* This testing investigation used the *Fair Housing Design Manual* as its standard for compliance in relation to design and construction requirements under the FHA. Referencing the seven design requirements, testing revealed violations at 16 of the 23 properties tested.<sup>1</sup> Issues of non-compliance were not evenly dispersed among the design requirements, and some properties had more than one violation. In total, testing uncovered 51 violations.
- *Customer Service:* In addition to the design and construction barriers identified, testing revealed behavior on the part of leasing agents that raised red flags in regard to potentially prohibited practices under the FHA, like steering. Further, 13 percent of leasing agents tested did not know whether a reasonable accommodation or modification would be approved, and 39 percent said that the request was not possible.

#### **Americans with Disabilities Act (ADA) Compliance:**

- Project staff used the 2010 *ADA Accessibility Guidelines* (ADAAG) as the reference document for evaluating the leasing offices, public restrooms, and public parking areas of the properties. Thirteen of the tested properties had ADA violations, for a total of 31 issues of non-compliance across the properties.

### Online Testing

People with disabilities face numerous obstacles in the search for accessible housing, and an inability to fully participate in modern housing search and application processes online has the potential to be one of many barriers. With the trend towards more online rental applications, it is important to understand and determine the extent to which websites of multifamily housing providers are accessible to people who use assistive technology like screen readers. Using matched pair testing, a sighted tester ("control tester") was paired with another tester who was blind ("protected tester") to compare the overall experiences and treatment of the testers on the basis of disability:

1. While advance calls indicated that appointments were not required nor preferred at two locations, the testers at two sites were turned away because the leasing agents told testers upon their arrival that they do not accept walk-ins. Since the data necessary for analysis could not be obtained for those two locations, the results are based off the data generated from the remaining 23 tests.

- Twenty of the 25 desktop versions of websites tested (80 percent) and 18 of the 25 mobile versions (72 percent) provided substantially different or undetectable information about the property to the protected tester as the control tester.
- In 21 of the 25 desktop versions of websites tested (84 percent) and 19 of 25 mobile versions (76 percent), the protected tester faced accessibility barriers when trying to determine which units were currently available, filter search results by preferred unit size, and/or learn about rent specials.
- Sixteen of the desktop and mobile websites tested had online applications. Of those, 13 (81 percent) were inaccessible to screen readers, preventing the protected tester from being able to fill out the application. Twenty-one of the websites tested had the ability for visitors to submit a comment form to connect with a rental agent. Of those, 12 (57 percent) did not allow visitors who use screen readers to make use of that feature on either the desktop or mobile versions.

When comparing the experiences of the blind tester to the sighted tester, the website tests in this investigation raise serious concerns about potential fair housing violations. While the sighted tester did not experience a single technical glitch or failure to complete all three tasks on any of the 25 websites, the blind tester experienced at least one significant barrier on each site. If their experiences were applied to an in-person visit, it would mean that:

- In 72 to 80 percent of visits, a blind person would not receive the same amount of information about the property, its amenities, and overall features as someone without a disability.
- In 76 to 84 percent of all visits, a blind person would not learn which units are currently available, any floor plan details like number of bedrooms, bathrooms, or square footage, and whether there are any leasing or rent specials.
- Finally, in 57 percent of visits, a blind person would not be able to communicate with the leasing agent about overall interest in renting an apartment, and in 81 percent of visits, blind visitors would not be able to fill out or submit an application.

In the span of less than a generation, the internet has completely transformed our world. It offers the promise of increased access and integration for people with disabilities that most of us couldn't even conceive of prior to its existence. However, as with new physical construction, if a commitment to accessibility is not at the core of a business' approach to its services, it becomes likely that these new opportunities will be squandered.

Whether developing multi-family housing or websites, design is an active choice that determines who is ultimately included or excluded from an opportunity. While the FHA and ADA have had protections in place against disability-related discrimination for more than 20 years, this investigation revealed that people with disabilities continue to experience numerous unnecessary and likely unlawful barriers when seeking housing, regardless of whether they search in person or online. As such, housing developers, property management companies, all levels of government, and the general public should act to eliminate and prevent further discrimination against people with disabilities in multifamily housing.

## BACKGROUND

Washington, D.C. has been the at the center of many discussions about new housing construction and neighborhood change in the past few years. Between 2008 and 2015, D.C. issued permits to build over 11,000 new housing units, 70 percent of which were multifamily apartment buildings or condominiums<sup>2</sup>. New housing construction has provided opportunities for many people, but it has been fraught with concerns about the exclusion of other residents. When discussing new housing development, experts and advocates often rightfully talk about displacement and exclusion in the context of race and socioeconomic status. However, it is important not to overlook the experiences of people with disabilities in these discussions, especially as the barriers they face commonly intersect with racial disparities and poverty.

Nearly 25 percent of non-institutionalized disabled Americans ages 18-64 live in poverty,<sup>3</sup> and among them, Black and Latino disabled individuals have higher poverty rates than their white counterparts.<sup>4</sup> According to 2017 data from the Bureau of Labor Statistics, fewer than 20 percent of disabled individuals were employed.<sup>5</sup> Of those who are employed, people with disabilities are more likely to work part-time than people without disabilities.<sup>6</sup> Due to discrimination, lack of opportunities for education, inability to work, or other reasons, many people with disabilities rely on government income supports such as Supplemental Security Income (SSI) to get by.<sup>7</sup> In fact, there are over 4 million disabled individuals living only on SSI.<sup>8</sup> However, according to a 2016 study, in 19 states and D.C., average one-bedroom rents were higher than monthly SSI benefit amounts.<sup>9</sup> In 2016, SSI payments for D.C. area residents amounted to \$733 a month, meaning that individuals receiving SSI benefits would have to pay 196 percent of their monthly income to rent an average studio apartment and 206 percent of their monthly income to rent a one-bedroom unit.<sup>10</sup>

This housing affordability crisis for people with disabilities as it intersects with both race and income level is reflected in the District's homeless population. According to the 2018 Point-in-Time count, there were 6,904 individuals experiencing homeless in the city.<sup>11</sup> Of these individuals, 4,971 were adults (either single or with families), 14.4 percent of whom had a physical disability. Out of single adults, 18 percent had a physical disability. Additionally, Black residents are disproportionately impacted by homelessness in D.C.—according to the count, over 88 percent of homeless individuals were African American, despite making up just under 48 percent of Washington, D.C.'s population.

Escalating housing prices are not the only challenges that people with disabilities face in the D.C. region. Community development and neighborhood revitalization can also exclude them by creating inaccessible buildings, landscapes, transit systems, and housing. Indeed, Americans with disabilities, specifically those with physical or mobility disabilities, face a housing crisis due not only to rising costs, but also to the physical inaccessibility of new housing developments, poor housing quality, and inconvenient location.<sup>12</sup>

2 Schuetz, Jenny. "In whose backyards has D.C. built new housing?" Brookings Institution, May 14, 2018. <https://www.brookings.edu/blog/the-avenue/2018/05/10/in-whose-backyards-has-d-c-built-new-housing/>

3 Fontenot, Kayla et. al. "Income and Poverty in the United States: 2017," Current Population Reports, U.S. Census Bureau, September 2018. <https://www.census.gov/content/dam/Census/library/publications/2018/demo/p60-263.pdf>

4 Bruenig, Matt. "Over 1 in 5 Disabled Americans Are In Poverty," Demos, Jan. 31, 2014. <https://www.demos.org/blog/1/31/14/over-1-5-disabled-americans-are-poverty>

5 Bureau of Labor Statistics. "Persons with a Disability: Labor Force Characteristics – 2017," June 21, 2018. <https://www.bls.gov/news.release/pdf/disabl.pdf>

6 Ibid.

7 Access Living. "The State of Housing for People with Disabilities," Oct. 3, 2008. <https://www.accessliving.org/fair-housing-old>

8 Schaak, Gina et. al. "Priced Out: The Housing Crisis for People With Disabilities," Technical Assistance Collaborative, Inc. and Consortium for Citizens with Disabilities, December 2017. <http://www.tacinc.org/media/59493/priced-out-in-2016.pdf>

9 Ibid.

10 Ibid.

11 "2018 Point-in-Time Count of Persons Experiencing Homelessness in the District of Columbia," The Community Partnership for the Prevention of Homelessness, 2018. [https://dhs.dc.gov/sites/default/files/dc/sites/dhs/page\\_content/attachments/Fact%2BSheet%2B2018.pdf](https://dhs.dc.gov/sites/default/files/dc/sites/dhs/page_content/attachments/Fact%2BSheet%2B2018.pdf)

12 National Council on Disability. "The State of Housing in America in the 21st Century: A Disability Perspective," Jan. 19, 2010. <http://voorheescenter.red.uic.edu/wp-content/uploads/sites/122/2017/10/2010-the-state-of-housing-in-america-in-the-21st-century-a-disability-perspective.pdf>

Structural inaccessibility is a major barrier to adequate housing for people with disabilities. Simple modifications, such as the installation of grab bars, widened doorways and hallways, accessible bathrooms, ramps with handrails, and elevators make daily life for a person with a physical disability far easier. Nationally, these are some of the most common unmet housing-related needs for people with disabilities.<sup>13</sup> A rapidly changing Washington, D.C. must adopt and act on a multi-faceted commitment to accessibility when it comes to new construction.

This investigation seeks to use data from civil rights testing investigations to provide information about the experiences of people with disabilities finding housing that meets their needs in “the new” Washington, D.C. Civil rights testing is an investigative tool used to gather evidence, usually in order to compare conduct or design and construction to legal requirements or a policy. It involves one or more people covertly engaging in an interaction or surveying a physical space. Testing has a long history in civil rights related work and is supported by decades of fair housing-related case law.

By reporting on data collected through civil rights testing, the ERC seeks to expand the conversation surrounding neighborhood change to better include the needs of people with disabilities and uncover whether new construction of multifamily housing is in line with accessibility requirements and other general nondiscrimination protections, regardless of whether the potential renter is seeking housing online or in person. In particular, new housing construction in the D.C. area presents a significant opportunity to increase the quality of life for people with disabilities because the housing stock is generally old and constructed pre-Fair Housing Amendments Act (FHAA) and Americans with Disabilities Act (ADA) accessibility standards. Out of the 314,843 housing units in the D.C. area, 257,308 units—over 80 percent—were built prior to 1990.<sup>14</sup> Thus, the new construction of multifamily housing offers a key opportunity for enhancing housing accessibility in the region overall.

## The Fight for Accessible Housing

This investigation is far from the first endeavor the Equal Rights Center (ERC) has undertaken when it comes to the issue of housing accessibility. Throughout the 2000s, the ERC conducted testing investigations of multifamily housing in the D.C. area, testing for accessibility standards and taking action when necessary. As a result of these efforts, the ERC uncovered major accessibility violations at multiple apartment complexes and pursued enforcement actions that resulted in large apartment complexes becoming more accessible for people with disabilities. For example, an ERC testing investigation revealed that Archstone-Smith, one of the largest developers of apartment complexes in the country, failed to comply with the Fair Housing Act (FHA) and ADA. Along with the American Association of People with Disabilities and the United Spinal Association, the ERC successfully negotiated an agreement that required Archstone-Smith to survey 71 apartment complexes in 16 states and retrofit all barriers to ensure the full use and enjoyment of the facilities by people with disabilities.<sup>15</sup>

The ERC also conducted a major testing investigation of apartment complexes owned by Post Properties, which merged with Mid-America Apartments (MAA) in 2016. The U.S. Department of Justice (DOJ) used facts from the ERC’s investigation to establish a case against Post Properties in 2010. In November 2018, the DOJ and MAA finally resolved the case when MAA agreed to retrofit over 30 of its properties formerly

<sup>13</sup> Ibid.

<sup>14</sup> U.S. Census Bureau, 2017 American Community Survey 1-Year Estimates, Table DP04, generated January 2019. [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_17\\_1YR\\_DP04&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_DP04&prodType=table)

<sup>15</sup> “Historic Settlement in Nationwide Disability Discrimination Lawsuit Against Developer Archstone-Smith Trust,” Equal Rights Center and Washington Lawyer’s Committee for Civil Rights and Urban Affairs, June 8, 2005. [https://equalrightscenter.org/pr-archives/2005/05-06.08.05\\_Historic\\_Settlement\\_in\\_Nationwide\\_Disability.pdf](https://equalrightscenter.org/pr-archives/2005/05-06.08.05_Historic_Settlement_in_Nationwide_Disability.pdf)



owned by Post to comply with accessibility standards as required by the FHA and ADA.<sup>16</sup> According to the settlement, retrofitting the inaccessible properties will cost nearly \$9 million. Under the terms of the settlement agreement, MAA is also required to pay \$175,000 to compensate victims.

Finally, in 2008, the ERC established the Multifamily Housing Resource Program (MHRP), a membership program for housing industry leaders dedicated to helping developers comply with accessibility requirements and increasing the number of accessible apartments throughout the country.<sup>17</sup> Long-term partnerships through MHRP have allowed the ERC to share its expertise about accessible housing with housing providers so that they may develop the technical knowledge necessary to build accessible housing and avoid future errors. MHRP now has 19 members representing more than 600,000 apartments and condominiums across the United States. Since the program's inception, the ERC has helped MHRP members make over 60,000 housing units more accessible for people with disabilities.<sup>18</sup>

## Trends in Accessible Design and Construction

While accessibility has become more present in discussions about housing since the passage of the ADA and the implementation of the FHAA design and construction requirements in the 1990s, the country's housing stock still has a very long way to go when it comes to accessibility. In their 2018 Fair Housing Trends Report, the National Fair Housing Alliance (NFHA) points out that nearly 73 percent of housing stock in the United States today was built before 1990, prior to the implementation of the design and construction standards under the FHAA.<sup>19</sup> Because of that, the majority of this housing is inaccessible to people with disabilities. Indeed, only 1 percent of housing was wheelchair accessible as of 2011.<sup>20</sup>

Most trends in accessible design and construction over the past decade have focused on the older population and aging in place: the idea that an individual should be able to meet all their needs in the residence of their choice for as long as possible.<sup>21</sup> Elderly individuals often have many of the same housing needs as people with disabilities, and many people become disabled as they grow older. A 2016 Harvard study listed zero-step entrances, single-floor living, wide halls and doorways, electrical controls reachable from a wheelchair, and lever-style handles on faucets and doors as design features that could improve living situations for elderly individuals and those who use wheelchairs. However, only 1 percent of housing has all five of these features.<sup>22</sup> Even basic features necessary for wheelchair accessibility—wide hallways and doors, bedroom and bathroom on the entry level, and zero-step entrances—are only present in 3 percent of rental units.<sup>23</sup>

Universal design is the idea that all buildings and public places should be constructed in a manner that is fully accessible to people regardless of disability, age, and size, and that designing buildings in such a way makes them more attractive and accessible to everybody.<sup>24</sup> The trend is increasingly popular as an idea among designers but far from a common reality. In addition, most discussions about accessible housing revolve around wheelchair access, although there are countless unmet needs for people with vision and

16 Lane, Ben. "MAA must pay \$8.7 million to fix Post apartments that are not accessible to persons with disabilities," HousingWire, Nov. 21, 2018. <https://www.housingwire.com/articles/47470-maa-must-pay-87-million-to-fix-post-apartments-that-are-not-accessible-to-persons-with-disabilities>

17 "MHRP", Equal Rights Center. <https://equalrightscenter.org/mhrp/>

18 "Civil Rights Compliance is Smart Business," Equal Rights Center, 2012. [https://equalrightscenter.org/wp-content/uploads/cpt-brochure\\_final.pdf](https://equalrightscenter.org/wp-content/uploads/cpt-brochure_final.pdf)

19 Abedin, Shanti et. al. "Making Every Neighborhood a Place of Opportunity: 2018 Fair Housing Trends Report" National Fair Housing Alliance, April 2018. <https://nationalfairhousing.org/2018/04/30/new-report-analyzes-50-years-of-the-fair-housing-act-and-calls-for-stronger-enforcement-of-fair-housing-laws/>

20 Sisson, Patrick. "Senior housing: How a surging older population will impact U.S. homes," Curbed, Dec. 14, 2016. <https://www.curbed.com/2016/12/14/13961624/senior-housing-retirement-home-ownership-harvard>

21 "What is Aging in Place?" AgeInPlace.com, 2019. <https://ageinplace.com/aging-in-place-basics/what-is-aging-in-place/>

22 Joint Center for Housing Studies of Harvard University, "Projections & Implications for Housing a Growing Population: Older Households 2015-2035," Harvard University, December 2016. [http://www.jchs.harvard.edu/sites/default/files/harvard\\_jchs\\_housing\\_growing\\_population\\_2016.pdf](http://www.jchs.harvard.edu/sites/default/files/harvard_jchs_housing_growing_population_2016.pdf)

23 Joint Center for Housing Studies of Harvard University, et. al. "America's Rental Housing 2017," Harvard University, December 2017. [http://www.jchs.harvard.edu/sites/default/files/harvard\\_jchs\\_americas\\_rental\\_housing\\_2017\\_0.pdf](http://www.jchs.harvard.edu/sites/default/files/harvard_jchs_americas_rental_housing_2017_0.pdf)

24 Centre for Excellence in Universal Design. "What is Universal Design," National Disability Authority, 2014. <http://universaldesign.ie/What-is-Universal-Design/>



hearing disabilities as well. For example, Deaf people or those who are hard of hearing could benefit from visual fire alarms; blind individuals or those with low vision could benefit from bright lighting, contrasting colors, and Braille signage.<sup>25</sup> Universal design could take many of these cross-disability issues into account. For example, the wide, open spaces that universal design principles suggest could allow wheelchair users to move freely, and Deaf residents to more easily see and sign to one another.

Federal enforcement and nonprofit advocacy have helped increase accessible housing for people with disabilities in the past several decades. However, there is still work left to be done. In 2017, disability-related discrimination complaints made up 57 percent of all complaints to private fair housing organizations and government agencies (including the U.S. Department of Housing and Urban Development (HUD), DOJ, and state and local Fair Housing Assistance Programs).<sup>26</sup> Similarly, 42 percent of fair housing complaints reported to the ERC were related to disability. The most commonly expressed issues concerned reasonable accommodations or modifications (50 percent), accessible design and construction (18 percent), and intimidation or coercion (14 percent).

## Website Accessibility: The Latest Challenge in Accessible Housing

The newest challenge in accessible housing exists in an unexpected place—the internet. Website accessibility, or the purposeful design of webpages to be accessible for and usable by people with disabilities, has been on the disability rights agenda for years and is an emerging issue in fair housing. The ERC regularly hears from housing providers about the obsolescence of physical leasing offices and the growing importance of online housing advertisements and rental applications. Indeed, a 2016 survey from TransUnion found that 56 percent of rental property managers saw an increase in online housing applications in the previous year.<sup>27</sup> But when housing websites are not accessible to people with disabilities, they effectively exist as another barrier to fair housing.

When a website is inaccessible, blind individuals, those with limited mobility, people who experience seizures, and others may be unable to fully access the website.<sup>28</sup> Inaccessible websites might include elements that screen readers cannot properly interpret, feature GIFs and flashing lights or colors, or make it difficult for users to navigate using just the keyboard.

Section 508 of the Rehabilitation Act requires federal agency websites to be accessible, and in January 2017, the United States Access Board published regulations that define accessibility for such websites in terms of compliance with Website Content Accessibility Guidelines 2.0 (WCAG 2.0).<sup>29</sup> Meanwhile, the ADA requires effective communication on the part of entities that communicate with the public, such as housing providers. However, the federal government has not published website accessibility standards for ADA compliance. In fact, in December 2017, the DOJ revoked draft rules on the topic after having worked for years to promulgate them.<sup>30</sup>

<sup>25</sup> Khazan, Olga. “Architects design with sight-, hearing-impaired in mind,” *Washington Post*, Oct. 26, 2012.

[https://www.washingtonpost.com/realestate/architects-design-with-sight-hearing-impaired-in-mind/2012/10/25/9af2364c-0da4-11e2-a310-2363842b7057\\_story.html](https://www.washingtonpost.com/realestate/architects-design-with-sight-hearing-impaired-in-mind/2012/10/25/9af2364c-0da4-11e2-a310-2363842b7057_story.html)

<sup>26</sup> “Making Every Neighborhood a Place of Opportunity” National Fair Housing Alliance.

[https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report\\_4-30-18.pdf](https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report_4-30-18.pdf)

<sup>27</sup> “As Online Applications Increase, TransUnion Finds Nearly 70% of Property Managers Concerned About Identity Theft and Online Fraud,” *TransUnion*, June 16, 2016. <https://newsroom.transunion.com/as-online-applications-increase-transunion-finds-nearly-70-of-property-managers-concerned-about-identity-theft-and-online-fraud/>

<sup>28</sup> Quito, Anne. “There’s already a blueprint for a more accessible internet. If only designers would learn it,” *Quartz*, Nov. 15, 2018. <https://qz.com/1407450/theres-already-a-blueprint-for-a-more-accessible-internet/>

<sup>29</sup> “About the Update of the Section 508 Standards and Section 255 Guidelines for Information and Communication Technology,” United States Access Board, January 2017. <https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/overview-of-the-final-rule>

<sup>30</sup> Seyfarth Shaw LLP, “DOJ Nixes All Pending ADA Rulemakings, Including Website Access Rules,” *ADA Title III*, Dec. 22, 2017. <https://www.adatitleiii.com/2017/12/doj-nixes-all-pending-ada-rulemakings-including-website-access-rules/>

Along with other businesses and entities that host websites, housing providers often lack the technical expertise and guidance necessary to make housing websites accessible. In the absence of further federal guidance on the matter, housing providers could look to standards like WCAG 2.0, an internationally recognized standard of accessibility. However, the DOJ has “consistently taken the position that the absence of a specific regulation does not serve as a basis for noncompliance with a statute’s requirements. Absent the adoption of specific technical requirements for websites through rulemaking, public accommodations have flexibility in how to comply with the ADA’s general requirements of nondiscrimination and effective communication.”<sup>31</sup>

People with disabilities face numerous obstacles in the search for accessible housing, and an inability to fully participate in modern housing search and application processes online has the potential to be one of many barriers. The underlying civil rights testing investigation detailed in this report sought to document what, if any, online barriers exist when seeking housing in Greater Washington, D.C.

## STATE OF THE LAW

Disability rights advocates have spent decades challenging stereotypes and biases against their community, rallying for legal change, and lobbying for self-determination. One outcome of this struggle has been key legislation passed by Congress to protect the rights of people with disabilities: the FHA and the ADA.

### The Fair Housing Act

Congress passed the FHA in 1968, seven days after the assassination of Dr. Martin Luther King Jr. Initially, the FHA made it illegal to discriminate in a broad swath of housing-related transactions based on race, color, national origin, and religion. Sex was added as a protected class under the law in 1974, and the Fair Housing Amendments Act of 1988 (FHAA) added protections on the basis of familial status and disability.

Illegal discrimination under the FHA may be outright and obvious, but most times it is subtle and difficult to detect. It is illegal for a housing provider to offer discriminatory terms and conditions, advertise using discriminatory language, refuse to sell or rent to someone because of their membership in a protected class, or misrepresent availability based on membership in a protected class. A person should never face harassment, intimidation, coercion, or retaliation from a housing provider due to their membership in a protected class. Steering people to a neighborhood, unit, or area of an apartment complex based on their membership in a protected class is also prohibited under the FHA.

People with disabilities should not receive differential treatment during any point of the home seeking process. Discriminatory practices against people with disabilities may include providing misleading information about what units are available, charging different rental rates, deposits, or other fees, and only touring certain units or areas of a building. For example, a rental agent may attempt to steer people with disabilities to what they consider to be an accessible unit. However, leasing agents should not assume that a resident will automatically prefer an accessible unit over other available units because of the presence of a disability. Housing agents also should not discourage people due to their disabilities at any step of the application process. For example, not returning telephone calls or following up with initial contact once the agent learns that a potential tenant has a disability, or discouraging an individual with a disability from completing an application would likely be considered illegal under the FHA. In short, people with disabilities should have the same opportunities to use and enjoy their homes as people without disabilities.

<sup>31</sup> Letter from the U.S. Department of Justice, received by Representative Ted Budd, Sept. 25, 2018. <https://www.lflegal.com/2018/09/doj-cut/#Full-text-of-September-25-2018-Letter-From-the-US-Department-of-Justice>

Further, under the FHAA, properties that were ready for occupancy on or after March 13, 1991, are required to incorporate accessible design and construction features. These requirements apply to any covered multifamily residential building with four or more units. Specifically, the *Fair Housing Design Manual* outlines seven design and construction requirements for multifamily residential buildings:

- 1 Accessible entrance on an accessible route;
- 2 Accessible and usable public and common use areas;
- 3 Usable doors;
- 4 Accessible routes into and through covered units;
- 5 Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
- 6 Reinforced walls in bathrooms for later installation of grab bars; and
- 7 Usable kitchens and bathrooms.

Each requirement details and defines accessibility according to specific measurements. As an alternative to the *Design Manual*, HUD also recognizes nine additional safe harbors to account for accessibility under the FHAA. These safe harbors are recognized as equivalent compliance standards with the FHAA's design and construction requirements and can be used in lieu of the *Fair Housing Design Manual*.

Due to the diverse needs of people with disabilities, additional changes in a home may need to be made. At any point, a person with a disability has the right to request a reasonable modification or accommodation. A modification is generally a structural change to a unit, common area, and/or public area that helps improve the functionality of a space for someone who has a disability. Similarly, an accommodation is a change in rule, policy, practice, or service that will make it possible for a person with a disability to equally enjoy and use their home. The FHA requires housing providers to consider and grant modification and accommodation requests if deemed reasonable. FHA guidance states that either type of request is reasonable as long as there is an identifiable relationship between the request and the individual's disability, and it does not impose an undue financial or administrative burden on the housing provider. This process is meant to be interactive between the housing provider and the person with a disability in order to satisfy both parties and ensure their needs are properly met.

## The Americans with Disabilities Act

After years of work by disability rights advocates, President George H.W. Bush signed the ADA in 1990. The purpose of the ADA is to prohibit discrimination and ensure equal opportunity for persons with disabilities in employment, state and local government services, public accommodations, commercial facilities, and transportation. The ADA relates to housing in that it established accessibility requirements for public areas in multifamily residential housing, since Title III of the ADA applies to public accommodations. In the context of multifamily residential housing, the leasing office, public restrooms, and public parking are subject to ADA regulations. The *ADA Accessibility Guidelines* (ADAAG) create clear requirements through specific measurements and dimensions to define what “accessible” means in relation to a physical space. Unlike the *Fair Housing Design Manual* and various safe harbors under the FHA, ADAAG is the only standard used to assess accessibility under the ADA, but there are two versions based on the public accommodation’s construction date. The 1991 ADAAG is the reference standard from its passage on July 26, 1991 until March 14, 2012. The updated 2010 ADAAG applies to any new construction built on or after March 15, 2012 through today.

Additionally, businesses and organizations that serve the public must also provide information in accessible formats due to ADA Title III’s requirement that businesses and nonprofit organizations communicate effectively with people who have vision, hearing, speech, or other disabilities affecting communication or accessing or processing information. Effective communication requirements ensure that people with disabilities can receive and convey information accurately compared to individuals without disabilities. With increasing frequency, disability rights advocates have been filing ADA claims against public accommodations over inaccessible websites, arguing that a business’s or organization’s online presence should comply with the same effective communication obligations.<sup>32</sup> Using this line of argument, housing providers have a duty to ensure that their websites and materials are accessible and can be understood by people who rely on alternative forms of communication, like screen readers.

Unfortunately, even though the ADA was written to provide broad protections both currently and as new technologies, services, and other changes emerge, there have never been regulations promulgated under the law to define accessibility for websites, and what compliance might require. In fact, in December 2017, after having worked for seven years on such guidance, the DOJ announced the withdrawal of four previously announced Advance Notices of Proposed Rulemaking (ANPRMs) on the topic. Regardless, the requirement for effective communication applies and there are resources and existing related standards available to assist entities with ensuring compliance. For example, in January 2017, the United States Access Board issued a final rule requiring that all federal agency websites governed by Section 508 of the Rehabilitation Act must be compliant with standards set forth in WCAG 2.0. Moreover, WCAG 2.0 is also accepted internationally as a standard for electronic accessibility.

<sup>32</sup> Vu, Minh N. et. al. “Number of ADA Title III Lawsuits Filed in 2018 Tops 10,000,” Seyfarth Shaw LLP, ADA Title III, Jan. 22, 2019. [https://www.adatitleiii.com/2019/01/number-of-ada-title-iii-lawsuits-filed-in-2018-tops-10000/?fbclid=IwAR2QIkjBDn2Axbv3i8YDrng\\_GIM41Z5kmPI6RC94\\_7-fZLbx3-hROK2CWM0](https://www.adatitleiii.com/2019/01/number-of-ada-title-iii-lawsuits-filed-in-2018-tops-10000/?fbclid=IwAR2QIkjBDn2Axbv3i8YDrng_GIM41Z5kmPI6RC94_7-fZLbx3-hROK2CWM0)

## METHODOLOGY

In order to capture the potential barriers that people with disabilities face when seeking housing both in person and online, the ERC designed a two-part testing investigation that gathered specific information about testers' experiences when visiting recently constructed multifamily housing properties and their websites in the Greater Washington, D.C. region.

As an initial investigatory step, the project team researched multifamily housing properties that received their certificates of occupancy after 2011, 20 years after the design and construction requirements of both the ADA and FHA went into effect and approximately 10 years after the ERC last conducted a large-scale systemic investigation into housing accessibility in the region. To identify potential properties that met the prerequisite requirements, ERC staff obtained data from several online sources. Staff limited properties to the Greater Washington area, including the District of Columbia, Montgomery and Prince George's counties in Maryland, and Loudoun, Prince William, and Fairfax counties in Virginia. Through this effort, project staff identified 156 buildings that were built between 2011 and 2018.

After compiling an initial list, staff identified the developer, property management company, website host, and online content management system for each property. This additional research allowed the test coordinator to select test sites that were not only geographically dispersed throughout the region, but also had a variety of owners and online platforms.

For this testing investigation, the ERC conducted 50 tests in total: 25 in-person tests and 25 online tests. Prior to conducting any tests, each tester completed classroom and field training. Specific methodologies for each test type are outlined below.

### Part One: In-Person Testing

The focus of in-person testing was to evaluate compliance with accessible design and construction requirements at recently constructed multifamily housing properties and to evaluate the experiences of testers posing as friends of an individual with a physical disability looking for a home. During each test, two testers visited each site together. One tester was able-bodied and the other tester used a wheelchair or scooter. Both testers acted as proxies for a third person who was not present. The testers explained that their absent friend used a wheelchair or scooter, was relocating to the area, and needed to find a unit that was accessible to their needs. Advanced calls provided test coordinators with sufficient information to create tester profiles that were appropriate for each location, such as rent ranges, units currently available, and whether appointments were necessary. If asked, the testers responded that the third person had the necessary income and household composition to qualify for the unit.

Throughout the course of the test, each tester was assigned to fill specific roles like taking photos or measurements that the test coordinator needed to assess compliance with accessible design and construction requirements. The testing was designed to capture information about the most common accessibility concerns and not as an exhaustive checklist to evaluate a property's compliance with every single requirement. Testers also reported on their general experiences with customer service,<sup>33</sup> and how leasing agents responded to reasonable accommodation and reasonable modification requests.

After each test, testers debriefed with an ERC test coordinator and submitted written test reports and photos. Project staff used this data to conduct a thorough analysis of each test.

<sup>33</sup> Since the in-person tests were not designed to be matched pair tests, the information gathered as well as any conclusions made from the data on customer service are limited.

## Part Two: Online Testing

With the trend towards more online rental applications, it is important to understand and determine the extent to which websites of multifamily housing providers are accessible to people who use assistive technology like screen readers. Using matched pair testing, a sighted tester (“control tester”) was paired with another tester who was blind (“protected tester”) to compare the overall experiences and treatment of the testers on the basis of disability. The two testers were assigned profiles that matched according to every variable other than the basis of the test, which for this investigation was that the protected tester used screen readers to navigate websites, while the control tester did not.

### WHAT IS A SCREEN READER?

*A screen reader is a software program that converts text on a computer screen to audible speech or braille display for people who are blind or visually impaired. It can also be used by people with other disabilities like learning disabilities. If a website is not designed accessibly, then the screen reader cannot accurately read and convey information to the user. The screen readers used in this investigation were JAWS and VoiceOver.*

Though the tested websites did not match identically to the in-person test sites, there was overlap and all websites were selected from the initial list of 156 buildings discussed above. As it was important to have diversity among developers and property management companies, site selection additionally prioritized evaluating a variety of content management systems like WordPress, Amazon, and others.

Once assigned a website to test, testers were instructed to complete three discrete tasks:

1. Gather information that a prospective resident would be interested in learning about a property. While each website was different, common features tested included, but were not limited to, amenities, photos, floor plans, neighborhood or location information, social media accounts, and office hours.
2. Determine the current unit availability at the property and details about the rent or any rent specials.
3. Attempt to fill out a contact form or schedule a tour, but only submit if the contact form included the option for the protected tester to disclose their disability through a private message. Without being able to do so, there would be no basis to compare treatment from the management company. Finally, if there was an option to apply online, fill out the application, but do not submit it.

Both testers attempted these tasks simultaneously on both the mobile and desktop versions of the websites for each test. However, if the protected tester experienced difficulties, they would stop and ask for assistance from the control tester. If the problem was able to be resolved with help, the test continued. If it could not, then the test ended.<sup>34</sup> Once the test was completed, the testers debriefed with their test coordinator and submitted a narrative that detailed what happened, including screenshots from the desktop and mobile versions of the website. ERC staff analyzed the information provided by testers on the basis of the ADA’s effective communication requirements as well as the FHA’s protections against differential treatment on the basis of disability.

<sup>34</sup> This might happen if the screen reader was unable to find the navigation menu that would allow a tester to visit subpages dedicated to information about the property not available on the landing page.

## RESULTS

ERC test coordinators conducted in-depth analysis of each test in accordance with the testing methodology.



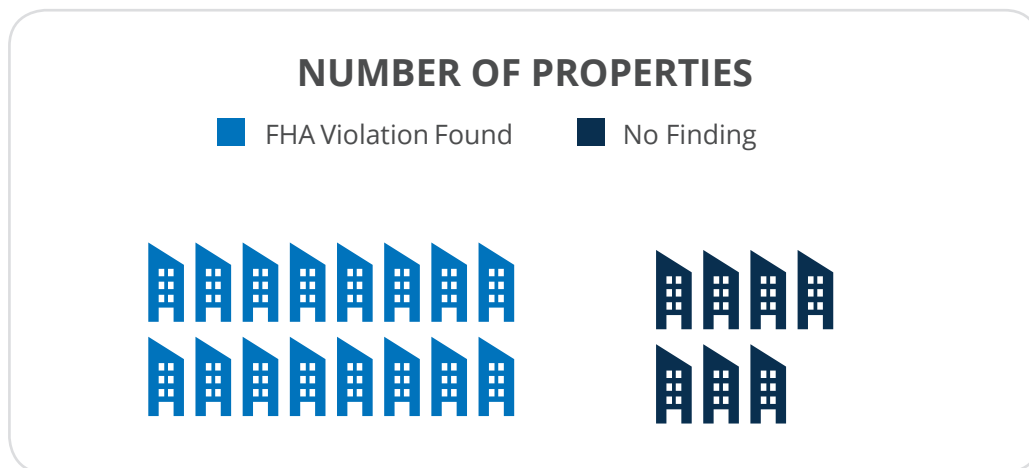
### Results, In-Person Tests

Testing data collected from photos, measurements, and narratives were analyzed three ways:

1. To determine the extent to which a property complied with the design and construction standards of the ADA and FHA;
2. To uncover and detail the presence of prohibited behaviors identified as leading to potential discrimination under the FHA; and
3. To ascertain whether the leasing agent answered the request for a reasonable accommodation or modifications appropriately according to fair housing guidance and best practices.

### ***Design & Construction Standards – FHA***

This testing investigation used the *Fair Housing Design Manual* as its standard for compliance.<sup>35</sup>



Referencing the seven design requirements, testing revealed violations at 16 of the 23 properties tested.<sup>36</sup> Issues of non-compliance were not evenly dispersed among the design requirements, and some properties had more than one violation. In total, testing uncovered 51 violations.

<sup>35</sup> HUD recognizes 10 safe harbors that, when followed, comply with the accessible design and construction requirements under the FHA. Choosing a different safe harbor could result in different results.

<sup>36</sup> While advance calls indicated that appointments were not required nor preferred at 2 locations, the testers at two sites were turned away because the leasing agents told testers upon their arrival that they do not accept walk-ins. Since the data necessary for analysis could not be obtained for those 2 locations, the results are based off the data generated from the remaining 23 tests.



FHA Design & Construction Requirement	Number of Violations
Req 1: Accessible entrance on an accessible route	4
Req 2: Accessible and usable public and common use areas	25
Req 3: Usable doors	1
Req 4: Accessible routes into and through covered units	1
Req 5: Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations	0
Req 6: Reinforced walls in bathrooms for later installation of grab bars	1
Req 7: Usable kitchens and bathrooms	19
<b>Total:</b>	<b>51</b>

### Requirement 1: Accessible entrance on an accessible route

Testing revealed four issues of non-compliance, but they were barriers added after construction. Examples included entrance doors that were too heavy to independently open and obstructions placed along the accessible route, like oversized standing marketing signs and post office boxes.

### Requirement 2: Accessible and usable public and common use areas

There were 25 issues of non-compliance as they relate to the shared use areas of the properties, most commonly referred to as “amenities” for residents and their guests. Examples of these violations included elevated and inaccessible platforms on rooftops, only high-top seating options in lounges, lack of accessible portions of concierge desks, lack of access to each type of gym equipment, and no shower curtains provided for the accessible showers even when they were supplied for the others.

### Requirement 3: Usable doors

There was one in-unit door that was not usable. It was a bathroom door that measured narrower than the required nominal 32 inches of clear width.

### Requirement 4: Accessible routes into and through covered units

There was one test that revealed an inaccessible route through a covered unit. In that test, the patio featured a threshold that was taller than the maximum allowable height.

### Requirement 5: Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations

No tests revealed that any of the in-unit electrical outlets, light switches, and/or thermostats were out of reach range.<sup>37</sup>

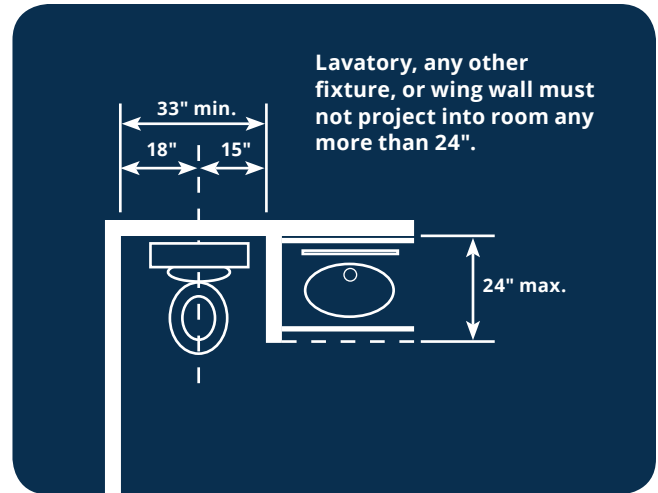
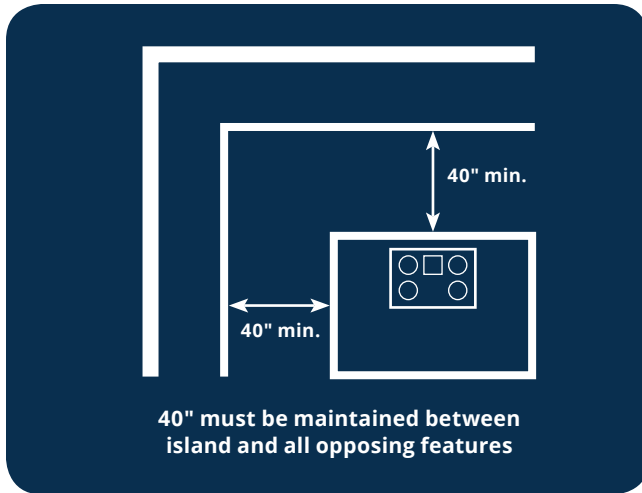
### Requirement 6: Reinforced walls in bathrooms for later installation of grab bars

When testers asked whether the walls in bathrooms were reinforced for grab bars to be installed upon request, one agent responded that they did not know. All other agents responded that grab bars could be added, though this could not be independently verified.

<sup>37</sup> Testing did not address placement or location of outlets, light switches, and environmental controls.

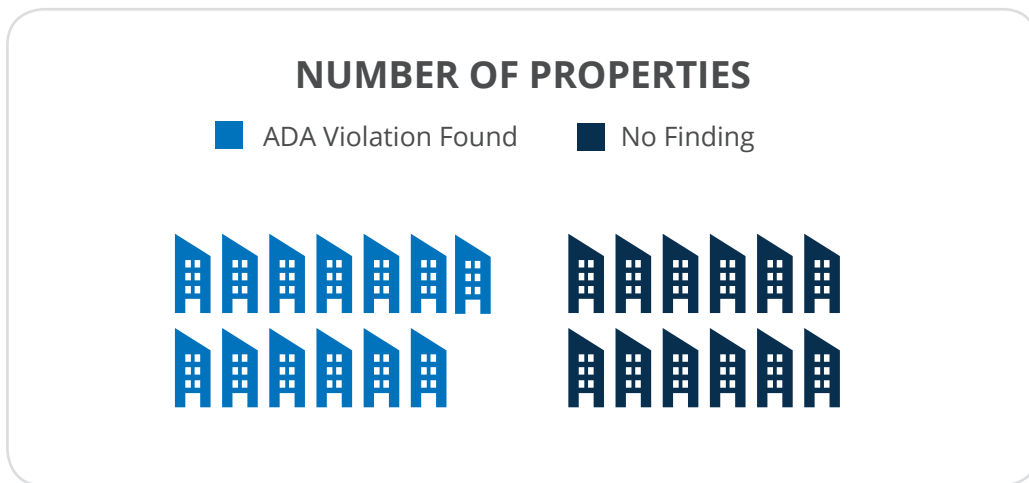
### Requirement 7: Usable kitchens and bathrooms

There were 19 issues of non-compliance with the kitchen and bathroom designs in the units that testers visited. Four types of violations appeared repeatedly: insufficient clearance around kitchen islands, insufficient clear floor space at toilet, insufficient clear floor space outside swing of door, and lack of sufficient, centered approach for appliances.



### Design & Construction Standards – ADA

Project staff used the 2010 ADAAG as the reference document for evaluating the leasing offices, public restrooms, and public parking areas of the properties. Thirteen of the tested properties had ADA violations.



## Parking Areas

Nine of the testing locations offered public parking, and testing identified five ADA violations: two properties had support beams or other obstructions in the access aisle, one parking spot had no access aisle, one parking spot had no accessible parking signs, and one parking spot had faded, nearly invisible access aisle markings.

## Public Bathrooms

Testing revealed 25 violations in the ADA-covered public bathrooms. The most common issues of non-compliance related to the presence of barriers within the required clear floor space (storage cabinets, oversized freestanding trash cans, etc.), bathroom signage not having the International Symbol of Accessibility, the lack of skin protection under sinks, and tall sink bowls being mounted above countertops, making them too high for someone from a seated position to use.

## Leasing Offices

One property had a violation related to their office. The accessible entrance to the leasing office was not along the main path, and there was no sign explaining where the accessible entrance was located.

## *Other Fair Housing Concerns*

### Customer Service

In addition to the design and construction barriers identified, testing revealed behavior on the part of leasing agents that raised red flags in regard to potentially prohibited practices under the FHA.

In five of the 23 tests (22 percent), once a tester revealed that they were looking for an apartment for a third party who also used a wheelchair or scooter, the leasing agent only showed them what they regularly called their “ADA units,” an inaccurate colloquial term that when used, identifies units that have already been modified for increased accessibility. The significance of this behavior is difficult to fully comprehend in the absence of a comparative experience from an able-bodied tester. However, it raises concerns about the practice of steering.

In one test, testers were shown the gym through a glass window. The leasing agent identified the space as the community gym, and commented, “not sure your friend would use this.” On another test, when the tester asked to use the public bathroom, the agent responded that they only had “regular” bathrooms.

Other potentially problematic behaviors include hugging the protected tester, but not the control tester, and handing information to the control tester, not the protected tester who had requested it. Without more information, it is difficult to determine whether these behaviors were the reaction to an obvious disability or due to other unrelated factors.

### Reasonable Accommodations/Reasonable Modifications

Reasonable accommodations and modifications are a critical right for people with disabilities that afford them the opportunity to adapt a housing environment to meet their specific needs. During each test, testers were instructed to inquire about:

1. The ability to install grab bars in the unit bathrooms (Requirement 6), and
2. A separate request that would reveal that the potential renter would need a reasonable accommodation or modification in order to live at the property.

When presented with such inquiries, 22 of 23 leasing agents responded that grab bars could be installed. But when asked about other potential modifications or accommodations, three leasing agents responded that they were unsure and nine stated that it was not allowed. One leasing agent who initially rejected the reasonable modification request later followed up by email to let the tester know that they spoke with their manager and was told that their request for a reasonable modification would be approved.



## Results, Online Tests

Project staff analyzed testing data according to the testers' ability to complete each of three tasks on both the mobile and desktop versions of the website:

1. Gather information that a prospective resident would be interested in learning about a property. While each website is different, common features tested included, but were not limited to, amenities, photos, floor plans, neighborhood or location information, social media accounts, and office hours.
2. Determine the current unit availability at the property, and details about the rent or any rent specials.
3. Attempt to fill out a contact form or schedule a tour, but only submit if the protected tester was able to disclose their disability. Without being able to do so, there would be no basis to compare treatment from the management company since both testers would appear the same. Finally, if there was an option to apply online, fill out the application, but do not submit it.

### Task 1: Obtain Property Information

Twenty of the 25 desktop versions of websites tested (80 percent) and 18 of the 25 mobile versions (72 percent) provided substantially different or undetectable information about the property to the protected tester as the control tester. The most common problems were related to externally hosted information that screen readers couldn't perceive (walk scores, neighborhood maps, etc.), images without descriptions, inaccessible virtual tours, and undiscoverable or unavailable links that connect visitors to different subpages that provide information about amenities, apartment features, pet policies, floor plans, online applications, and specials. Testers identified that pop-ups and inaccessible links and labels were the main causes for the differential information that was provided during the tests.



Provided substantially different or undetectable information about the property to the protected tester as the control tester.

## Task 2: Determine Unit Availability and Rent Details

In 21 of the 25 desktop versions of websites tested (84 percent) and 19 of 25 of the mobile versions (76 percent), the protected tester faced accessibility barriers when trying to determine which units were currently available, filter search results by preferred unit size, and/or learn about rent specials. In order to use search or filter options when completing this task, the problematic websites had mandatory fields that were not accessible to screen readers. The mandatory fields involved interactive calendars, combo boxes, or drop-down menus that are not compatible with screen readers.

*"On the desktop version, I could not select the dropdown menu for move-in date, beds, or baths. No floorplans were displayed. However, my control partner was able to view all the floor plan information without selecting an option in the dropdown menus. The information was automatically displayed for my [sighted] partner." - Project Tester*

## Task 3: Contact Housing Provider and/or Apply Online

Sixteen of the desktop and mobile websites tested had online applications. Of those, 13 (81 percent) were inaccessible to screen readers, preventing the protected tester from being able to fill out the application. Twenty-one of the websites tested had the ability for visitors to submit a comment form. Of those, 12 (57 percent) did not allow visitors who use screen readers to make use of that feature on either the desktop or mobile versions. In all of these situations, the control tester confirmed that they were able to fill out the forms but did not submit them. The biggest barriers to accessibility were the inclusion of an inaccessible CAPTCHA<sup>38</sup> (36 percent of websites tested) or mandatory fields that were inoperable by screen readers (57 percent of websites tested).

Of the eight websites where both testers were able to submit comment forms, the protected tester needed assistance from the sighted tester on three websites (38 percent) because they were not able to submit the form independently. Each time it was because a mandatory field could not be accurately interpreted by the screen reader. Once the control tester explained to the protected tester what the mandatory field was requiring, the protected tester was able to supply the information and move forward with submitting the request.

When comparing the contact initiated by the property management company in response to the request for more information or a tour, four properties offered only automated or impersonal responses (50 percent), two properties provided both testers the same amount of personal and follow-up contact (20 percent), one provided the protected tester with more personal and follow-up contact (10 percent), and one property only contacted the control tester (10 percent). Even though the protected tester requested, due to their disability, assistance in either finding the leasing office or being told how to alert staff once they had arrived, none of the responses from any leasing agent addressed this request or offered any help.

<sup>38</sup> CAPTCHA is an acronym for Completely Automated Public Turing test to tell Computers and Humans Apart. It is an online feature where visitors must prove they are not a robot by completing a simple task. Accessible CAPTCHAs will have an audio test option rather than requiring only a visual one.

## DISCUSSION

Whether developing multifamily housing or websites, design is an active choice that determines who is ultimately included or excluded from an opportunity. While the FHA and ADA have had protections in place against disability-related discrimination for more than twenty years, this investigation revealed that people with disabilities continue to experience numerous unnecessary and likely unlawful barriers when seeking housing, regardless of whether they search in person or online.

Unlike other protected classes, people with disabilities are the only group that can be discriminated against solely based on how spaces are designed. “A person using a wheelchair is just as effectively excluded from the opportunity to live in a particular dwelling by the lack of access into a unit and by too narrow doorways as a posted sign saying ‘No [Disabled] People Allowed.’”<sup>39</sup> The design-related violations uncovered during the in-person testing revealed similar barriers, with 88 percent of the findings concentrated among two requirements: accessible and usable public and common use areas (Requirement 2) and usable kitchens and bathrooms (Requirement 7). Amenity spaces were routinely designed in ways that exclude or discourage participation from people with disabilities by selecting furniture, fixtures, and equipment that prevented access. Examples from tests included only providing high-top tables, placing sculptures on the accessible portions of counters, or adding elevated platforms to spaces that did not initially have accessibility concerns. Within the units, most violations involved not having sufficient clear floor space at key elements like sinks, appliances, and toilets, which prevent people who use wheelchairs from having the same access and ability to use them as other residents without disabilities.

While the FHAA requires properties to incorporate “modest”<sup>40</sup> accessibility requirements, reasonable accommodations and modifications allow people with disabilities to adapt spaces within their units or the building’s common areas in order to fully use or equally enjoy their homes. As such, it is particularly troubling that 13 percent of leasing agents did not know whether a reasonable accommodation or modification would be approved, and 39 percent said that the request was not possible.

Design is not the only potential source of discrimination in new construction, however. In 22 percent of the tests, the leasing agent showed the testers modified units rather than all units available. Though the test methodology did not yield data regarding which units agents would have shown an able-bodied tester, it is difficult to believe that leasing agents in this investigation didn’t base their decisions about which units to show on the obvious disabilities of testers and their absent friends. This raises questions about the prevalence of steering that deserve additional investigation. Each disability is different, and each person with a disability should be trusted to make decisions for themselves by themselves. Limiting a person’s choices, regardless of whether the motive for doing so is altruistic, is discriminatory.

Another potential example of discriminatory behavior motivated by paternalistic concern occurred when a leasing agent appeared to assume that a person with a disability would not be interested in using or enjoying the gym. These attitudinal barriers likely, at least in part, informed the five companies’ decision to not comply with the *Fair Housing* and provide an accessible route to each type of gym equipment. It may also have impacted the decision to not provide, or worry about providing, a shower curtain for the accessible shower stalls at two properties. Societal barriers are often the slowest to subside, but the process would greatly increase if spaces were designed accessibly so their use became more commonplace.

<sup>39</sup> U.S. House of Representatives Report on the FHAA, H.R. Rep. No. 100-711 at 5 (1988) <https://www.congress.gov/bills/100th-congress/house-bill/1158>

<sup>40</sup> “Fair Housing Act Design Manual,” Department of Housing and Urban Development <https://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>

Website inaccessibility was also a major barrier to housing in our investigations. In the span of less than a generation, the internet has completely transformed our world. It offers the promise of increased access and integration for people with disabilities that most of us couldn't even conceive of prior to its existence. However, as with new physical construction, if a commitment to accessibility is not at the core of a business' approach to its services, it becomes likely that these new opportunities will be squandered.

Currently, the majority of website accessibility discussions are focused on whether and how the ADA applies to businesses and organizations, but not whether there are fair housing implications for multifamily housing properties that have created inaccessible websites. It is not a stretch to think of an apartment's website as a virtual leasing office. Everything that someone can do in person has been mirrored online. Therefore, it should follow that all the protections afforded someone seeking housing in person should be afforded online.

When comparing the experiences of the blind tester to the sighted tester, the website tests in this investigation raise serious concerns about potential FHA violations. While the sighted tester did not experience a single technical glitch or failure to complete all three tasks on any of the 25 websites, whether on the mobile or desktop version, the blind tester experienced at least one significant barrier on each site. If their experiences were applied to an in-person visit, it would mean that:

- In 72 to 80 percent of visits, a blind person would not receive the same amount of information about the property, its amenities, and overall features as someone without a disability.
- In 76 to 84 percent of all visits, a blind person would not learn which units are currently available, any floor plan details like number of bedrooms, bathrooms, or square footage, and whether there are any leasing or rent specials.
- Finally, in 57 percent of visits, a blind person would not be able to communicate with the leasing agent about overall interest in renting an apartment, and in 81 percent of visits, blind visitors would not be able to fill out or submit an application.

Website accessibility is an emerging issue that has frustrated housing providers and people with disabilities alike due to the lack of guidance from federal, state, and local governments. As businesses struggle to determine how best to make their websites accessible, people with disabilities are left to face new barriers when accessing goods and services in an ever increasingly digitally-reliant world. While not yet the majority, several properties directed testers to submit an application online rather than in person. What was once thought of as a supplemental or alternative method to connect with renters now is becoming the increasingly preferred approach. This shift makes housing providers' obligations in the digital realm even more obvious.

Even though there is not yet an equivalent of the ADAAG or *Fair Housing Design Manual* for website design, housing providers are not shielded from meeting their obligations to provide alternative forms of communication online as they do in person. While having an adopted standard, like WCAG 2.0, could streamline compliance, the housing industry cannot wait and obfuscate their responsibilities of preventing discrimination on the basis of disability. Multifamily housing providers must prioritize promoting and ensuring accessibility and equal treatment in all aspects of their services.

The examples of non-compliance documented in this report serve not only as barriers to access, but as barriers to inclusion and integration for people with disabilities as well. Non-compliance with civil rights requirements further reduces an already limited amount of accessible housing, prevents people from living in the communities of their choice, and restricts a person's independence when they need to rely on others to overcome barriers that should not exist, thus reinforcing the stereotype that people with disabilities need help. It also denies others the benefits of having neighbors with disabilities, or adequate support should



they or someone in their household become disabled themselves. The FHA and ADA were written so that the onus of providing accessible spaces and services fall on covered entities. When businesses and organizations shirk those responsibilities, it creates undeserved burdens for people with disabilities. Businesses must be held accountable for their decisions that negatively affect people with disabilities.

## RECOMMENDATIONS

In order to eliminate and prevent further discrimination against people with disabilities in multifamily housing, the ERC makes the following recommendations:

### Housing Developers and Property Management Companies:

- Hire trusted and vetted accessibility professionals to review each pivotal stage of new construction, from design to occupancy.
- Create Accessibility Advisory Committees that have people with diverse disabilities to vet company policies, test website design, and review marketing materials.
- Include an accessibility statement on websites and create and make public a specialized email for people to directly report accessibility-related concerns about the website.
- Schedule accessibility reviews of the company's website on an ongoing basis. Only hire website developers with demonstrated expertise in building accessible websites.
- Make training on reasonable accommodations and modifications, general fair housing, and everyday operational barriers to accessibility mandatory and routine for all employees.
- Think of FHA and ADA design standards as the minimum rather than the goal for accessible design in multifamily housing. Widely incorporate principles of and a commitment to universal design.

### Federal, State, or Local Government:

- Create firm guidance regarding how to make websites accessible to people with disabilities.
- Require accessibility plan reviews including site inspections as part of a building's permitting and certificate of occupancy processes. Emphasize accessibility in code enforcement.
- Fund more civil rights testing investigations in order to document, contextualize, and monitor trends in discrimination faced by people with disabilities.
- Fund local fair housing organizations at a level that they can effectively investigate complaints of disability-related housing discrimination and pursue enforcement in a timely manner.

### General Public:

- Consider reporting suspicions you have about discrimination to the ERC, HUD, DOJ, or DC Office of Human Rights. If you are not interested in being involved with an investigation or enforcement action in relation to your claims, you can report your experiences in the form of a tip to the ERC. You can leave a tip through the ERC's website, [www.equalrightscenter.org](http://www.equalrightscenter.org).
- Residents of the Greater Washington, D.C. area that are concerned by the findings of this investigation should consider serving as testers for the ERC. Testing (similar to "secret shopping") is an investigative tool designed to gather objective information in order to assess an entity's business practices or compliance with civil rights laws. Testers are individuals who pose as persons seeking certain services, accommodations, or opportunities (e.g. housing, employment, accessibility, goods or services, etc.) for the purpose of collecting information. The information testers collect is subsequently analyzed and may be used to determine an entity's compliance with applicable standards for equal treatment. The ERC has a robust testing program, and is always in need of diverse, detail-oriented people willing to participate as testers and help further ERC's mission. Interested parties can visit ERC's "Become a Tester" page in order to get more information about the application process.



## **THE EQUAL RIGHTS CENTER**

**820 First St NE, LL160  
Washington, D.C. 20002**

**202-234-3062**

**[www.equalrightscenter.org](http://www.equalrightscenter.org)**

