



Testimony for the United Nations Human Rights Council
United Nations Compliance Program
Discrimination Against Persons with Disabilities in Public and Subsidized Housing
April 13, 2010

Access Living of Metropolitan Chicago

Founded in 1980, Access Living is one of the nation's largest, most experienced and most prominent disability rights organizations governed and administered by people with disabilities. As a Center for Independent Living established under the federal Rehabilitation Act, our statutorily-mandated mission is to ensure the independence, integration and full citizenship of people with disabilities.

Because the lack of housing is one of the key barriers to this mission, we have historically focused a great deal of our work on advancing the housing opportunities of people with disabilities. Indeed, Access Living is recognized as one of the nation's leaders and innovators in addressing housing-related issues for persons with disabilities. Currently, we: a) perform housing policy work on the national, state and local level; b) provide legal advice and representation to people with disabilities who have discrimination claims; c) conduct disability-based fair housing tests; d) assist consumers in securing affordable, accessible housing; e) educate service providers, housing professionals, public officials, advocates and consumers on disability-related housing matters; and f) provide grants to consumers to make their homes accessible.

Historical Background

For most of our nation's history, persons with disabilities were viewed as unfit, dangerous, and a detriment to "normal" society. Literally and figuratively, persons with disabilities were treated as second class or even non-citizens. This viewpoint resulted in, condoned and rationalized government-imposed segregation of people with disabilities in every aspect of community life including education, transportation, employment, recreation and, of course, housing. Historically, government-imposed housing segregation forced persons with disabilities into state-operated and private institutional settings. Because people with disabilities were considered "sick" and in need of treatment and cure, their housing options resembled (and still often do resemble) medical centers. As Supreme Court Justice Thurgood Marshall noted in describing the history of discrimination against persons with cognitive impairments: "A regime of state-mandated segregation and degradation soon emerged that in its virulence and bigotry rivaled, and indeed paralleled, the worst excesses of Jim Crow."¹

Tragically, people with disabilities had very few housing options aside from institutional settings. Homes, apartment buildings, condominiums, and subsidized housing developments were typically inaccessible. In addition, government and private providers were free to deny housing to persons with disabilities; that is, there was no obligation to serve persons with

¹ *City of Cleveland vs. Cleburne Living Center*, 473 U.S. 432, 462 (U.S. 1985).

disabilities or treat them equally. Simply put, if a landlord preferred not to rent an apartment to someone who used a wheelchair, had a visual or hearing disability, a development, cognitive or psychiatric impairment, or any other disability, he/she was legally protected. Housing providers, with impunity, could slam the door on prospective residents with disabilities.

Progress Made

In the 1960's, institutional living came to be viewed as isolating and controlling. This spurred a de-institutionalization movement, which resulted in the creation of smaller, yet still congregate facilities in the "community" as an alternative to institutional living. Then, in the 1970's, persons with disabilities began to develop a collective consciousness and to confront their history of segregation, discrimination, mistreatment, medicalization, and paternalism. The disability rights movement had taken root.

The movement's first major political success was the passage of Section 504 of the Rehabilitation Act. Section 504 made it illegal for federal agencies (e.g., the U.S. Department of Housing and Urban Development) and recipients of federal financial assistance (e.g., public housing authorities) to discriminate against persons with disabilities. Unfortunately, enforcement of this law was lax and its promise largely unrealized.²

The 1980's and 1990's brought a further shift toward integration, inclusion and recognition that persons with disabilities have civil rights. As the disability rights movement strengthened its political muscle, civil rights laws were passed that prohibited discrimination in the areas of housing, transportation, education, recreation and public accommodations.

One critical success, in 1988, was the passage of the Fair Housing Amendments Act. This Act amended the Fair Housing Act - which until then prohibited housing discrimination based on race, gender, national origin, and religion - to people with disabilities. The Act made it illegal for private or public/subsidized housing providers to discriminate against people with disabilities in the rental or sale of housing, and required new multi-family residential buildings (defined as buildings with four or more units) to be accessible to people with disabilities.

Current/Continuing Obstacles in Chicago Metropolitan Area

Although we have made progress in eradicating housing discrimination against people with disabilities, disability discrimination is still prevalent. A 2005 HUD study, "Discrimination Against People with Disabilities: Barriers at Every Step,"³ assessed discrimination against those who are deaf and those who use wheelchairs. The study confirmed widespread discrimination in the Chicago housing market against people with disabilities.⁴ Notably, the study compared its findings to those from HUD's 2002 study of housing discrimination based on race, which also included the Chicago area. This comparison showed that:

[P]ersons with disabilities face more frequent adverse treatment in the

² Timothy L. Cook, *The Americans with Disabilities Act of 1990: The Move to Integration*, Temple Law Review, Vol. 64:2, 1991, p. 394.

³ U.S. Department of Housing and Urban Development, *Discrimination Against Persons With Disabilities: Barriers at Every Step*, (June 2005), available at <http://www.hud.gov/offices/ftheo/library/dss-download.pdf>.

⁴ *Id.* at pp. 2-3.

Chicago area rental market than African Americans or Hispanics ... Not only were testers with disabilities more likely to experience *unfavorable* treatment ... than blacks or Hispanics, they were much less likely to be favored. As a consequence, the net measures of systematic discrimination against persons with disabilities are generally higher than the net measures of discrimination on the basis of race and ethnicity.⁵

The findings of the HUD study are borne out by the high percentage of disability-based housing complaints filed with HUD. For the last several years, the largest percentage of those complaints concerned allegations of disability-based discrimination. In FY 2008, 49% of those complaints alleged disability-based discrimination,⁶ in FY 2007, the percentage was 49%,⁷ in FY 2006, the percentage was 45%.⁸

Although housing discrimination is devastating to all protected classes, it hits with additional force against people with disabilities because their housing options are so limited. Two entrenched factors combine to choke their housing opportunities: (a) the dearth of affordable housing; and (b) the lack of accessible housing. Although the absence of affordable housing is a major challenge for all persons of limited means, it is especially problematic for the disability community, which is largely poor and unemployed. The lack of accessible housing, of course, is an obstacle unique to people with disabilities. HUD's 2005 Disability Discrimination Study demonstrated that many median-income units in Chicago are off-limits to people with physical disabilities because they are not accessible:

It is far more difficult for a person using a wheelchair to find rental housing in the Chicago area than for a non-disabled person. More than a third of rental homes and apartments that are advertised in the City of Chicago and surrounding Cook County are in buildings that are inaccessible for wheelchair users even to visit ... In other words, at best, a person who uses a wheelchair is limited to only about two-thirds of the Chicago area rental housing market from the outset.⁹

Discriminatory treatment, combined with the lack of affordable housing and the gloomy prospect of finding accessible housing, presents a potent barrier for persons with disabilities in need of housing. Because the housing market for people with disabilities is extraordinarily tight, there is virtually no margin for prejudice. Discrimination against people with disabilities can and will lead to homelessness and/or institutionalization.

Compounding the problem is that certain housing programs of the federal government (e.g., the U.S. Department of Housing and Urban Development (HUD)) and state agencies segregate people with disabilities into congregate settings, which we characterize as "housing silos." For example, federal 811 (Supportive Housing for People with Disabilities) properties are specifically and exclusively for persons with disabilities. Also, while silos sometimes house a

⁵ *Id.* at pp. 54 (emphasis in original)

⁶ U.S. Department of Housing and Urban Development, *The State of Fair Housing, FY 2008 Annual Report on Fair Housing*, p. 26.

⁷ *Id.*

⁸ *Id.*

⁹ U.S. Department of Housing and Urban Development, *Discrimination Against Persons With Disabilities: Barriers at Every Step*, (June 2005), at p. 42, available at <http://www.hud.gov/offices/ftheo/library/dss-download.pdf>.

variety of disabled residents, others are specific to a particular kind of disability, such as a mobility disability, developmental disability, or psychiatric disability. In any way, shape or form, these congregate settings are segregated vestiges of the past and inconsistent with the needs and desires of persons with disabilities to live in integrated, community-based settings.

The urgency of addressing the housing obstacles of people with disabilities has been highlighted by the decision of the U.S. Supreme Court in *Olmstead v. L.C.*¹⁰ In *Olmstead*, the Supreme Court held it is discriminatory for a state to use its long-term care funding under Medicaid to institutionalize persons with disabilities without medical justification. *Olmstead* required states to develop a “comprehensive, effectively working plan” to move people with disabilities out of institutions and into the community.¹¹ As states move to comply with the Court’s directive, greater numbers of persons with disabilities will be searching for community-based housing.

Recommendations

Broadly and generally, the federal government should: a) increase affordable, accessible, and integrated housing for people with disabilities; b) increase funding for fair housing enforcement by HUD and private fair housing organizations; and c) ensure that public housing authorities and other housing providers that receive federal financial assistance do not discriminate against people with disabilities with respect to the provision of accessible units, admissions, communication, waiting lists, design and construction of new developments, and reasonable accommodations/modifications. More specific recommendations follow.¹²

Program/Policy Recommendations

- Because “housing silos” are congregate, segregated settings, such settings should be eliminated and forbidden on the federal and state level. Instead, government funding for housing should foster the development of integrated “housing for all.”
- Because of the challenges attendant to persons with disabilities securing housing, a higher percentage of affordable housing constructed with federal or state support should be reserved for people with disabilities, and governments should ensure that units so reserved are actually occupied by people that need accessible features.
- Because the national government, through HUD, is increasingly relying on housing choice vouchers and the use of these vouchers by persons with disabilities presents special challenges (i.e., the private housing market is largely inaccessible), a well-funded national modification fund should be established to

¹⁰ 527 U.S. 581 (1999).

¹¹ 527 U.S. at 605-06.

¹² For an excellent recitation on the housing needs of persons with disabilities and recommendations to meet those needs, please review: National Council on Disability, *The State of Housing in America in the 21st Century: A Disability Perspective* (January 19, 2010), available at http://www.ncd.gov/newsroom/publications/2010/NCD_Housing_Report508.pdf.

pay for reasonable modifications that are necessary to make private units accessible (or at least usable) for people with disabilities.

- In accord with the Supreme Court's *Olmstead* decision:
 - (a) The federal government, through HUD, should require public housing authorities to set local preferences for public housing units and designate vouchers for people with disabilities who are leaving institutions;
 - (b) Governments should provide substantial rental assistance for people with disabilities who are leaving institutions; and
 - (c) Over the next several years, the federal government, through HUD, should dramatically increase the number of vouchers it issues for the exclusive use of persons with disabilities and a portion of such vouchers should be designated for those leaving institutions.

Legislative/Regulatory/Legal Recommendations

- The federal government should pass H.R. 1675, which would triple the number of new 811 units built annually and integrate 811 units into larger, non-segregated developments.¹³
- Because the application of the Fair Housing Act's statute of limitations in new construction cases is critical to appropriate enforcement, HUD should issue written binding guidance that interprets the limitations period broadly and states that a failure to design and construct accessible housing is a violation of the Act that continues until the violations are corrected.
- The federal government should determine that tax credit properties are recipients of federal funding and hence obliged to comply with Section 504 of the Rehabilitation Act. This would dramatically increase fully accessible housing opportunities for people with disabilities.
- HUD should support H.R. 1408, the Inclusive Home Design Act, which would require any housing constructed with federal funds that is not covered by the Fair Housing Act to include a basic level of accessibility (i.e., visitability).

Respectfully Submitted,



Kenneth M. Walden, Managing Attorney – Fair Housing

¹³ Even though this bill does not require the full integration of people with disabilities in 811 properties, the bill is an important step forward.