People with epilepsy may face discrimination in many aspects of life, including housing. The federal Fair Housing Act (FHA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibit discrimination on the basis of disability and provide people with certain rights in obtaining housing and remedies against discrimination.¹

Who Is Protected by the Federal Laws?

A person is protected by the FHA and Section 504 from discrimination due to a disability if he or she: a) has a physical or mental impairment that substantially limits one or more major life activities, b) has a record of such a disability, or c) is perceived as having a disability. For example, you may be perceived as having a disability, which substantially limits a major life activity, by your landlord if you use a service animal or receive Medicaid benefits. There is no exhaustive list of what is considered to be a major life activity under the law; these activities may include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, and the operation of major bodily functions. The Americans with Disabilities Act Amendments Act (ADAAA) of 2008 applies to Section 504 and establishes that whether someone has a disability under the law is determined by considering both the individual’s disability and its impact on major life activities in its untreated state and if the condition is continuously active. This means that people with epilepsy should be covered by Section 504 even if seizures are well controlled. The ADAAA changes do not apply to the FHA, which also defines a person with a disability as, "any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment."

¹ Most states also have civil rights laws prohibiting housing discrimination.
**Housing Discrimination and Federal Law**

**Who Must Comply with these Federal Laws?**

The FHA applies to most landlords of privately owned and publicly funded buildings, as well as real estate service providers, such as mortgage lenders and insurance agents. In some circumstances, the FHA exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

Section 504 applies to housing built or rented with federal funds, including public and Housing Choice Voucher program housing, regardless of the number of units or tenant population.

**Your Rights under Federal Law**

In the sale and rental of housing, the following actions are prohibited against a person with a disability:

- Refusal to rent or sell housing
- Refusal to negotiate for housing
- Making housing unavailable or denying access to a dwelling because of a disability
- Setting different terms, conditions, or privileges for sale or rental of a dwelling
- Providing different housing services of facilities
- Falsely denying that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting); and
- Denying access to or membership in a facility or service related to the sale or rental of housing.

In mortgage lending, the following actions are prohibited against a person with a disability:

- Refusing loan information and/or make a mortgage loan
- Imposing different loan terms and conditions
- Discrimination in appraising property
- Refusing to purchase a loan; or set different terms or conditions for purchasing a loan.
Questions You Can Be Asked

Federal law specifically prohibits using different qualification criteria or rental applications for people with disabilities, making disability-based inquiries, or requiring an applicant to release medical records. However, a landlord can ask each applicant if he/she is able to pay rent and willing to comply with the housing regulations.² A landlord can also ask if an individual is currently an illegal user of controlled substances, has a criminal record, or would pose a direct threat to the health or safety of others. If the unit’s use is limited to people with disabilities, property managers may request medical documentation.

Your Right to Reasonable Accommodations

Under federal law, a landlord may not refuse to make reasonable accommodations, if necessary, for the person with a disability to use the housing on an equal basis as a person without a disability. Reasonable accommodations are modifications in rules, practices, and services that enable a person with a disability to be able to participate in or access a service or program. An accommodation may include waiving a “no pet” rule to permit a tenant to keep a service animal, allowing a live-in attendant not permitted by the visitor rules, or in some cases, excusing a poor rental history explained by the person’s disability. However, an accommodation does not need to be provided if it would be too expensive or would cause an undue burden, or if it would fundamentally change the housing service offered.

Additionally, a landlord cannot refuse to allow a renter with a disability to make reasonable modifications to the dwelling or common use areas, at renter’s expense, if it is necessary for the person with a disability to use the housing. However, where reasonable, a landlord may permit changes only if the

² Most states also have civil rights laws prohibiting housing discrimination.
tenant agrees to restore the property to its original conditions at the end of the lease term. Furthermore, a landlord can refuse an otherwise qualified applicant or evict a resident if the person: a) refuses or is unable to comply with building rules; or b) poses a direct threat to the health or safety of other tenants. Landlords cannot conclude that a person poses a direct threat on the basis of the disability alone and must base their decision on a recent history of objectively disruptive, abusive, or dangerous behavior. If a reasonable accommodation would enable the resident to comply with rules or sufficiently minimize the threat, landlords are required to make necessary adjustments.

**Service Animals and Fair Housing Laws**

A service animal defined by the ADA is any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If they meet this definition, animals are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government.

When requesting an accommodation for a service animal in housing with a “no pet” policy, you should explain how the requested accommodation will be helpful in relation to your disability. You should also include a note from your doctor which verifies your need for a service animal. Remember that you do not need to disclose details concerning your disability or medical history.

**Strategies for Tenant’s Facing Eviction**

People with epilepsy have faced evictions because of seizure related behaviors. If you are facing eviction due to seizure-related behaviors, consider the following strategies.

- **Prepare a letter asking your landlord to cease eviction proceedings and to consider providing a reasonable accommodation.** Be as specific as possible!
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- **Explain to the landlord that your disability is the reason for noncompliance with the lease provisions.** Evidence, such as a doctor’s medical evaluation and documentation of similar past behavior resulting from a seizure, will strengthen your request. For example, if you wandered into someone else’s apartment during post-ictal confusion, explain to your landlord that as a result of your seizure you were not aware of where you were and what you were doing.

- **Be prepared to show objective evidence that your behavior is not a direct threat to other tenants.** For example, if your landlord states that you pose a direct threat to other tenants, he must show that there is no reasonable accommodation which will eliminate or acceptably minimize this risk. Good evidence may include a landlord’s willingness to extend your lease in the past, showing that past behavior did not constitute a direct threat to the other tenants.

- **Think of ways to show that an accommodation will allow you to remain in compliance with your lease.**

- **Wear medical alert jewelry.** If you exhibit aggressive behavior while in a post-ictal state, you may want to wear medical alert jewelry that would put others on notice of your disability. This may also strengthen your request for an accommodation.

Keep in mind that a landlord does not have to accept an accommodation request which imposes an undue burden or causes a fundamental change in the lease terms.

**You Have a Right to File a Complaint or Sue in Court**

If you believe your rights under federal law have been violated, you can file a housing discrimination complaint with the Department of Housing and Urban Development (HUD). You can file a complaint online through HUD’s website ([www.hud.gov](http://www.hud.gov)), by calling HUD’s toll-free telephone number (1-
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800 669-9777), or by sending a written letter to the HUD Regional Office that serves your state. See, http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination. If you file a FHA claim, you must file the complaint within one year of the discriminatory event. If you file a Section 504 complaint, you must file the complaint within 180 days of the discriminatory event. You do not need an attorney to file a complaint with HUD.

Once HUD receives your complaint, it will conduct an investigation and make a determination on whether there is reasonable cause to believe that discrimination occurred. If HUD determines that there is reasonable cause to believe your rights under the FHA have been violated, the agency may appoint an attorney for you. If HUD determines there is reasonable cause to believe your rights under Section 504 have been violated, it may order the violator to fix the problem by a certain date, at the risk of losing funding.

Even if HUD dismisses your complaint, the FHA gives you the right to file a private civil lawsuit against the landlord in federal court. You must file your lawsuit within two years of the most recent date of alleged discrimination. For more information about landlord-tenant law in your state or about your state’s civil rights laws, contact your local housing authority.

While this material is designed to provide accurate and current information on the subject matter involved, the Epilepsy Foundation and the authors cannot guarantee the accuracy or completeness of the information contained in this publication. This material is not a legal document and does not provide legal advice or opinion. If legal advice or other expert assistance is required, the services of a competent professional should be sought.