

Law Offices

## HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.  
Suite 100  
Washington, D.C. 20006-6801

202-955-3000  
FAX 202-955-5564  
<http://www.hklaw.com>

Annapolis  
Atlanta  
Bethesda  
Boston  
Bradenton  
Chicago  
Fort Lauderdale  
Jacksonville  
Lakeland  
Los Angeles  
Melbourne  
Miami  
New York

Northern Virginia  
Orlando  
Portland  
Providence  
San Antonio  
San Francisco  
Seattle  
St. Petersburg  
Tallahassee  
Tampa  
Washington, D.C.  
West Palm Beach

International Offices:  
Caracas\*  
Helsinki  
Mexico City  
Rio de Janeiro

São Paulo  
Tel Aviv\*  
Tokyo

\*Representative Offices

**CHRISTOPHER B. HANBACK**  
202-457-7157

Internet Address:  
[chanback@hklaw.com](mailto:chanback@hklaw.com)

## Fair Housing Act Design and Construction

### Summary and Overview

The Fair Housing Act ("Act") is the principal federal law aimed at prohibiting discrimination in the negotiation for, or the sale or rental of, housing based on race, color, religion, sex, familial status, national origin or handicap. The Act also prohibits certain discriminatory practices in lending, brokerage, appraisal services and advertising. 42 U. S. C. §§ 3601 *et seq.* The Act is known as Title VIII of the Civil Rights Act of 1968, including the Fair Housing Act Amendments of 1988, which added certain additional protections for families with children and persons with disabilities. Violations involve not only intentional discrimination, but also facially neutral policies that "disparately impact" on a protected class. Certain exemptions exist for housing for the elderly.

The Department of Justice, HUD and advocacy groups are actively bringing lawsuits against property owners, who allegedly discriminate or cannot document that they have in place well-crafted "Fair Housing Policies and Procedures." The Justice Department has announced filing over 60 cases under its nationwide program.

One particularly high profile area has been suits against apartment and condominium developers, who have failed to comply with the new construction accessibility design guidelines for multifamily housing consisting of four or more dwelling units and built for first occupancy after

March 13, 1991. In recent months apartment and condominium developers, owners and managers have been the subject of six and seven figure lawsuits and settlements. Many developers and their architects have not understood that the Fair Housing Act contains national building standards that are similar to, but different from, those contained in the Americans with Disabilities Act ("ADA"). Compliance with local building codes and obtaining local permits and approvals does not exempt a developer from the federal Fair Housing Act requirements. Indeed, many practitioners feel that the Fair Housing Act accessibility construction requirements are much more extensive than those under the ADA for transient lodgings, such as hotels. This is because, while the ADA only requires that a certain percentage of rooms be handicap accessible, the Fair Housing Act requires that every unit in an elevator building and every first floor unit in a non-elevator building be built to specific accessibility standards--regardless of the wishes of the potential tenant or unit owner.

The design requirements include: accessible building entrance on an accessible route, accessible and usable public and common areas, doors and doorways of specific size and design; light switches, electrical outlets, thermostats and other controls in accessible locations, reinforced bathroom walls for grab bars and accessible kitchens and bathroom. Developers and owners report that compliance with clearance space and other requirements make it impractical to include certain desirable amenities for kitchens, bathrooms, balconies and closets in their developments.

When buildings have been (and continue a decade later to be) constructed that are not in compliance with the design requirements of the Act, creative negotiations and solutions are required to resolve such lawsuits. We are currently representing two major real estate companies who are the subject of Fair Housing Act design investigations by the Department of Justice.

For more information contact **Christopher B. Hanback at 202-457-7157.**