



# LEGAL UPDATE

FEBRUARY 2022, 22.02

## A MONTHLY GUIDE TO WISCONSIN REAL ESTATE LAW & POLICY

### Finding Accessible Homes for People with Disabilities

Make no mistake: disability impacts all of us. The Centers for Disease Control and Prevention (CDC) reports 61 million adults in the United States live with a disability. In other words, 26% or one on four adults in our country have some sort of disability. Two out of five adults 65 years of age or older have a disability, one in four women have a disability and two in five Non-Hispanic American Indians/Alaska Natives have a disability.

According to the CDC, 993,009 adults in Wisconsin have a disability. This is 21% or one in five adults. In terms of different types of disability, the CDC breaks it down as follows:

#### Percentage of Adults in Wisconsin with select functional disability types

**Mobility:** Serious difficulty walking or climbing stairs 10%

**Cognition:** Serious difficulty concentrating, remembering, or making decisions 10%

**Independent living:** Serious difficulty doing errands alone, such as visiting a doctor's office 5%

**Hearing:** Deafness or serious difficulty hearing 5%

**Vision:** Blind or serious difficulty seeing, even when wearing glasses 3%

**Self-care:** Difficulty dressing or bathing 3%

[www.cdc.gov/ncbddd/disabilityandhealth/impacts/wisconsin.html](http://www.cdc.gov/ncbddd/disabilityandhealth/impacts/wisconsin.html)

We may tend to think many of these people with disabilities are the elderly and service members returning from Iraq, Afghanistan and other engagements. Their survival rate is greater than with any other war or conflict in United States history due to the advances in medical technology, evacuation procedures, on-site medical personnel, and advances in both body and vehicle armor.

But by no means are disabilities the exclusive domain of the elderly and our veterans. People across all ages, cultures and socio-economic backgrounds may have disabilities resulting from illness or injury. Technological and medical innovations also mean many people with disabilities successfully live in the community rather than in a care facility such as a nursing home, hospital or assisted living, and are active homebuyers. We also may find ourselves amongst these populations at some moment.

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Finding homes for persons with disabilities is a challenging endeavor. Many homes are not very accommodating to a person with a physical or mobility impairment and distinct livability requirements. Accessibility is important to all persons with disabilities when it comes to the homes they purchase and rent. But it also is a consideration for those with family members or friends with disabilities who come to visit and for consumers who want to have a home where everybody can visit in the years to come, regardless of whatever special need they might have.

### What Is Disability?

A disability is any condition of the body or mind (impairment) that makes it more difficult for the person with the condition to do certain activities (activity limitation) and interact with the world around them (participation restrictions). There are many types of disabilities, such as those that affect a person's vision, movement, communication, hearing and mental health.

Although "people with disabilities" sometimes refers to a single population, this is actually a diverse group of people with a wide range of needs. Two people with the same type of disability can be affected in very different ways. Some disabilities may be hidden or not easy to see.

Disability can be related to conditions that are present at birth and may affect functions later in life. Cognition, memory, learning and understanding may be impacted, as well as mobility, vision, hearing and

general behavior. These conditions may be disorders in single genes, disorders of chromosomes, or the result of the mother's exposure during pregnancy to infections or substances, such as alcohol or cigarettes. There may be developmental conditions that become apparent during childhood, conditions related to an injury, or a longstanding condition such as diabetes that can cause a disability such as vision loss, nerve damage or limb loss. These conditions may be progressive, for example, muscular dystrophy; static, for example, limb loss; or intermittent, for example, some forms of multiple sclerosis.

## Disability as fair housing protected class

Disability can be temporary or chronic, acquired at birth or later in life. Consequently, of all the protected classes under fair housing law, it is the one in which anyone at any time may find they have become a temporary or permanent member.

Real estate professionals are reminded of the importance of providing fair and equitable service to members of this protected class. Fair housing law teaches the goal is to ensure people with disabilities have the same choices and opportunities that people without disabilities enjoy every day. Discrimination in housing transactions based on someone's disability violates fair housing laws.

Licensees who work with persons with disabilities may wish to consider these pointers:

- To best serve home seekers with disabilities, it is helpful to become familiar with the accommodations needed for people with visual or hearing impairments as well as those with mobility issues.
- If a licensee can't find an existing barrier-free home for a client, get familiar with needed repairs and modifications.
- It may be useful to determine whether it would be more cost-effective for a client to build a new home or pay for alterations. These changes may include ramps, walk-in tubs, grab bars in bathrooms, lowered light switches and countertops, and wider bathroom doors.
- The licensee should stay up to date on special financing options for persons with disabilities such as down payment assistance programs and VA loan eligibility. While many persons with disabilities are employed, many have limited income.
- Make sure the person with disabilities has expert legal counsel advising them regarding any of the complicated Supplemental Security Income (SSI), Medical Assistance (MA) or other government program requirements or issues that may be impacted by the transaction.
- Sensitivity, kindness and patience are essential for communications and the building of trust.

## Home Design Philosophies

Accessible housing is typically used to describe homes that have been designed or constructed with barrier-free elements. The design of homes to meet needs of persons with disabilities, however, is increasingly similar to other related approaches to making homes practical and user-friendly to everyone who lives there and those who visit the home. The following discussions relate to universal design, visitability and aging in place.

## Universal design

Universal design means products and buildings that are accessible and usable by everyone, including people with disabilities. Universal design refers to the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. Universal design provides one solution that can accommodate people with disabilities as well as the rest of the population. Moreover, universal design means giving attention to the needs of older people as well as the young, women as well as men, and left-handed persons as well as right-handed persons. Universal design recognizes overlap between the needs of injured veterans and the elderly. An entrance that is designed to be "universal" would not have stairs at all.

Universal design increases the potential for developing a better quality of life for a wide range of individuals. It also reduces stigma by putting people with disabilities on an equal playing field. While it does not substitute for assistive technology, universal design benefits people with functional limitations and everyone else. It represents an approach to creating things that can be used by everyone, everywhere. Universal design is commonsense design. Universal design is intended to allow persons to remain independent and keep their dignity.

Universal design features can be so attractive that no one notices them, except for the fact that they are easy to use. Essential universal design features include:

1. **No-step entry:** At least one step-free entrance into the home, either through the front, back or garage door, allows everyone, including those who use a wheelchair, to enter the home easily and safely.
2. **Single-floor living:** Having a bedroom, kitchen, full bathroom with plenty of maneuvering room and an entertainment area on the same floor makes life convenient for all families.
3. **Wide doorways and hallways:** If the doorways are at least 36 inches wide, large pieces of furniture and appliances will fit, and so will wheelchairs. Hallways that are 42 inches wide and free of hazards or steps are even better and permit free movement by everyone.
4. **Reachable controls and switches:** Anyone can use light switches that are from 42-48 inches above the floor, thermostats no higher than 48 inches and electrical outlets that are 18-24 inches off the floor.
5. **Easy-to-use handles and switches:** Lever door handles and faucets and rocker-style switches make life easier for people of all ages and abilities.

## Visitability

Similar features are emphasized with regard to "visitability." These include widened doorways and corridors on the first level of a home, a no-step entrance and electrical outlets that are slightly higher.

Visitable housing is designed and built to allow guests with mobility impairments to visit someone in their home without architectural barriers impeding their ability to move in and out of the home or use facilities a guest would need. Such housing also makes it easier for residents to adapt their house as they age and develop mobility impairments. Visitable housing may be more attractive to buyers who have friends and relatives with mobility impairments. Adding basic visitable features such as no threshold steps, wider doors and larger guest bathrooms adds little

to the cost of housing at the time of construction. Such housing could be marketed as visitable to buyers.

Visitable homes are not entirely accessible when measured by other accessibility standards.

Basic visitability features include:

1. One zero-step entrance
2. Doors with 32 inches of clear passage space
3. One bathroom on the main floor that is wheelchair-accessible and reinforced walls in the main-floor bathroom that will permit grab bar installation
4. Electrical switches slightly lower than standard
5. Easily usable climate controls

Visitability features are typically geared to support the ability of a disabled person to access the main level of the home. Although the term “visitability” refers to design elements that enable mobility-constrained neighbors and relatives to visit socially, the features also allow for some degree of aging in place and are relatively low-cost during initial construction. Visitable design is considerate design.

The idea of “adaptability” addresses a valuable middle ground in the design of homes, somewhere between full accessibility and the typical barrier-filled residence. Putting a kitchen or vanity cabinet on casters allows it to be rolled aside for a homeowner who needs to sit while cooking or washing up in the bathroom. Installing solid wood blocking behind a shower wall means sturdy grab-bars can be mounted there later without requiring costly re-tiling. Adaptable design saves money in the long run.

## Aging in place

The housing laws protecting accessibility rights for persons with disabilities are increasingly important as more aging Americans are remaining in their homes. Whether one has a sports accident or an ill adult relative, increasing disability or just the wish to “stay put” in their elderly years, a large number of individuals want to age where they currently live. Many elderly individuals are in better health than previous generations and they also live longer. People come with a wide range of individual needs and these needs may change over time, as with “normal aging.” That is why visitable housing and universal design are popular. The trick is making the homes beautiful enough that no one suspects they are meant for seniors.

The typical design for aging in place will include a no-step entry, bathrooms on an accessible floor level, potential for a sleeping space on an accessible level, good lighting, efficient space planning, and other features that reduce effort and accommodate short-term and chronic disabilities.

It is easy to see these concepts of universal design, visitability and aging in place substantially overlap. The design emphasis and home features advocated in these different philosophies are similar and practical for everyone.

## Features for Accessible Homes

Accessibility is all about furnishing the home to meet the real conditions of people who live and visit there, for example, if they use a walking cane, wheelchair, bifocals or hearing aids. Some disabled homeowners like to add apps and gadgets to control energy usage and lighting. Others go further and install solar backup generators installed in the home for extra

security. As a general rule, by age 65 disabilities hit one out of every two persons in one way or another.

Consider the following barrier-free features that would be welcome in anyone’s home, regardless of whether they were persons with disabilities or not. Learning why these features are important generates a recognition of their value for everyone’s enjoyment and ease of use of the home.

1. **Open floor plans:** Open floor plans are lauded for their ability to bring living spaces together. Contemporary homes have embraced open floor plans to better reflect the way families live and entertain today. Open-concept design eliminates the narrow doorways and hallways that impede mobility device users. It also maximizes livable space, so people can enjoy the convenience of a compact home without feeling cramped. For a parent who’s hard of hearing, eliminating walls and attaching glass doors allows her to keep track of kids in the next room. Large sunny rooms with generous vistas into the outdoors and between activity centers are appealing to everyone, and also essential to individuals with a variety of disabilities.
2. **No-step entry:** Big breakthroughs for designing accessible homes are zero-step entrances and broader doorways, features that are appreciated whether pushing a baby carriage or using a mobility device. Having a minimum of one step-free entrance into the home allows everyone to enter the home easily and safely.
3. **Hardwood floors:** Hardwood adds to a home’s market value but is more costly than other flooring types. But hardwood is also the best for accessibility. Unlike carpet, wood floors don’t create friction or snag mobility devices such as wheelchairs, walkers and crutches. Any floor covering should be non-glare. Non-slip tile and low pile carpet are easy to maintain and clean. Cork floor coverings



may also help to prevent slipping accidents while maintaining a level of comfort for the feet. Tile can be difficult to stand on for extended periods of time, especially for people with hip or lower back pain. Tiles or stones should be kept very small. The less distance that you have between tiles, the lower chance of a slip and fall accident. Hardwood is much easier to roll a wheelchair over than tile or carpeting.

4. **Zero-threshold and roll-in showers:** Any obstruction, even if it's just an inch high, can be difficult for some people, so a roll-in shower with no curb is best. With a streamlined look and plenty of space to share, zero-threshold showers add a contemporary feel and are also great for accessibility. It is expensive to retrofit a bathroom with a zero-threshold shower, but builders can incorporate these barrier-free fixtures into new construction at a minimal cost.
5. **Lighting:** Lighting also plays an important role in a home's accessibility. Good lighting supports people with vision loss. With motion-activated, rocker and smart switches, lighting choices accommodate a wide range of other disabilities as well. A mix of natural, ambient and task lighting creates interior spaces that are well-lit and livable. Under-cabinet lighting will help to illuminate work areas that would otherwise be dark, and task or track lighting provides appropriate light throughout the home. Good lighting makes homes look bright, clean and spacious and highlights any house's décor.
6. **Built-in appliances:** While built-in appliances are more expensive to install and replace, many homeowners find the improvements to design and functionality to be well worth the trade-off. When ovens and microwaves are mounted at waist height, they're easy to operate whether you're standing or in a wheelchair. Meanwhile, under-counter refrigerator drawers keep ingredients accessible, no reaching required.
7. **Wide doorways and hallways:** If the doorways are at least 36 inches wide, large pieces of furniture and appliances will fit, and so will wheelchairs and walkers. Hallways that are at least 42 inches wide and free of hazards or steps permit free movement by everyone.
8. **Lever controls:** An offset single-lever faucet is ideal because it can be operated with just one hand and doesn't require the user to reach so far behind the sink. It's suitable for a range of people, including those with severe arthritis. Motion-sensor faucets that activate when you wave your hand under them are even better. The same applies to doorknobs and cabinet and drawer knobs and pulls. Paddle-type or lever handles in place of knobs on doors and sinks are most appreciated by a person with an armload of laundry or an individual with weak upper body strength.
9. **Back-up solar-powered generator:** A back-up solar-powered generator may seem like a novelty, but it can be a vital tool for many disabled homeowners who rely on electric power for life-saving devices. Blackouts during a tornado or ice storm can be problematic in households with disabled people because they can disrupt essential health monitoring equipment and smart technology electronic controls and force people to leave their homes.
10. **Storage:** For a person who is blind, storage closets everywhere in the home, such as in the entry, stair landings and bathroom, mean that supplies can always be readily accessed.

## Benefits of smart devices for people living with disabilities

Smart home technology gives control to people with disabilities. These devices can help them enjoy independent living while easing the worries of their loved ones.

One good example is a smart door sensor that is connected to smart speakers. People who are blind can use this smart home technology to let them know if someone has entered or left the house. Another good example is the Amazon Echo personal assistant device that can listen to voice commands and control Bluetooth-enabled devices and appliances. People with limited physical mobility would no longer need to get up to change the thermostat or to get in touch with a loved one. Opening curtains or blinds can be difficult for some people with restricted mobility. Having a smart device enables them to perform this task with ease. Smoke alarms, ovens and even coffee makers can be controlled using smartphones or just spoken commands.

Smart home devices generally are easy to install and set up although some technologies for persons with disabilities may need wiring that requires an electrician. For people living with disabilities, these devices make life more normal.

### Door sensors

Security is a top priority. A door sensor sends you an alert whenever someone tries to enter your home.

For people living with disabilities such as dementia, loved ones can feel much safer with a door sensor installed. It eases their minds because they'll be able to know right away if their family member leaves home without them.

### Motion sensors

Motion sensors play a key role in any security system. They can alert you when your children are entering an area in the home (like the basement) when they shouldn't be, let you know if your teen is breaking curfew or going out while you're asleep, or alert you when intruders break into your home.

### Smart thermostats

A smart thermostat allows you to set the temperature inside your home just the way you want it. With a smart thermostat, you can lower the heat while you're out of the house to save on costs and then warm it up when you're on your way home. For people living with disabilities, being able to remotely control the temperature of their home is a convenience that makes life easier.

### Smart blinds/curtains

Adjusting blinds or curtains on a tall window can sometimes pose a challenge for wheelchair users or those with limited mobility. Smart blinds are user-friendly, offer privacy, and can even help reduce your energy bill by blocking unwanted warmth or cold air sneaking in from the outside.

### Smart locks

A smart lock enables you to open and lock your doors remotely. It ensures you're never locked out of your home — something that can easily happen if you forget your key or the code into your house.

It also allows you to provide people temporary access to your home.

### Video doorbells

A video doorbell has a camera that records video. This smart device is a great criminal deterrent. Seeing a camera recording their actions just outside your door can make criminals think twice about breaking into your home. You can watch over deliveries and screen visitors without needing to answer the door, all a great convenience and security measure for those with disabilities. You can see, hear and communicate with visitors from your device, which is ideal for wheelchair users who may not have a door peephole at eye level.

### Leak sensors

As you've probably already guessed by its name, this smart device alerts you whenever it detects a leak. Traditional devices will sound an alarm, which only works when you're at home and can hear it. With a leak sensor such as a smart water leak detector, you get the alert on your smartphone. People with disabilities might not have the ability to search for a leak.

## What Is Accessible?

Whether or not a home is accessible depends upon the nature and extent of one's disability. As a practical matter, an accessible home is one that enables an individual to do what he or she needs and desires to do as independently as possible. For some, access may be as simple as adding grab bars and a tub seat in the bathroom. For wheelchair users, access may require ramping entrances, widening doorways, lowering counters, adding lever or loop-style hardware to doors and drawers, and modifying storage areas. Individuals with hearing disabilities may require visual adaptations for the telephone ringer, the doorbell and smoke alarms. People who are blind may require tactile markings of changes in floor levels and stair edges as well as Braille markings on appliances and controls. People with low vision may be accommodated with large print markings and displays, contrasting colors to distinguish changes in level or transition from one area to another, proper lighting, and reduced glare from lighting and windows. There are certain features that some know their new home must have. These will vary depending on their disabilities, but they can be deal-breakers.

Too often the terms "accessible" or "accessibility" are tossed about without any underlying common understanding of what they exactly mean. Because there is no clear and concise definition, the terms may be used inconsistently and indiscriminately. What one person says is accessible may be rejected by another as having too many barriers. The listing firm might advertise a property as accessible and when the selling agent and buyer go there, they discover it simply will never work because the doorways are too narrow for the buyer's wheelchair and the buyer will never be able to open and close all of the double-hung windows, which would be too expensive for the buyer to replace. The parties and the agents could avoid getting their hopes up and wasting their time if they had more detailed information in advance.

## New Accessibility Features Report Options

An Accessibility Features Report (AFR) is a property condition report designed to identify features that may be desirable to a homebuyer with disabilities. AFRs don't represent that a property is accessible. Rather, AFRs include a listing of different features that may be important for a person with special needs.

## Using AFRs in the MLS

A licensee who lists a property with potential for a person with disabilities may request that the seller complete an AFR and then indicate there is a completed AFR available in the MLS listing. Many of the MLSs serving Wisconsin have a check box item in their residential property profile sheets for an AFR. In addition, using the AFR as an associated document in the MLS allows easy access for those who are interested in learning more. The cooperating broker can review the AFR and get a better idea of the special-needs features the listed property might have. Any person considering a property based upon an AFR should most definitely follow up to inspect and evaluate the property for him or herself.

Being able to direct a buyer with disabilities to properties with special features desired by that person exhibits a high level of professional real estate service.

## WRA updated AFRs

The WRA cultural diversity in housing committee has worked to create two new versions of the AFR that take into account smart technology features and look to address features desired by persons with vision and hearing impairments in addition to those with mobility concerns.

These specific features or property attributes are included in a grid where the seller may check corresponding boxes for either "Yes," if the feature is present, "No," if the feature is not present, or "Not Sure." If a seller is not familiar with a feature or has doubt about whether it accurately describes their home, they need not stress or undergo an investigation and may instead just indicate they are not sure. Some of the items include measurements, generally in regard to whether a person using a wheelchair can comfortably enter the home and the first-floor rooms, navigate the hallways, and be able to successfully maneuver and turn around in key areas such as the bathroom and kitchen. Most of these items might be fairly easily measured but sellers are not required to undertake a dimensional survey.

The AFRs strive for a balance between the detailed information that is most useful to a buyer with special needs with the comfort of sellers who are gracious enough to complete an additional form and help real estate licensees better serve buyers with disabilities.

### Basic Sellers' Accessibility Features Report

The WRA Basic Sellers' Accessibility Features Report is two pages long and focuses on physical features or attributes of the seller's home that would tend to be of greatest interest to a buyer with mobility concerns, although the items regarding motion sensors, good illumination and strobe light alerts will appeal to a broader spectrum. The check box items run through the middle of the second page where the seller will see a box where they may enter additional accessibility features and comments.

The prompt suggests they might enter information regarding: "smart home technology features; motion detectors; rocker light switches; anti-scald valves; non-glare windows, flooring and work surfaces; compact fluorescent and/or LED lighting; detachable hand-held showerhead; chair lift or elevator; carbon monoxide detector(s) on every floor and in the basement, 5 feet above the floor or on the ceiling, within 10 feet of sleeping areas; smoke and fire detector(s) on every level; webcam surveillance of the exterior and/or of the interior; emergency egress windows with minimum opening area of 5.7 square feet and 44-inch maximum sill height above floor (per International Building Code) and other features making this home accessible for specific needs."

## Sellers' Accessibility Features Report

The WRA Sellers' Accessibility Features Report is five pages long, is in slightly larger font, and includes more property features that persons with vision and hearing disabilities may desire, as well as those with mobility challenges. Reading through the report is sure to educate everyone about all the various features that potentially may be incorporated in a home to make it more comfortable for persons with different special needs. It will certainly open the eyes of parties and licensees alike to all of the technological advancements that have been made over the years and all of the miraculous features a buyer may wish to install in a property if they were interested in remodeling or retrofitting a home with basic features that can be adapted to further accommodate additional needs.

Each WRA AFR concludes with spaces for the sellers' signatures and a place for buyers to initial to indicate they have received and read the report should the parties include the AFR in their transaction.

Keep in mind that the AFRs are tools and a seller or listing agent may select whatever report form they believe will be best in the situation and that will most closely encompass the attributes, dimensions and physical features of the particular home listed for sale.

The two new AFR forms may be found in zipForm and on the WRA Customers with Disabilities Resource page at [www.wra.org/Disabilities](http://www.wra.org/Disabilities).

***The listing broker would like to advertise a house as wheelchair accessible because it is built at ground level. The broker was told that the remainder of the house, especially the bathroom, would also have to be wheelchair accessible. Is this correct?***

The term "accessible" may have many connotations. What may be accessible for certain persons with special needs may not be so for others. To address this issue, the WRA recommends using an Accessibility Features Report (AFR) to assist in marketing properties that may be remodeled and retrofitted for persons with special needs. The AFR forms may be found in ZipForm, or on the WRA Customers with Disabilities Resource page at [www.wra.org/Disabilities](http://www.wra.org/Disabilities).

## RESOURCES

- Growing Accessibility Challenges at <https://magazine.realtor/news-and-commentary/feature/article/2021/07/growing-accessibility-challenges>
- CDC infographic: [www.cdc.gov/ncbddd/disabilityandhealth/documents/disabilities\\_impacts\\_all\\_of\\_us.pdf](http://www.cdc.gov/ncbddd/disabilityandhealth/documents/disabilities_impacts_all_of_us.pdf)
- March 2001 *Legal Update*, "Providing Good Customer Service to Persons with Special Needs," at [www.wra.org/LU0103](http://www.wra.org/LU0103).
- November 2010 *Legal Update*, "Growing Market for Accessible Housing," at [www.wra.org/LU1011](http://www.wra.org/LU1011).
- October 2001 *Legal Update*, "Accessible Offices and Homes – A Guide to the ADA and Visitability," at [www.wra.org/LU0110](http://www.wra.org/LU0110).
- November 1999 *Legal Update*, "Assisting People with Disabilities to Purchase a Home," at [www.wra.org/LU9911](http://www.wra.org/LU9911).

### The Right Thing

NAR's "That's Who We R" TV spots feature four storylines, including "The Neighborhood," "The Right Thing," "The Search" and "The Unexpected."

Be sure to watch The Right Thing: [http://chicago.flavor.tv/flavor\\_web/22941\\_nar/quicktimes/20220113-1700/16x9/NAR\\_TheRightThing\\_30sec\\_WIP\\_20220112\\_545pm.mp4](http://chicago.flavor.tv/flavor_web/22941_nar/quicktimes/20220113-1700/16x9/NAR_TheRightThing_30sec_WIP_20220112_545pm.mp4)

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