

Chapter 162-38 WAC
REAL ESTATE TRANSACTIONS, DISABILITY DISCRIMINATION

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

162-38-020	Purpose of chapter. [Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-38-020, filed 9/22/82.] Repealed by WSR 96-13-045, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3) and 49.60.240.
162-38-030	Related law. [Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-38-030, filed 9/22/82.] Repealed by WSR 96-13-045, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3) and 49.60.240.
162-38-130	Behavior causing risk. [Statutory Authority: RCW 49.60.120(3) and 1997 c 271. WSR 98-08-035, § 162-38-130, filed 3/23/98, effective 4/23/98.] Repealed by WSR 99-15-025, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3).

WAC 162-38-010 Scope and purpose of chapter. (1) **Confined to unfair practices.** This chapter interprets and implements the disability discrimination coverage provided by the law against discrimination regarding unfair practices in real estate transactions, RCW 49.60.222 through 49.60.340. This chapter applies to the unfair practices which the commission is empowered by RCW 49.60.120(4) to eliminate and prevent through the administrative process provided in RCW 49.60.230 through 49.60.270.

(2) **Principal statutes interpreted.** The statutes principally interpreted in this chapter are RCW 49.60.222 through 49.60.225. This chapter does not define the scope of the civil right to be free from discrimination because of a disability declared in RCW 49.60.030 or interpret other statutes.

(3) **Sources of policy guidance.** In applying and interpreting the provisions of the law against discrimination regarding discrimination in real estate transactions based upon the presence of a sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person, the commission is guided by the following:

(a) Legislative policy statements found in RCW 49.60.010, 49.60.030, 70.84.010 and 70.92.100; and

(b) The federal Fair Housing Amendments Act of 1988, 42 U.S.C. 3601, et seq.

(4) **Related statutes and regulations.** Chapter 70.92 RCW (provisions in buildings for aged and disabled persons); chapter 70.84 RCW ("white cane law" for disabled persons); chapter 19.27 RCW (state building code); chapter 162-26 WAC (disability discrimination in public accommodations); chapter 162-22 WAC (disability discrimination in employment); chapter 162-40 WAC (disability discrimination in credit transactions); chapter 162-36 WAC (unfair practices in real estate transactions); and chapter 51-30 WAC (standards for barrier-free facilities).

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. WSR 98-08-035, § 162-38-010, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-38-010, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-38-010, filed 9/22/82.]

WAC 162-38-035 Concurrent remedy in court. Courts have jurisdiction under RCW 49.60.030(2) to remedy violations of RCW 49.60.222, 49.60.223, 49.60.2235 and 49.60.224 as interpreted and implemented by this chapter, concurrently with the commission. When the commission learns that an action on the same facts has been filed in court, the commission will administratively close the case before it in compliance with RCW 49.60.226 and WAC 162-08-062.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-38-035, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-38-035, filed 9/22/82.]

WAC 162-38-040 Definitions. The following words or phrases are used in this chapter in the meaning given, unless the context clearly indicates another meaning.

"Accessible" means usable or understandable by a person who is disabled, with reasonable effort and in reasonable safety.

"Standards for barrier-free facilities" means standards for making building and facilities accessible to physically disabled persons, pursuant to chapter 51-30 WAC and chapter 70.92 RCW. See WAC 162-38-030(2), 162-38-070.

"Disability" is short for "the presence of a sensory, mental or physical disability."

"Landlord" means anyone other than the occupant of real property who attempts to control use of the property under claim of right arising out of an ownership interest in real property by that person or another person for whom that person acts. The term includes owners of rental property, trustees, receivers, persons controlling the common areas used in connection with condominiums, and agents or others acting in the interest of any such persons.

"Rental property" includes real property that is rented or leased, offered for rental or lease, or built or maintained for rental or lease.

"Structural" means the load-bearing members and essential structure or composition of a place, as distinguished from its finish, decorations or fittings. Examples of structural components are floors, walls, stairs, door openings, sidewalks, elevators, and escalators. Examples of things that are not structural are moveable walls, bathroom fixtures and partitions, fixtures such as water fountains (whether or not attached to a wall), doors and door hardware, cabinets, counters, handrails, signs (attached or painted), elevator controls, alarm systems, and carpeting and other floor covers.

"Tenant" is a person who rents or seeks to rent real property.

"Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons.

"Service animal" means an animal that is trained for the purpose of assisting or accommodating a disabled person's sensory, mental, or physical disability.

[Statutory Authority: RCW 49.60.120(3). WSR 99-15-025, § 162-38-040, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. WSR 98-08-035, § 162-38-040, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-38-040, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-38-040, filed 9/22/82.]

WAC 162-38-050 Who is protected. (1) **Scope.** RCW 49.60.222 defines practices in connection with real estate transactions that are unfair when done because of "the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person." Nothing in this chapter or in chapter 49.60 RCW, however, prohibits treating disabled persons more favorably in a real estate transaction than persons who are not disabled.

(2) **Presence of disability.** The presence of a sensory, mental, or physical disability includes, but is not limited to, an abnormal condition that:

- (a) Is medically cognizable or diagnosable;
- (b) Exists as a record or history; or
- (c) Is perceived to exist, whether or not it exists in fact.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. WSR 98-08-035, § 162-38-050, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-38-050, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-38-050, filed 9/22/82.]

WAC 162-38-060 General rules. (1) **General principles apply.** The unfair practices in real estate transactions as defined in RCW 49.60.222 through 49.60.225 apply to claims of disability discrimination. This chapter deals with special questions as to the application of the law to disability discrimination. Where no special provision is made by the statute, by this chapter, or by exception by the commissioners under WAC 162-06-030, general principles of nondiscrimination apply.

(2) **Statutory rules.** It is an unfair practice for any person to do any of the acts enumerated in RCW 49.60.222 through 49.60.225 because of the presence of a sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. For purposes of this chapter, an unfair practice in a real estate transaction on the basis of a disability includes discrimination because of a disability of the buyer or renter, a person residing in or intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that buyer or renter.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. WSR 98-08-035, § 162-38-060, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-38-060, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-38-060, filed 9/22/82.]

WAC 162-38-070 Accessibility. (1) Laws requiring accessibility.

The principal laws that require that buildings be made accessible are:

(a) The state building code, chapter 19.27 RCW, which includes the standards for barrier free facilities in chapter 51-30 WAC, promulgated under the authority of chapter 70.92 RCW.

(b) The federal Fair Housing Amendments Act of 1988, codified at 42 U.S.C. 3601, et seq., and accompanying regulations (chapter 24 C.F.R. Part 100).

(c) The Americans With Disabilities Act of 1990, codified at 42 U.S.C. 12101, et seq.

(d) The Rehabilitation Act of 1973, codified at 29 U.S.C. 701, et seq., and accompanying regulations.

(e) The Architectural Barriers Act, codified at 42 U.S.C. 4151, et seq.

(3) **Practices that are not unfair.** It is not an unfair practice under RCW 49.60.222:

(a) To engage in a real estate transaction involving real property with structural barriers that were lawful when constructed and that are presently lawful under the state building code and other law outside of the law against discrimination; or

(b) To maintain real property with structural barriers to accessibility when the structural barriers were lawful when constructed and are presently lawful under the state building code and other law outside of the law against discrimination.

(4) **Unfair practices.** It is an unfair practice under RCW 49.60.222:

(a) To build or remodel in violation of the standards for barrier free facilities, chapter 51-30 WAC, or other requirement of law on accessibility as defined herein.

(b) To fail to maintain or fail to continue the accessibility of real property that was required by law to be accessible when built, remodeled, or rehabilitated.

(c) To take any action of the types set out in RCW 49.60.222 through 49.60.225 against a disabled person because the real property transaction involves real property that is not accessible.

(d) For an owner of four or more units of rental property who is making nonstructural changes in the rental property to fail to eliminate barriers to accessibility when this can be done without substantially changing the scope or cost of the project or requiring structural changes that are not otherwise required by law. Specifically, it is an unfair practice:

(i) When installing a nonstructural fixture or component, to choose and install one that is not accessible to the disabled or that makes the place of public accommodation less accessible to the disabled.

(ii) When replacing a nonstructural fixture or component, to replace it with one that is not accessible to the disabled or one that makes the place of public accommodation less accessible to the disabled.

(iii) When relocating a nonstructural fixture or component, to relocate it to a place that is not accessible to the disabled, unless no suitable place is accessible.

(iv) When modifying a nonstructural fixture or component, to do so in a way that does not eliminate barriers to the disabled, when possible.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-38-070, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 83-02-012 (Order 43), § 162-38-070, filed 12/23/82.]

WAC 162-38-080 Modifications or additions made by tenants. (1) **Landlord need not pay.** Except as required by law, a landlord is not required to pay for alterations or additions to real property needed to make it accessible by disabled persons.

(2) **Unfair to unreasonably prohibit modifications needed by disabled tenant.** Whether or not the landlord permits tenants in general to make alterations or additions to a structure, it is an unfair practice under RCW 49.60.222 for a landlord to refuse to allow a disabled tenant to make reasonable alterations or additions to the structure or fixtures under the following conditions:

(a) The alterations or additions are paid for by the tenant; and

(b) The tenant agrees to restore the interior of the dwelling to the condition that existed before the modification, reasonable wear and tear excepted; or

(c) As otherwise required by RCW 49.60.222(2).

(3) **Examples of appropriate modifications.** The following are examples of alterations or additions commonly needed to make real property accessible to disabled persons:

(a) Ramps for wheelchairs or walkers.

(b) Lights to indicate to a deaf person that the doorbell or telephone is ringing, or for similar purposes.

(c) Grab bars in bathrooms.

(d) Roll-out shelves in kitchens.

(e) Simplified locking systems for use by a person with mental disabilities.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-38-080, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-38-080, filed 9/22/82.]

WAC 162-38-090 Public areas of rental property. (1) **Are covered as places of public accommodation.** RCW 49.60.040 includes the following in its broad definition of place of public accommodation:

". . . public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants."

(2) **Applicable law.** Public areas as defined in this section are governed by the public accommodations coverage of the law against discrimination, RCW 49.60.215, and chapter 162-26 WAC, public accommodations, disability discrimination, as well as by the real estate transaction coverage of the law against discrimination and this chapter of the commission's regulations.

(3) **Public areas.** "Public" areas for purposes of public accommodations coverage of rental property include all areas intended for use by more than one tenant, or by one or more tenants and the resident owner. The area need not be open to the public at large. The area is covered if it is open to all tenants, or any two tenants, or the owner and one or more tenants. In addition to public halls, public elevators and public washrooms, public areas include garbage disposal facili-

ties, recreation facilities, laundry or other work areas, and open space.

[Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-38-090, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-38-090, filed 9/22/82.]

WAC 162-38-100 Persons with dog guides or service animals. (1) **Are protected.** RCW 49.60.222 protects persons with disabilities from discrimination because of their use of a trained dog guide or service animal the same as it protects them from discrimination directly because of disability.

(2) **General rule.** The same rules that apply to the treatment of persons because of disability under RCW 49.60.222 and this chapter apply to the treatment of persons with disabilities because they use a trained dog guide or service animal.

(3) **Landlord's duty.** It is an unfair practice for a landlord to refuse to rent to a person with a disability because the person uses a trained dog guide or service animal. A landlord's no-pet policy cannot be applied to the dog guide or service animal of a person with a disability.

(4) **Cleaning or damage deposits not unfair.** It is not an unfair practice for a landlord to enforce on a tenant with a disability using a dog guide or service animal its standard cleaning or damage deposit if the same cleaning or damage deposit is enforced equally on all tenants.

(5) **Pet deposits unfair.** It is an unfair practice for a landlord to enforce on a tenant with a disability using a dog guide or service animal a pet deposit in addition to any standard cleaning or damage deposit.

[Statutory Authority: RCW 49.60.120(3). WSR 99-15-025, § 162-38-100, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 1997 c 271. WSR 98-08-035, § 162-38-100, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-38-100, filed 9/22/82.]

WAC 162-38-105 Removal of dog guides and service animals. (1) **General rule.** It is an unfair practice to request that a trained dog guide or service animal be removed, unless the person can show:

(a) That the presence, behavior or actions of that dog guide or service animal constitutes an unreasonable risk of injury or harm to property or other persons; and

(b) A reasonable attempt to eliminate the behavior or actions of that dog guide or service animal that constitutes an unreasonable risk fails.

It is an unfair practice to remove a trained dog guide or service animal from the entire rental property because the animal presents a risk of injury or harm when in part of the rental property.

(2) **Assessing risk of injury or harm.**

(a) Risk to property or other persons must be immediate or reasonably foreseeable under the circumstances, not remote or speculative. Risk to persons may be given more weight than risk to property. Risk of severe injury or harm may be given more weight than risk of slight injury or harm. For example, an apartment manager excludes a

tenant's dog guide because, "a pet dog bit one of the kids here a while back, so now I don't allow any dogs in the complex." This is **not** "reasonably foreseeable risk" justifying removal of the dog guide.

(b) Annoyance on the part of staff or other tenants of the rental property at the presence of the dog guide or service animal is not an unreasonable "risk to property or other persons" justifying the removal of the dog guide or service animal.

(c) Risk of injury or harm to the dog guide or service animal is not a reason to remove or exclude the animal. The decision whether to bring the animal into the rental property under such circumstances most properly rests with the person with a disability using the dog guide or service animal.

(3) **Reasonable accommodation.** When risk justifies the removal of a dog guide or service animal from a rental property, efforts must be made to reasonably accommodate the person with the disability.

(4) **Liability.** Law other than the law against discrimination governs liability for injury or harm. Generally, a person with a disability using a dog guide or service animal is responsible for the animal and may be held liable for the actions or behavior of the animal.

[Statutory Authority: RCW 49.60.120(3). WSR 99-15-025, § 162-38-105, filed 7/12/99, effective 8/12/99.]

WAC 162-38-110 Inquiries to disabled applicants. Unfair practice. It is an unfair practice under RCW 49.60.222 (1)(g) for a landlord to inquire into matters personal to a disabled applicant beyond what is necessary and appropriate to the landlord-tenant relationship. For example, the landlord may inquire as to how many persons will occupy the unit, but ordinarily will have no other reason to know whether an aide assists a person with a disability, and when.

[Statutory Authority: RCW 49.60.120(3). WSR 99-15-025, § 162-38-110, filed 7/12/99, effective 8/12/99. Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-38-110, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-38-110, filed 9/22/82.]

WAC 162-38-120 Unfair to request or require waiver of rights. It is an unfair practice for any person as a condition of entering into or continuing a real estate transaction to request or require another person to waive rights or hold anyone harmless because the real property will be occupied by a disabled person or by a person with a disability using a trained dog guide or service animal.

[Statutory Authority: RCW 49.60.120(3) and 1997 c 271. WSR 98-08-035, § 162-38-120, filed 3/23/98, effective 4/23/98. Statutory Authority: RCW 49.60.120(3) and 49.60.240. WSR 96-13-045, § 162-38-120, filed 6/13/96, effective 7/14/96. Statutory Authority: RCW 49.60.120(3). WSR 82-19-086 (Order 41), § 162-38-120, filed 9/22/82.]