



FAIR HOUSING ACCESS: SCOPING AND LIABILITY

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What is Covered?

For a Fair Housing Act case:

- A “dwelling” under the Fair Housing Act
- Designed and constructed for “first occupancy” after March 13, 1991
- A building with four or more dwelling units
- In a building with an elevator, all units are covered
- In a building without an elevator, all ground floor units are covered



- “Dwellings” under the Act include private and publicly funded housing:
 - Apartments
 - Condominiums
 - Timeshares
 - Dormitories
 - “Institutional” group homes
 - Nursing homes
 - Residential hotels
 - Tax credit properties
 - Public housing

REGARDLESS OF FUNDING, but an investigation should keep track of funding sources because other laws may apply



Enforcement

- Private fair housing organizations
 - Free, funded by HUD, advocates available
 - Can assist with enforcement
- Department of Housing and Urban Development, Office of Fair Housing
 - Free
 - Talk to a person or file an on-line complaint:
<https://www.hud.gov/fairhousing/fileacomplaint%20>
- State or local fair housing enforcement agencies like Ohio Commission on Civil Rights
 - Free
- Legal assistance
 - Cost depends on the lawyer; look for a specialist and a contingency agreement



- What is Covered:
- Multifamily Housing:
 - Constructed for first occupancy after March 13, 1991
 - Buildings with four or more units
 - In elevator buildings, all units
 - In buildings without an elevator, ground floor units
 - And all public and common use areas
- What is **not** Covered:
 - Detached single family houses
 - Duplexes or triplexes
 - **Multistory townhouses**
 - Renovation of pre-1991 buildings

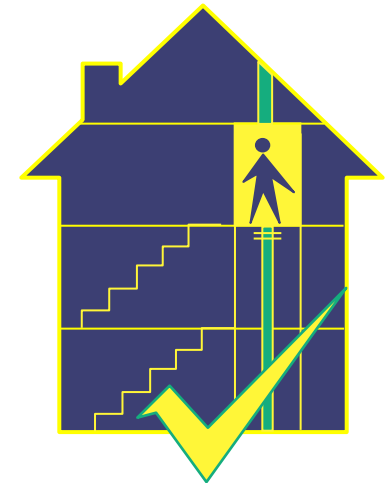


Townhouse Exception

Townhouses with two or more stories are generally NOT covered

BUT: TOWNHOUSES
WITH ELEVATORS MUST
COMPLY

Townhouses with private interior elevators are covered, and, to a limited extent, townhouses in buildings with an elevator are covered.





Townhouses





Carriage House Design

Carriage Houses are Not Covered





Multifamily Units Over Retail





Fair Housing Act – Ten Safe Harbors for Compliance

- HUD Fair Housing Accessibility Guidelines and the Supplemental Notice
- ANSI A117.1 (1986), used with the Fair Housing Act, HUD's regulations, and the Guidelines
- CABO/ANSI A117.1 (1992) used with the Fair Housing Act, HUD's regulations, and the Guidelines
- ICC/ANSI A117.1 (1998) used with the Fair Housing Act, HUD's regulations, and the Guidelines
- The Fair Housing Act Design Manual (1998)



Fair Housing Act – Ten Safe Harbors for Compliance

- Code Requirements for Housing Accessibility 2000 (ICC/CRHA)
- International Building Code 2000 with 2001 Supplement
- International Building Code 2003, with one condition*
- American National Standards Institute (ANSI) 2003
- International Building Code (IBC) 2006
- HUD proposes to add 2009, 2012, 2015, and 2018 editions of the International Building Code as safe harbors for compliance with the accessibility requirements of the Fair Housing Act.



Effect of Local Code Standards

- Compliance with local code requirements is NOT a defense
- **Compliance** with a state or local law that provides a **comparable** level of accessibility to one of the safe harbors can be a defense.
 - In real life, if you see exterior steps, narrow doors, high thresholds, either the code is not comparable OR the developer/designer did not comply with it



All Participants May be Liable

- U.S. v. Rommel Builders, Inc., et al - 3 F. Supp.2d 661 (D. Md. 1998).
The Act imposes liability on entities beyond builders or developers; an entity need not be engaged both in design and construction to be liable under the Act.
- “When a group of entities enters into the design and construction of a covered dwelling, all participants in the process as a whole are bound to follow” the Act.
 - Developers
 - Owners
 - Managers
 - Architects
 - Civil Engineers
 - Landscape Designers
 - Contractors
 - Homeowners Associations
 - Cities, counties, states
 - Subsequent corporate or governmental owners
 - Real Estate Agents?
 - Lenders?



Rejected Defenses

- “I didn’t know”---Department of Housing and Urban Development v. Argave – HUDALJ 10-99-0308 (Order, November 15, 2001).
- “Requirements are confusing,” “vague” - Montana Fair Housing, Inc., et al. v. American Capital Development, Inc., et al.-81 F. Supp. 2d 1057 (D. Mont. 1999); U.S. v. Taigen & Sons, Inc. et al.- 303 F. Supp. 2nd 1129 (D. ID. 2003).
- Wheelchair user can use the premises--Fair Housing Council et al. v. Village of Olde St. Andrews Inc. et al.- 250 F. Supp. 706 (W.D. Ky. 2003).
- Did not design AND construct-- Montana Fair Housing, Inc., et al. v. American Capital Development, Inc. et al.- 81 F. Supp. 2d 1057 (D. Mont. 1999).
- Reliance on expertise of another--U.S. v. Quality Built Construction, Inc. et al. – No. 4:00-CV-194 BO(3),(Order, January 7, 2003) (E.D. N.C. 2003).
- Post litigation changes---Memphis Center for Independent Living v. R. and M. Grant, et al.- No. 01-2069, Order Granting Partial Summary Judgment, April 26, 2004 (W.D. Tenn. 2004).
- No disabled applicants, “we will adapt when someone who is disabled moves in” also have been rejected.



Identify Potential Properties

- Identify the property in question and attempt to identify WHEN it was built, when occupancy permits were approved and who the developer and architects were
- Go to the local planning office and permit office for permits and plans
- Go to the local tax assessment office for current owner/operator
- Go to the Secretary of state for corporate identification of the agent for service of process which is where a complaint can be sent if you can't identify the owner
- Go to apartment.com, RENT.COM, apartmentguide.com and others, for more information
 - Date built
 - How many units
 - Photographs
 - Floor plans



Seven Key Elements of Compliance: Accessible Routes and Accessible Public and Common Use Areas

One: Accessible routes

- From “pedestrian arrival areas” to entrances for each unit (“Primary entrances”)
 - Route has running slope $< 5\%$ or ramp $< 8.33\%$
 - Route has cross slope $< 2\%$
 - Route includes properly designed curb cuts
 - Route is at least 36” wide
 - Doors on route have at least 32” clear opening and maneuvering space
 - Route includes accessible hardware on doors and gates

Two: Accessible public and common use areas

- Parking: At least 2% of spaces for residents are accessible



Seven Key Elements of Compliance

Two (cont.): Accessible public and common use areas

- Parking: Additional accessible spaces for visitors are accessible; at least one van accessible space at rental/sales offices (ADA requirement)
- Accessible route to public and common use areas
 - Pool
 - Mailboxes
 - Club house
 - Laundromat
 - Fitness center
 - Jogging trails, gazebo, dog park, picnic area

Three: Usable Doors

- Interior doors are wide enough for access
- 32" or "nominal 32" which is 31 5/8"



Seven Key Elements of Compliance

Four: Accessible route into and through the dwelling unit

- Interior of unit has accessible doorways, level changes and thresholds, door to patio/balcony is accessible. (four inch drop allowable to concrete patios)

Five: Light switches, electrical outlets, thermostats and other environmental controls in accessible locations

- Reach ranges are between 15" and 48" above the floor, outlets are also within reach ranges

Six: Reinforced walls in bathrooms

- Grab bars can be installed at toilet, tub, shower

Seven: Usable kitchens and bathrooms

- Clear openings of 40" in kitchen, clear floor space parallel to and centered on sinks, stoves, and parallel or perpendicular to refrigerator, specific space requirements at toilet and tub/shower .



Focus on the Property

- Do a drive-by if you don't live there
- Go to the website for an identified property
 - Photographs
 - Floor plans
- Examine and download interior and exterior photographs, posted floor plans, other relevant info into a consistent format
- Examine any google earth images
- Identify information about funders, owners, and date of construction, often all available.



Identify Connected Properties

- Identify the owner and the operator of the site and funding sources(s)
 - Website
 - Lists of tax credit properties, <https://lihtc.huduser.gov/>
 - HUD-subsidized properties
<https://www.huduser.gov/portal/datasets/assthsg.html>
- Look for other properties by same owner or developer or architect
- Investigate them
- The date of the occupancy permit for the most recently constructed property can be important for statute of limitations purposes
 - Two years for a federal lawsuit
 - One year for HUD
 - Often 6 months for a state of local agency



Keep Organized Records

- Construct a common record keeping system to enter the data that you have collected
- If you download something, keep the link with what you have downloaded. In some cases, downloads are not possible, but screen shots are. Keep the website or internet address with the screen shot, along with the date.
- When you download pictures or on-line plans, keep the web address and the date.
- Date your searches. It becomes VERY relevant when websites change or additions made later.
- Note other application or rental policies that may be discriminatory as part of review



On-Site Investigations

- Drive-By Investigations

- Office

- Look for accessible route to office
 - At least one van accessible parking space at office (ADA requirement)
 - One or more accessible parking spaces with curb cuts and signs around the property

- Overall accessible parking spaces

- At least 2% of the spaces for residents
 - More accessible spaces for visitors
 - At every amenity (clubhouse, pool, mailboxes) that has parking, there is at least one accessible parking space

- Accessible routes

- At least one accessible route to each amenity: mailboxes, pool, club house, dog park, picnic table/grill, gazebo....
 - An accessible route without steep slopes or steps to the primary entrance of each unit
 - At entrance threshold, no more than 1¼ inch rise from exterior stoop, beveled 1:2



COMMON ERRORS



THE MOST COMMON ERROR

- The developer/owner doesn't know what they are doing
- They comply with state or local building codes but not Fair Housing Act or other requirements
- Or they don't really even comply with state or local codes



Structural Errors

- Lack of an accessible exterior route to units
 - There are steps or steep slopes
 - There is a big step at the “primary entrance”
 - There is a high threshold at the entrance door



No Accessible Route to Ground Floor Units





Step at Primary Entrance Door





High Thresholds at Primary Entrance





Exterior Route and Door Hardware





Lack of Accessible Route to Club House





Inaccessible Entrance and No Accessible Parking





Cross Slope on Sidewalk





Lack of Accessible Route to Mailboxes





Lack of Accessible Route to Mailboxes in a neighborhood





Lack of Accessible Route to Amenities





Noncompliant curb cut with excessive slopes





Lack of Accessible Parking

- Lack of van accessible parking at office
- Lack of enough accessible parking spaces



Lack of Accessible Parking at Club House





Parking Isn't Accessible; Curb Cut a Problem





No Access Aisle or Curb Cut





Curb Ramp with Steep Slopes





No Accessible Garages





Lack of Clear Opening at Pantry Door





Lack of 60 inch Turning Radius





Lack of Clear Floor Space Centered on Stove





Lack of Clear Floor Space at Bathroom Sink





Lack of Clear Floor Space at Toilet





What Else?



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Resources

- Fair Housing Design Manual,
<https://www.huduser.gov/portal/publications/destech/fairhousing.html>
- Fair Housing FIRST, FAQs,
<https://www.fairhousingfirst.org/faq.asp>
- Fair Housing First, Key Issues caselaw,
<https://www.fairhousingfirst.org/resources/courtcases.html>
- HUD Fair Housing Accessibility Guidelines,
https://www.hud.gov/program_offices/fair_housing_equal_opportunities/fhefhag
- HUD and DOJ Joint Statement, Accessibility (Design and Construction) Requirements for Covered Multifamily Dwellings Under the Fair Housing Act,
https://www.ada.gov/doj_hud_statement.pdf