

Landlord to Pay \$11.4 Million in Accessibility Case by Howard Bookstaff, Attorney

Does your property measure up to Federal Fair Housing and disability standards? A recently lawsuit has highlighted the need for apartment owners and operators to be vigilant and pay careful attention to meeting federal standards for accessibility to disabled residents.

If your property was built for first occupancy after March 13, 1991, it is subject to certain design and construction requirements pursuant to the FHA.

On December 20, 2004, three nonprofit groups filed a Fair Housing lawsuit in federal court against an apartment operator with communities in several states. The plaintiffs alleged that the operator failed to design and construct numerous apartment communities in accordance with the requirements of the Fair Housing and Americans with Disabilities Act.

On June 8, 2005, the court entered a decree in the case requiring the operator to determine what remedial actions, if any, need to be taken with respect to meeting the accessibility requirements of the FHA and ADA for 71 of its properties throughout the nation. In addition to taking remedial measures, the operator agreed to pay \$11.4 million to the nonprofit organizations to cover their damages, attorneys' fees and other related expenses.

Accessibility requirements have received a lot of attention from various nonprofit groups whose mission is to promote Fair Housing throughout the United States and provide counseling and referral services to protect individuals seeking housing. If your property was built for first occupancy after March 13, 1991, it is subject to certain design and construction requirements pursuant to the FHA. If your property was constructed for first occupancy after January 26, 1993, it is also subject to certain accessibility requirements under the ADA. The issues discussed in the suit may apply to your property.

Accessibility Requirements

The FHA provides that, in connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, discrimination includes the failure to design and construct those dwellings in such a manner that:

1. The public use and common use portions of such dwellings are readily accessible to and useable by handicapped persons.
2. All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs.
3. All premises within such dwellings contain the following features of adaptive design:
 - an accessible route into and through the dwelling
 - light switches, electrical outlets, thermostats and other environmental controls in accessible locations
 - reinforcements in bathroom walls to allow later installation of grab bars and
 - useable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space

It should be noted that the term "covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground-floor units in other buildings consisting of four or more units. The term "ground floor" under FHA means a floor of a building with a building entrance on an accessible route. An "accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair that is also safe for and useable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts.

Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly known as the ANSI guidelines) suffices to satisfy the FHA requirements. The ANSI guidelines create a “safe harbor” for operators to follow to avoid issues.

The ADA provides that it is discriminatory conduct to design and construct facilities considered to be public accommodations and commercial facilities, for first occupancy after January 26, 1993, that are not readily accessible to and useable by individuals with disabilities. Areas of an apartment community that would be considered public accommodations include the rental office, model unit, visitor parking areas or other portions of the property that are open to the public.

Allegations of the Complaint

In 2000, a nonprofit group sent testers to properties being constructed by various developers. After discovering what it described as a pattern of violations of the FHA, the group sent testers to the operator’s properties to determine the extent of FHA and ADA violations. Altogether, 30 properties were tested in five different states and the District of Columbia. The complaint alleged that the units at the tested properties had the following accessibility problems:

1. doors to units were not wide enough to allow passage by persons who use wheelchairs
2. units did not contain the following features of adaptive design:
 - an accessible route into and through the unit
 - light switches, electrical outlets, thermostats and other environmental controls in accessible locations
 - useable kitchens and bathrooms such that an individual in a wheelchair could maneuver about the space
 - units were constructed without accessible routes, including steps or other barriers that inhibit access to the unit and
 - patios or balconies were not accessible

The complaint also alleged that common areas of the properties tested had the following accessibility problems: mailboxes were not accessible to persons who use wheelchairs or with other mobility impairments because the common areas lacked curb cuts or were otherwise inaccessible and recreational facilities including pools, barbecue areas and children’s play areas were not on an accessible route.

The complaint also alleged that the properties’ public areas posed accessibility problems because rental offices were located upstairs or had other barriers that restricted access and parking facilities lacked reserved and accessible parking or an accessible route from the parking area to the rental office. The offices also had facilities, such as restrooms or other fixtures that were inaccessible. In one case, the complaint alleged that, when a tester desired to see a unit, the leasing agent stated that the community had a policy of showing “model” units which were located on the third floor and accessible only by steps.

What You Can Do

Assume that testers are coming to your property to check compliance. A survey of your property can be conducted to determine whether your property meets the accessibility requirements of the FHA and the ADA. The “safe harbor” provisions of the ANSI guidelines should be reviewed to determine whether, and to what extent, any work needs to be completed in order to meet those guidelines. The ADA guidelines should also be reviewed to determine whether, and to what extent, any work is required to meet the requirements applicable to the public facilities located at your property.

Learn from the complaint filed by the nonprofit groups in this case. By taking action now, you can avoid potentially uncomfortable and expensive problems down the road.

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