



# Issue Fact Sheet

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## FAIR HOUSING ACCESSIBILITY

### Background

When Congress amended the Fair Housing Act in 1988 to make it unlawful to discriminate against any person on the basis of handicap, it defined “discrimination” to include the failure to design and construct certain covered multifamily dwellings in such a manner that they are accessible and usable by handicapped persons. Many NMHC/NAA members have been challenged with lawsuits over their alleged failure to comply with the accessibility requirements of the law. Given the complexity of building construction coupled with vague and limited guidance provided by the federal government, many property owners misunderstood their obligations and now find themselves potentially out of compliance.

Disability advocates and the federal government continue to turn up the heat to enforce these requirements on the apartment industry. NMHC/NAA support the industry in its legal challenges through “friend of the court” briefs when appropriate and most important, we have been working to identify and create educational opportunities to help the industry comply with the often ambiguous provisions of the law. We also seek a long-term solution to help mitigate the threat of litigation. This combined educational and advocacy initiative is being developed with legal and building industry expertise.

In 2010, NMHC commissioned a report by The Blanck Group, a recognized leader in the disability community for their expertise in disability law and policy, to investigate whether the current standards and existing safe harbors are the only means of achieving accessibility. The report's overall findings call into question the state of the science in the area of accessibility standards development. Their review and analysis support and recommend alternatives to current standards, notably the use of tolerances in lieu of strict measurement protocols as defined in various safe harbors.

### NMHC/NAA Position

Policymakers and regulators need to know the challenges facing the multifamily housing industry as it seeks to comply with interpretations of law that often present difficult targets because of numerous revisions. We also urge HUD to reject requests for establishment of an independent fair housing enforcement agency and to acknowledge that the existing safe harbors are only one means of complying with federal accessibility laws. For many of the accessibility requirements, allowing tolerances to existing safe harbors does not compromise the accessibility of the unit or the ability of a disabled resident to fully enjoy it.

### Current Status

Several apartment firms have entered into settlement agreements with the Equal Rights Center (ERC), the national non-profit organization that has lodged more than a dozen lawsuits against apartment firms in recent years. Ten companies have also joined ERC's Multifamily Housing Resource Program (MHRP), a collaborative effort that seeks to train employees on fair housing and accessibility issues and implement accessibility “best practices.”

Other lawsuits continue to work their way through the legal system. On March 8, 2011, a three-judge panel of the D.C. Circuit Appeals Court upheld a District Court ruling dismissing an ERC lawsuit against Post Properties. The Court of Appeals concurred with a lower court ruling that ERC lacked standing to bring the lawsuit because any injuries the organization suffered were due to its own decision to investigate Post and were thus self-inflicted. ERC can appeal the ruling to the entire Court of Appeals or the U.S. Supreme Court. In a conflicting ruling, on July 22, 2011, a federal judge held that ERC has standing to sue Equity Residential for alleged violations of the Fair Housing Act at 300 properties nationwide, finding that the ERC's mission was undermined by forcing the group to abandon victim counseling, seminars, education and other outreach activities in order to investigate accessibility violations.

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