

FAIR HOUSING: HANDICAP ACCESSIBILITY

NMHC/NAA Viewpoint

NMHC/NAA members support the accessibility design and construction requirements as mandated by the Fair Housing Act. However, construction tolerances should be incorporated into the requirements, giving apartment firms more flexibility to improve accessibility across a wide range of properties and sites.

When Congress amended the Fair Housing Act in 1988 to make it unlawful to discriminate against any person on the basis of handicap, it expanded the definition of discrimination to include the failure to design and construct certain multifamily dwellings in such a manner that they are accessible and usable by handicapped persons.

However, limited guidance from the federal government, often conflicting building codes and standards and increasing construction complexity have created ambiguity, opening many apartment owners and developers to noncompliance with accessibility rules.

At the same time, the federal government, along with certain disability advocates, continues to push enforcement of these requirements. Many apartment firms have been challenged with lawsuits over alleged failure to comply with the accessibility requirements of the law.

In fact, since 2009, the U.S. Department of Housing and Urban Development has investigated roughly 300 cases of alleged accessibility violations. Similarly, the U.S. Department of Justice filed 19 cases in the same timeframe. Private groups also are pursuing legal action; since 2005, one particular nonprofit organization has sued 13 major apartment firms for noncompliance, resulting in a number of settlement agreements, which included costly retrofits.

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A major flaw in the current approach to accessibility compliance enforcement is the failure of federal officials to recognize that the existing standards and safe harbors are but one way of making a property accessible. A 2010 report by The Blanck Group, a recognized leader in disability law and policy, specifically recommended alternatives to current standards.

Notably, the report supported the use of construction tolerances in the areas of reach ranges and sidewalk slopes in the compliance requirements, which give apartment owners and developers more flexibility in finding ways to improve accessibility across the spectrum of unique apartment properties and building sites.