ACCESSIBILITY: FAIR HOUSING AND ADA

The apartment industry supports the goals of the Americans with Disabilities Act (ADA) and Fair Housing Act (FHA) and is committed to creating communities that are accessible to people with disabilities. Among other things, our responsibilities under the Acts sometimes require the inclusion of specific building design features. However, the complex and sometimes conflicting nature of guidance, building codes and statutory language have led to varying interpretations of design and construction compliance.

NMHC/NAA Viewpoint

NMHC/NAA members support accessibility design and construction requirements. However, enforcement efforts should recognize compliance methods that address real-world conditions. The opportunity to cure alleged incidents of non-compliance supports the goals of both the Americans with Disabilities Act and Fair Housing Act by improving access for persons with disabilities.

Apartment firms are further challenged by the failure of enforcement officials to recognize that existing standards and safe harbors represent just one way to make a property accessible. Research supports the use of alternative design and construction practices that promote usability and access for those with disabilities. These include the use of reasonable construction tolerances related to pathway site slopes, reach ranges in kitchens and bathrooms and site measurements. An acknowledgement of alternative approaches to compliance provides apartment owners and developers with the necessary flexibility to improve accessibility across the spectrum of unique apartment properties.

Conditions under which apartment firms currently operate can lead to allegations of non-compliance that result in litigation, significant unanticipated costs, operational barriers and other challenges. Businesses across the real estate sector are the targets of these lawsuits, many of which are motivated by monetary goals and do nothing to improve access for the disabled. Specifically, these complaints often result from tester visits to a business for the express purpose of finding violations and filing suit. Plaintiffs then typically demand settlement money in lieu of filing a lawsuit.

From 2013 to 2014, the number of ADA public accommodation/access lawsuits surged by more than 63 percent.

NMHC/NAA support legislation introduced in Congress to stem the growing trend of ADA compliance complaints dubbed “drive by” lawsuits. This legislation strives to address what should be the primary concern in ADA compliance – fixing design issues and increasing access for people with disabilities. Specifically, this legislation ensures that business owners receive proper notice of alleged compliance problems and provides an opportunity to cure an alleged ADA deficiency prior to the initiation of a lawsuit. This would eliminate the incentive for complaints motivated purely by financial gain.

NMHC/NAA Joint Legislative Program
1775 Eye St., N.W., Suite 1100 | Washington, D.C. 20006 | 202 974 2300 WeAreApartments.org