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Are Your Buildings Accessible?

Multi-family developers take notice…or you could be next

The Department of Housing and Urban Development (HUD), the Department of Justice (DOJ), and others have stepped-up enforcement of federal accessibility laws developed to ensure that people with disabilities have equal access to the built environment. On March 4th 2009, DOJ announced its most recent case filed against a large multi-family housing developer alleging housing discrimination. In the press release issued by DOJ, Loretta King, Acting Assistant Attorney General for the Civil Rights Division stated, "We will continue to pursue vigorously those who still have not gotten the message that failing to design and construct multi-family housing with basic features of accessibility violates the law."

Are you on the radar screen of those who are being actively pursued? If so, what can you do to ensure compliance? This article highlights federal accessibility laws which may apply to a housing development. It also discusses common mistakes made in the field which, if avoided, will help to ensure compliance.

Accessibility Regulations and What they Cover

There are a number of federal laws developed to ensure that buildings are designed and constructed to provide access for people with disabilities. When these laws, including the Architectural Barriers Act (ABA), Section 504 of the Rehabilitation Act of 1973 (Section 504), The Fair Housing Amendments Act of 1988 (FHAA), and the Americans with Disabilities Act (ADA), are triggered, they apply in addition to the accessibility requirements of the applicable building code and the law of a state or local jurisdiction. Federal, state, and local laws and building codes refer to a number of technical standards for guidance on accessible design.

Architectural Barriers Act (ABA)

The ABA requires buildings and facilities that are constructed, leased, or financed by the United States to be accessible to people with disabilities. Simply stated, the ABA requires building access and it refers to the Uniform Federal Accessibility Standard (UFAS) for technical criteria used to incorporate access to buildings. The ABA is the oldest federal accessibility law. The good news is that compliance with Section 504 of the Rehabilitation Act of 1973, a subsequent federal accessibility law which incorporates the requirement for building access when federal funds are involved in the project, will suffice to satisfy the requirements of the ABA.

Section 504 of the Rehabilitation Act of 1973 (Section 504)

Section 504 provides that no qualified individual with a disability should be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Section 504 applies to the design and construction of buildings if federal funding is provided, such as housing provided by a public housing authority or private developer receiving HUD funding.

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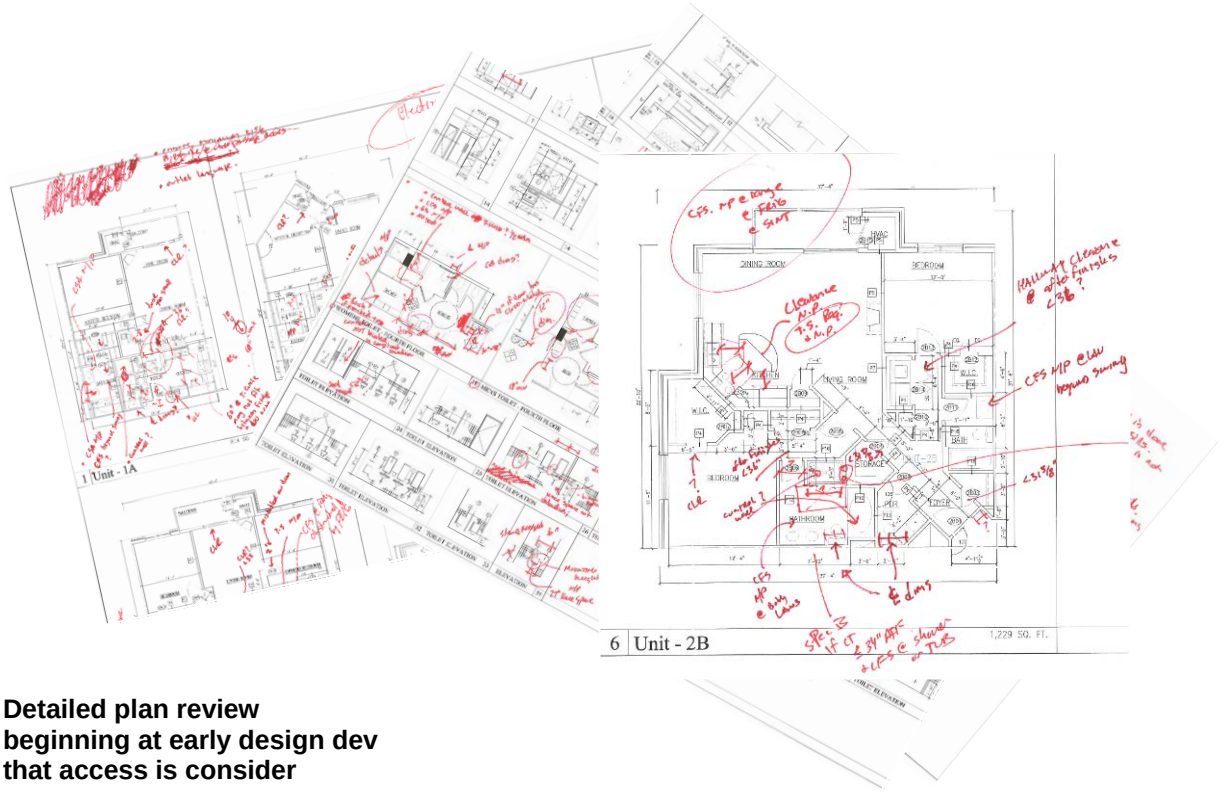

Detailed plan review beginning at early design dev that access is consider

Section 504 applies to new construction and to alterations of existing housing and non-housing facilities. If a newly constructed “multifamily housing project” includes at least five dwelling units, regardless of whether they are located on the same site, 5 percent of the units, but not less than one, are required to incorporate full access for people with disabilities and an additional 2 percent of the units, but not less than one, must accommodate the needs of people with hearing or visual disabilities. For alterations projects, Section 504 is triggered, with some limitations, when there are at least 15 units in the project. This law applies to rental housing; for federally funded homeownership programs, accessibility is required at the request of the buyer. Like the ABA, Section 504 refers to UFAS for technical guidance.

<u>The Fair Housing Amendments Act of 1988 (FHA)</u>

The FHA applies to newly constructed multifamily housing built for “first occupancy” after March 13, 1991. “First occupancy” means that the building was not previously used for a purpose other than a residential use. For example, the FHA does not apply to an adaptive reuse project in which an historic manufacturing facility is converted to condos since the facility was once used for a purpose other than residential. When triggered, the FHA applies regardless of the funding source, whether or not it is privately or publically owned, and whether dwelling units are for sale or rent.

Unlike the ABA and Section 504 which are triggered by federal funds and apply regardless of whether buildings are located on one site, and unlike Section 504, which is triggered when there are at least 5 units in a newly constructed "multifamily housing project" and 15 units in an alterations project, the FHAA applies whenever there are at least four units in one building and covers, with some limitations, all single story ground floor units in buildings not served by elevators and all units in building provided with elevator service. HUD has approved several "safe harbors" for compliance with the design and construction requirements of the FHA.

The Americans with Disabilities Act (ADA)

The ADA is probably the most well known accessibility regulation. Title III of the ADA covers places of public accommodations and commercial facilities, such as hotels and restaurants. The leasing office in a housing development, which is expected to be visited by the general public who may inquire about units for rent, for example, is considered a place of public accommodation and, as a result, is covered by Title III of the ADA. Title III refers to the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for technical guidance.

Title II of the ADA covers activities of states and local governments, such as housing on a state university campus and public housing operated by a housing authority. Title II provides a choice of technical criteria to use; ADAAG or UFAS. Because ADAAG does not include criteria for dwelling units, UFAS, which does include dwelling unit criteria, is recommended for housing required to be accessible by Title II.

Laws of a State and Local Jurisdiction and Building Code Requirements

States and local jurisdictions may have accessibility requirements which apply in addition to federal laws and building codes. Before beginning any project, contact the fair housing office of the state and local jurisdiction in which the project is being built for information on local requirements. Compliance with state and local laws and building codes does not suffice to satisfy the requirements of federal law. Further, projects may be covered by more than one law, depending on a number of factors. The general rule of thumb is that when more than one regulation applies comply with the most stringent criteria.

Common Mistakes

The inspection of properties cited in cases against owners, designers, and contractors have revealed common violations which are found, for the most part, in most properties. These violations are usually the result of the misunderstanding or misapplication of technical guidelines developed to ensure access for people with disabilities. A typical site inspection can result in the identification of hundreds of violations; some of the more prevalent violations are discussed below.

Many of the typical mistakes found in the field can be avoided if a compliance assessment is completed by a qualified consultant during the design development stage and during all phases of construction. Once construction is complete, violations can be extremely costly to remediate. A qualified consultant can determine which laws, standards, and building codes apply; a daunting task for anyone not familiar with all of the laws, codes, and standards which require accessible design.

Excessive Running and Cross Slopes

Accessible dwelling units are required to be connected by an "accessible route" to the common areas which serve them. Accessible routes are subject to specific criteria set in place to make the route easy to negotiate for most people. Two of these criteria which are often violated are

maximum allowable running and cross slopes (the running slope is a measure of the slope parallel to the direction of circulation; the cross slope is measured perpendicular to the direction of circulation).

Cross slopes of accessible routes are required to be no more than 2 percent, which is flat to the unassuming eye. It is not uncommon during a site inspection to find cross slopes in excess of 10 percent or more, a path not easily used by many.

In this picture, cross slope is measured by placing the digital level perpendicular to the direction of travel. The excessive cross slope renders the route inaccessible and creates a difficult condition for anyone with a disability to negotiate.

Typically, extreme cross slopes occur at the intersection of a sidewalk and a curb ramp where the route along the sidewalk continues across the slope of the curb ramp (see photo below). In this case, the running slope of the curb ramp, which is permitted to be up to 1:12 (8.33 percent), is also the cross slope of the accessible route across curb ramp; cross slopes are not permitted to exceed 2 percent.

The common corner curb cut is often constructed incorrectly. In this case, the slope of the curb ramp creates difficulty for some people with disabilities when negotiating the slope as they travel along the sidewalk. When a person who uses a wheelchair makes the turn around the corner, the wheelchair can tip toward the street creating a dangerous condition.

The accessible route is brought around the top of the curb ramp slope.

Providing a pathway around the top of the curb ramp so that a person is not required to negotiate across the slope of the curb ramp is one way to eliminate this common violation.

Additionally, cross slopes of accessible routes typically exceed 2 percent where those routes are provided across driveway aprons, which often slope steeply. If an accessible route is designed to cross a driveway, a minimum 36-inch wide route with a maximum cross slope of 2 percent must be maintained (code may require these routes to be wider than 36 inches). One way to remedy this inaccessible condition after the project is complete is to create a built-up route across the sloping driveway with a maximum 2 percent cross slope. Where driveways are concrete, a more expensive replacement and relocation of the flared driveway entrance may be required**.**

The picture at left demonstrates the excessive cross slope of the route as it negotiates across the driveway.

The picture at right shows the accessible route provided across the driveway entrance first, and then the sloped vehicular entrance is added. This design ensures that the accessible route as it negotiates across the driveway is kept level.

Running slopes of accessible routes should be kept as low as possible to provide easy access. Steep walkways are difficult to negotiate for many people. Accessible routes which slope up to 1:20 (5 percent) are referred to as “walks” and those which slope between 1:20 (5 percent) and 1:12 (8.33 percent) are considered “ramps.” It is not uncommon to find accessible routes with running slopes more than double the maximum permitted. Remediation of excessive running slopes can be extremely expensive, including provisions for additional accessible ”by-pass” routes or removing and replacing steep routes where a “by-pass” route is not possible.

The picture at right demonstrates the challenges with providing accessibility throughout steeply sloping sites.

Depending on the site conditions, it may not always be possible to achieve compliant running slopes. For example, extremely hilly terrain may prevent the installation of a route with a compliant running slope.

Considerations for these conditions are made, but in any case where a compliant route is achievable, it must be provided. For example, a site may have an extremely hilly area and an area which is relatively flat. Locating dwelling units in the area of the site which is hilly to avoid the inclusion of accessible routes may be considered deliberate manipulation to avoid compliance, which must be avoided. In all cases, where accessible routes are possible, they must be provided.

<u>Inaccessible Curb Ramps</u>

Non-compliant curb ramps are by far one of the most prevalent conditions found during a site inspection. Curb ramps are an integral part of accessible routes and provide access from street level, in most cases, to the sidewalk.

Curb ramps are subject to a number of criteria, including running slopes which do not exceed 1:12 (8.33 percent) and cross slopes which do not exceed 2 percent. It is easy to violate curb ramp requirements because there are many components to address, including how it meets the adjacent sidewalk, curb, and street.

For example, the bottom of a curb ramp often meets a gutter; the flares of a flared-type curb ramp meet a curb; and the top of the curb ramp meets the route which continues through the site. Each of these components has an affect on curb ramp construction. For example, gutters, or the area where the bottom of a curb ramp meets the street, are often sloped toward the curb ramp. As one might imagine, an excessive counter slope of the gutter makes it difficult for a person in a wheelchair to maintain the momentum needed to move across the slope of the

gutter and onto the running slope of the curb ramp. It is important to keep the slope of the gutter gradual so that the transition between the gutter and the running slope of the curb ramp is easy and does not require excessive effort to negotiate. For the most part, remediation often requires removal and replacement of the curb ramp.

The picture at left shows the slope of the gutter which must be kept minimal to avoid creating hazardous conditions. The digital level in this photo indicates a slope of over 11% which is more than two times the maximum slope permitted.

Hazards Created by Protruding Objects

Technical standards which provide guidance for accessible design not only address the needs of people with physical disabilities; they also include criteria which minimize conditions which might be hazardous to people with visual disabilities. Objects which protrude from walls or those which reduce headroom clearance, for example, can be extremely hazardous for people with visual disabilities.

When located below 80-inches above the floor or ground, wall-mounted scones are a common hazard for people with visual disabilities if they protrude from walls more than 4 inches.

Wall-mounted object, such as lighting, which are installed lower than 80 inches and more than 27 inches above the finished floor must not project more than 4 inches into the circulation path. Commonly, designers focus on eliminating unsafe protruding objects from accessible routes, but criteria developed to address the needs of people with visual disabilities apply to “circulation paths” and are not always limited to the accessible route. Typical fixes when unsafe protruding

objects are identified include replacing features with similar low-profile models, such as low profile lighting, or where remounting or replacing the feature is not feasible, providing a permanent cane-detectable barrier below will suffice, in most cases.

The lack of a cane-detectable barrier below an open stair run is a common violation of headroom criteria developed to address the needs of people with visual disabilities. Open stair runs, which are not permitted in many jurisdictions due to the potentially unsafe conditions they pose, must include a cane-detectable barrier to prevent people with visual disabilities from walking below.

Common-use areas such as the one picture to the left should never be located below open stairs.

Solutions for eliminating dangerous protruding objects and addressing low headroom clearance are not complicated; however, the amount of remediation typically needed to address these potential hazards can be extremely costly. For example, a newly constructed apartment complex made up of many buildings and hundreds of dwelling units scattered throughout a site may include exterior wall sconces at each exterior ground level unit entry. A quick measurement of one of the entry door lights may reveal that they must be replaced with low profile models. The solution is simple, but replacing hundreds of lights in one development can be extremely expensive.

Violations on the Interior of Dwelling Units

Switches, Electrical Outlets, and Thermostats Located out of Reach Range

Each of the technical standards provides guidelines on accessible reach range. Features intended to be used by tenants must be located within accessible reach range. It is not uncommon to find light switches, outlets, and thermostats, for example, which are out of reach. For features located above obstructions, such as countertops, mounting height requirements change due to the added difficulty of reaching features installed above obstructions. As you might imagine, reaching a light switch installed on a wall which is free of obstructions is easier than reaching the same switch installed above a 25-inch deep countertop. Electrical subcontractors typically install light switches at the same height regardless of where they are located, which often results in non-compliance. Remediation almost always involves lowering accessible switches, outlets, and thermostats which are out of range.

Doors which do not provide proper clear width

All doors within a unit which are meant for user passage are required to provide a clear opening width which is wide enough to provide access for people who use wheelchairs and other mobility aids. It is not uncommon to find doors within a unit which do not provide proper clear width, especially when two doors are provided to access the same room, such as a bathroom; one swing door might provide the proper clear width, but a second pocket door which provides access from the bedroom might provide a clear width which is too narrow. Any door which is meant to be walked through must be wide enough, regardless of where the door is located and how many doors are provided to the same space. Remediation, in most cases, involves removing and replacing the door and associated buck.

Insufficient Clearance at the Lavatory

Specific clearance is required to be provided at all bathroom fixtures and varies depending on the approach to the fixture. For dwelling units covered by the FHA only, a 30-inch x 48-inch clear floor space is required to be positioned for a parallel approach to the lavatory; for dwelling units covered by Section 504, the 30-inch x 48-inch clear floor space is required to be positioned for a front approach, in which case knee space must be provided (base cabinets are permitted to be in place as long as they are readily removable). Typically, space in bathrooms is not provided to allow proper positioning of the clear floor space at the lavatory. Remediating this condition is not always simple; it may involve shifting the lavatory to the left or right or eliminating the base cabinet to allow for a front approach rather than an improperly positioned side approach.

Kitchens which are too Narrow

Kitchens are required to maintain a certain distance between opposing elements, depending on the shape of the kitchen. For galley style kitchens, 40 inches must be maintained between opposing elements. In tight galley kitchens, appliances which stick out too far commonly reduce the distance between the face of the appliance and the opposing element to less than 40 inches.

In the kitchen pictured to the right, the distance between the face of the refrigerator and the opposing countertop must be no less than 40 inches. In this instance, value engineering resulted in a violation of clearance requirements. The original refrigerator was replaced with one which is less expensive; however, the less expensive model pictured here is deeper than the original resulting in a clearance of less than 40 inches.

Although kitchen plans may show that 40 inches are provided, appliances selected later on in the process or appliances which are substituted for those included in the initial design may compromise clearance requirements. It is important for designers to consider the dimensions of appliances to ensure that once installed proper clearance will be maintained.

Conclusions

The best way for owners, developers, architects, and contractors to avoid being the subject of a potential housing discrimination complaint due to non-compliance with laws set in place to ensure access to the built environment for people with disabilities is to work with a consultant who specializes in accessibility.

Having a plan review conducted by an accessibility consultant during the design development phase of a project is highly recommended and can provide the added protection professionals need to avoid breaking the bank on remediation should a legitimate complaint be filed and cause specific owners, developers, architects, and contractors to get on the radar screen of those set out to identify violators. The bottom line is that violating the federal, state, and/or local mandates for accessibility is against the law and remediation efforts to fix violations can be astronomical.

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