

A Road Map to the DOJ:

Accessibility and Maintaining Compliance

CAHEC PARTNERS CONFERENCE
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PRESENTERS: SHEILA GREGG + JOHN LAURETTA

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RA, NCARB, LEED AP

Senior Project Manager
Construction Risk Management (CRM)
Hillmann Consulting, LLC

Education:

B.Arch, California Polytechnic State
University – San Luis Obispo

M.B.A – Sustainability, San Francisco
Institute of Architecture

Experience: 25 Years

Sheila Gregg brings over 25 years of architectural design and project management experience to Hillmann Consulting, LLC, with specialties in sustainable design and handicapped accessibility. Ms. Gregg has provided pre-construction project analysis, physical needs assessments, cost review, construction monitoring and financial risk analysis services for a variety of nationwide projects up to 550,000 sf with budgets to \$105 million. She has conducted HUD MAP Architectural Cost Review for numerous renovation and new construction projects encompassing nearly 5,000 multifamily rental units in ten states, involving non-profit and for-profit developers, varied tax credit QAPs, and multiple accessibility codes. She has applied her combined experience in architecture, project management, hospitality, and finance to new construction, renovation and land development of residential, commercial, education, institutional, manufacturing, retail, resort timeshare, casino-entertainment and hospitality projects of Type I, II, III and V construction, including accessibility evaluations for the Nevada State Public Works Board and the City and County of San Francisco Unified School District.

John Laretta

Managing Director
Construction Advisory (CA)
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Education:

B.A. Architecture, Lehigh University

M.S. Civil Engineering, NJIT

M.S. Industrial Engineering, NYU

Experience: 15 Years

John Laretta brings over 15 years of design and project management experience across the Architecture, Engineering, and Construction (AEC) industry. As Managing Director for Hillmann Consulting's Construction Advisory division, Mr. Laretta is responsible for overseeing Owner's Representation, Development Management, and Construction Services. John's background and expertise lend particular insight into the design-materialization process, offering a unique perspective when advising Clients throughout design development into tangible/operational asset. Throughout his career, he has led the renovation of historic public landmark structures, corporate interior build-outs for Fortune 500 clients, and ground-up multi-family residential programs across the country, as a for-profit and non-profit Developer, as well as in the field as a Construction Manager.



THE UNITED STATES
DEPARTMENT OF JUSTICE

THE DEPARTMENT OF JUSTICE (DOJ)

AMERICANS WITH DISABILITIES ACT (ADA)

The DOJ enforces ADA regulations governing state and local government services (Title II) and public accommodations (Title III). Newly constructed or altered places of public accommodation, commercial facilities and state and local government facilities are required to comply with the ADA Standards. Places of public accommodation in existing facilities are required to remove accessibility barriers to the extent it is readily achievable - meaning easy to accomplish without much difficulty or expense. State and local governments using existing facilities are required to ensure their programs, services and activities, when viewed in their entirety are accessible.

State and Local Governments (Title II): Title II applies to State and local government entities, and, in subtitle A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to all activities of State and local governments regardless of whether these entities receive Federal financial assistance.

Public Accommodations and Commercial Facilities (Title III): Title III prohibits discrimination on the basis of disability in the activities of places of public accommodations (businesses that are generally open to the public and that fall into one of 12 categories listed in the ADA, such as restaurants, movie theaters, schools, day care facilities, recreation facilities, and doctors' offices) and requires newly constructed or altered places of public accommodation—as well as commercial facilities (privately owned, nonresidential facilities such as factories, warehouses, or office buildings –to comply with the ADA Standards.

FAIR HOUSING ACT (FHA)

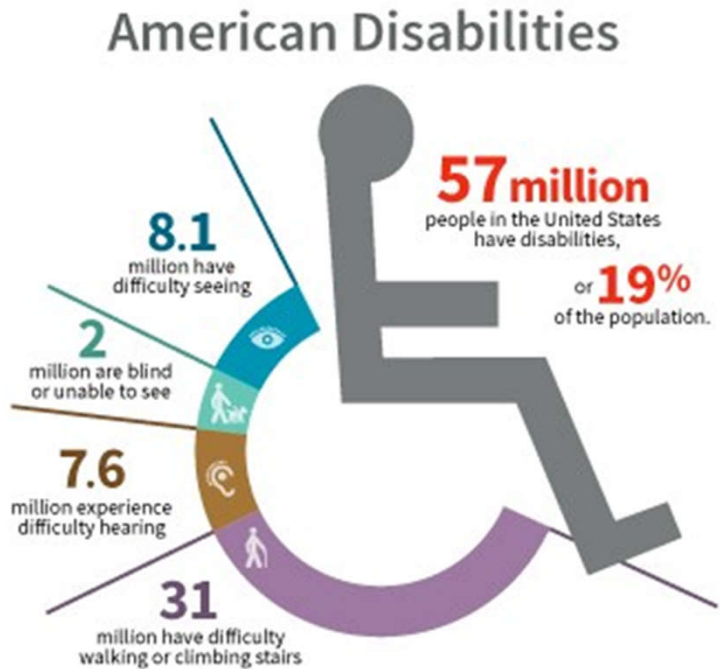
The DOJ and the Department of Housing and Urban Development (HUD) are jointly responsible for enforcing the Federal Fair Housing Act (FHA) .

The Fair Housing Act, 42 U.S.C. 3601 et seq., prohibits discrimination by direct providers of housing, such as landlords and real estate companies as well as other entities, such as municipalities, banks or other lending institutions and homeowners insurance companies whose discriminatory practices make housing unavailable to persons because of race or color, religion, sex, national origin, familial status, or disability.

SECTION 504

In 1973, Congress passed the Rehabilitation Act. This civil rights law sought to protect individuals with disabilities from discrimination in a host of areas, including Federal employment and contracting, as well as Federally funded programs and activities. Section 504 of the Act prohibits discrimination based on disability in programs receiving Federal financial assistance (Federally assisted programs) and Federally conducted, or Agency, programs.

AMERICANS WITH DISABILITY ACT (ADA) HISTORY



The Department of Justice (DOJ) originally published its ADA Title II and Title III regulations on July 26, 1991, including the 1991 ADA Accessibility Guidelines.

On September 15, 2010 the DOJ published final ADA regulations, including the adoption of updated ADA Standards for Accessible Design. The revised final rules went into effect on March 15, 2011. Compliance with the 2010 Standards was required on March 15, 2012. On July 15, 2016, the DOJ signed a final rule revising the ADA Title II and III regulations to implement the requirements of the ADA Amendments Act of 2008. The final rule was published in the Federal Register on August 11, 2016, and took effect 60 days after publication, on October 11, 2016.

Congress enacted the ADA Amendments Act (ADAA) to clarify the meaning and interpretation of the ADA definition of “disability” to ensure that the definition of disability would be broadly construed and applied without extensive analysis.

FAIR HOUSING ACT (FHA) HISTORY



DISABILITY



RACE



SEX



COLOR



NATIONAL
ORIGIN



RELIGION



FAMILY
STATUS

The Fair Housing Act, also called Title VIII of the Civil Rights Act of 1968, is the U.S. Federal Legislation that protects individuals and families from discrimination in the sale, rental, financing, or advertising of housing. The Fair Housing Act, as amended in 1988, prohibits discrimination on the basis of race, color, religion, sex, disability, family status, and national origin.

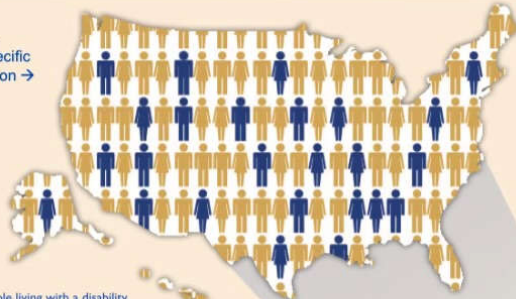
The Department of Housing and Urban Development (HUD) is charged with enforcing the Fair Housing Act, and the Office of Fair Housing and Equal Opportunity (FHEO) is charged with investigating complaints of discrimination filed with HUD. The FHEO determines if reasonable cause exists to believe that a discriminatory housing practice has occurred. If reasonable cause is found, a hearing is scheduled before a HUD administrative judge, who determines whether housing discrimination actually occurred. Individuals who discriminate may be fined, though such decisions are subject to review in the U.S. Court of Appeals.

Disability Impacts ALL of US



61 million adults in the United States live with a disability

Click for
state-specific
information →

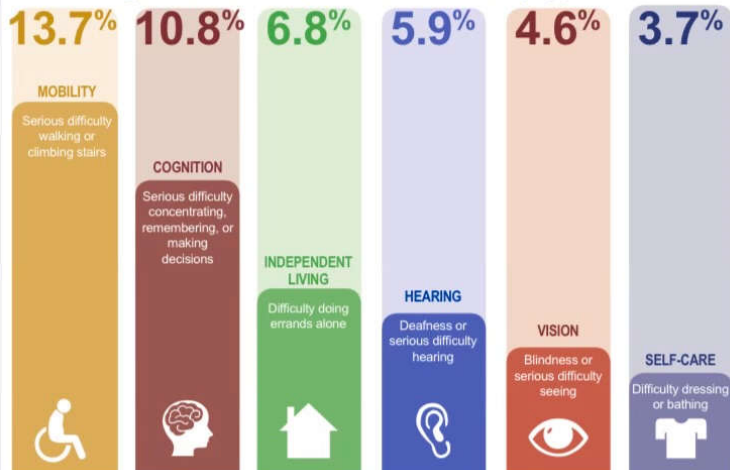


Blue icon: People living with a disability
Yellow icon: People living with no disability

26% of adults in
the United States
have some type
of disability
(1 in 4)

The percentage of people
living with disabilities is
highest in the South

Percentage of adults with functional disability types



WHAT DOES THE FHA PROHIBIT?

- Refuse to rent or sell housing.
- Making housing unavailable.
- Provide less(er) services or facilities.
- Falsely deny houses available to be inspected.
- Setting different privileges for sale or rental homes.
- Advertise/State any discrimination with respect to a sale.
- Impose different prices for sales.
- Evict a tenant or a tenant's guest.
- Fail or delay performance of maintenance or repairs.
- Discourage a purchase or rental of a dwelling unit.

FAIR HOUSING ACT (FHA) – DESIGN

The Fair Housing Act prohibits discrimination in housing and housing-related transactions based on race, color, religion, national origin, sex, disability and familial status. The Act provides unlawful discrimination against persons with disabilities includes the failure to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, in a manner that:

- (1) the public and common use portions of such dwellings are readily accessible to and usable 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
 - Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

The Fair Housing Act does not contain specific technical design criteria that need to be followed to comply with the design and construction requirements. It does provide, however, that compliance with the appropriate requirements of the “American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people.

DOJ'S ENFORCEMENT OF SECTION 504

The DOJ's Office of Civil Rights (OCR) is in control of and provides oversight and rulings regarding FHA discrimination law suits. The OCR provides assistance to the per-state agencies that keep their residents in compliance with Section 504.

The regulation distinguishes between existing facilities and newly constructed or altered facilities. Newly constructed facilities and alterations must be "readily accessible to and usable by" people with disabilities. In general, this means that such facilities and alterations must meet the stringent Uniform Federal Accessibility Standards (UFAS). However, in light of revisions to the Americans with Disabilities Act (ADA) regulations in 2010, DOJ recently advised grant awarding agencies that they can allow grant recipients to choose between using UFAS or the 2010 ADA Standards for Accessible Design (the 2010 Standards) for any new construction and alterations, until such time as the agencies adopt the 2010 Standards.

PROGRAM CHECKPOINTS



Between Zoning Regulations, Building Code requirements, jurisdictionally-stipulated Unit Mixes, and the plethora of other real estate development/financing constraints, it is recommended to conduct a per phase evaluation of the project to mitigate risk across the program landscape.

Gather the Experts!

- Architect of Record
- Accessibility Consultant
- Tax Credit Consultant

PROGRAM CHECKPOINTS



- Funding Sources
- Accessibility Targets
- Code Requirements
- Design Phases
 - Accessibility Consultant
- Construction Phase
 - Inspections

- Close-Out
- Warranty
- Lease-Up / Turnover
- Operation

Financing Close-out Milestones:

- Closing
- Post-Closing
- Warranty
- Conclusion
- Re-Certification

IDENTIFYING THE APPLICABLE GUIDELINES: ADA / FHA KIT OF PARTS

Identify the property/project jurisdiction: Federal, State, City, or County? Determine which ADA / FHA design standards and/or guidelines to reference.

Designing and planning **IN CONJUNCTION WITH** the parameters:

- Conduct a detailed initial and periodic surveys to prevent field changes. Better to receive non-compliance or rejections from failing to meet ADA requirements early in the development process.
- Understanding the level of detail/tolerances required for the project, and the exceptions to the rules.
- A best practice for accessibility design is to use a slightly less than maximum and slightly more than minimum requirement for slopes and dimensions in your design (to avoid issues related to construction deviations/inaccuracies).
- Use caution when suggesting custom designs for site-specific locations. Explore how to alter the design to remain ADA compliant, introduce measures to allow deviation.

ADA AND FHA WITHIN THE BUILDING CODE

A key difference between the Americans with Disabilities Act and the Fair Housing Act is the important distinction in determining what is “accessible” compared against what is “usable”.

The difference is the standard in which the respective acts have been set and are governed against:

- ADA requires a room or living space must be fully accessible from the start of project-completion and the facility opening. [Type A]
- FHA requires a room or living space to be fully usable from that time. A dwelling units can be later “reasonably modified”. In other words, a dwelling unit is a space that can be modified without extensive effort and expense at a to-be determined future point-in-time to help accommodate any person with one or more disabilities resided there. [Type B]



INTERPRETATIONS AND APPLICATIONS

- Title II / Title III
- Public Common Areas / Dwelling Units
- Section 504
- UFAS / Universal Design / ANSI-ICC A117.1
- Accommodations vs. Physical Improvements
- Structural Impracticability
- Financial Threshold
- Dimensional Tolerances
- Safe Harbor



COMPLIANCE OPTIONS: SAFE HARBOR

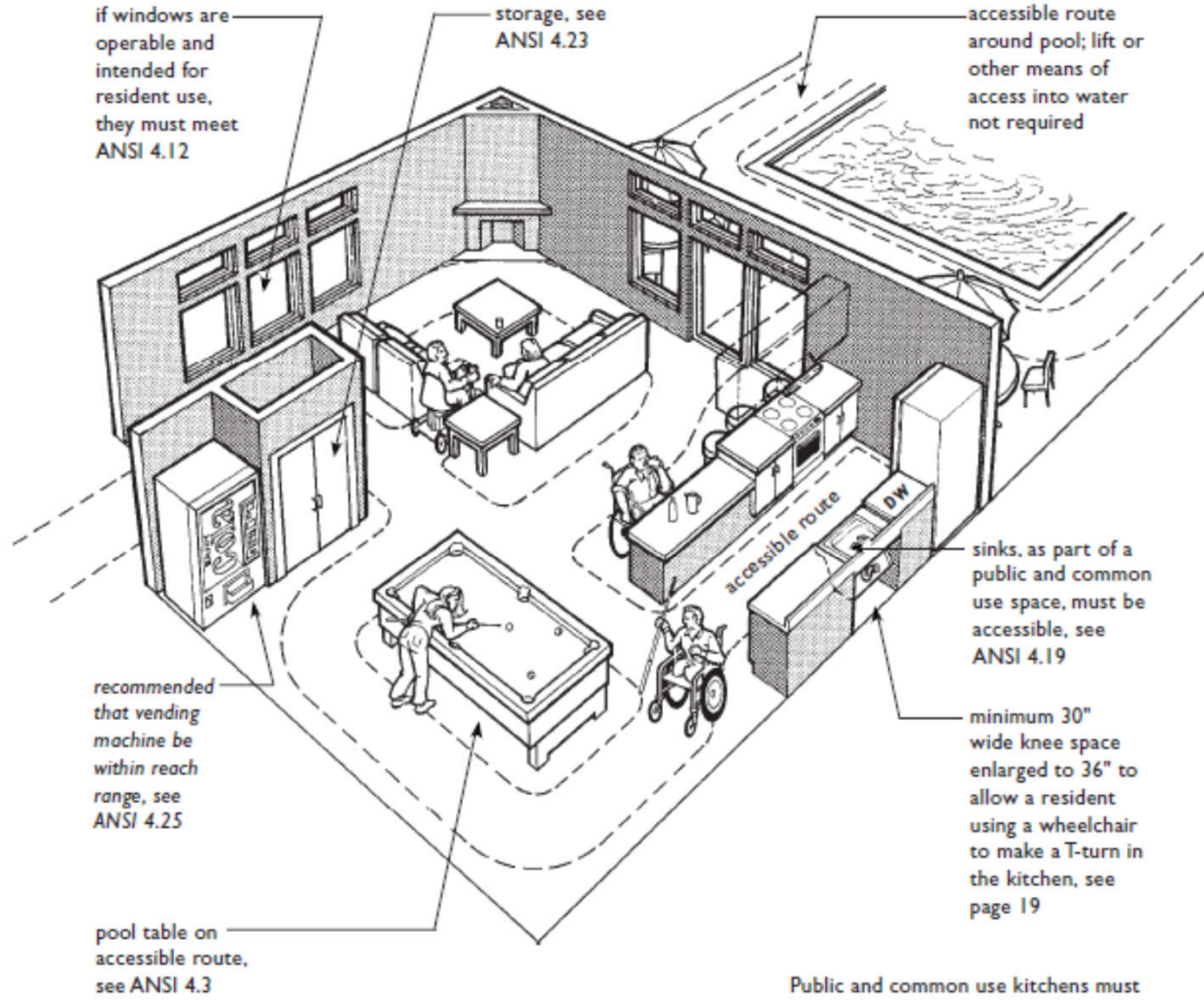
DATE	REQUIREMENT	APPLICABLE STANDARDS
Before March 15, 2012	<p>Elements that do not comply with requirements for those elements in the 1991 Standards must be modified to the extent readily achievable.</p> <p>NOTE: Noncomplying newly constructed and altered elements may also be subject to the requirements of ~36.406(a)(5).</p>	1991 Standards or 2010 Standards
On or After March 15, 2012	<p>Elements that do not comply with the requirements for those elements in the 1991 Standards or that do not comply with the supplemental requirements (i.e., elements for which there are neither technical nor scoping specifications in the 1991 Standards) must be modified to the extent readily available.</p> <p>NOTE: Noncomplying newly constructed and altered elements may also be subject to the requirements of ~36.406(a)(5)</p>	2010 Standards
Elements not altered after March 15, 2012	Elements that comply with the requirements for those elements in the 1991 Standards do not need to be modified.	Safe Harbor

COVERED DISABILITIES & ACCOMMODATIONS

- Minimum Standards
- Cost Effectiveness
- Inclusion & Dignity
- Market Appeal
- Invisible Disabilities
- Industry Innovations/Deficiencies
- Internal Policies
- Visitability



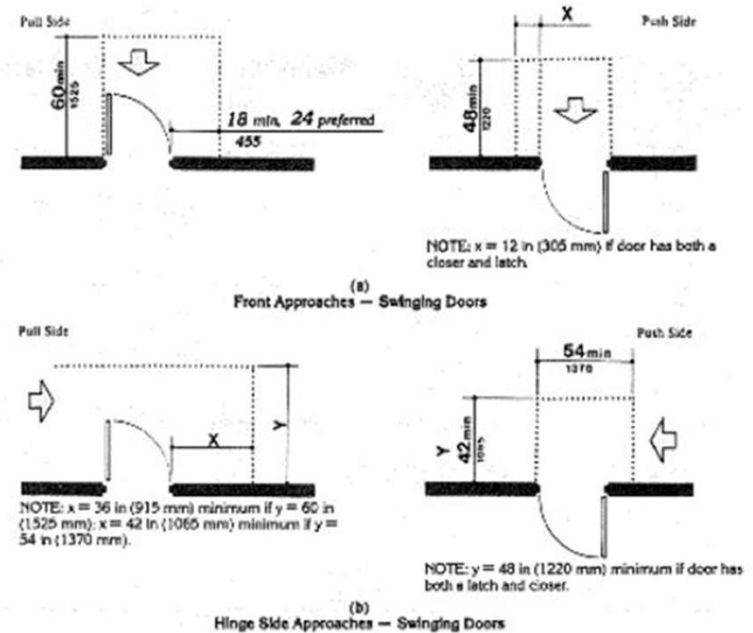
THE FINE PRINT



Accessible Elements and Features of a Public and Common Use Clubhouse

Public and common use kitchens must be usable and at least meet the requirements in the Guidelines for kitchens. If preferred, the requirements for kitchens in ANSI 4.32 could be followed.

Figure 25: Maneuvering Clearances at Doors



AND... THE NOT SO FINE PRINT

SECTION 103 HUMAN FACTOR PROVISIONS

The technical criteria in this standard are based on body sizes and functional abilities of adults and, in those sections where specifically noted, children.

SECTION 104 COMPLIANCE ALTERNATIVES

Nothing in this standard is intended to prevent the use of designs, products or technologies as alternatives to those prescribed by this standard, provided they result in equivalent or greater accessibility and such equivalency is approved by the administrative authority adopting this standard.

Appendix

This appendix contains additional information that should help the designer to understand the minimum requirements of the standard or to design buildings or facilities for greater accessibility. The paragraph numbers correspond to the sections or paragraphs of the standard to which the material relates and are therefore not consecutive (for example, A4.2.1 contains additional information relevant to 4.2.1). Sections for which additional material appears in this appendix have been indicated by an asterisk.

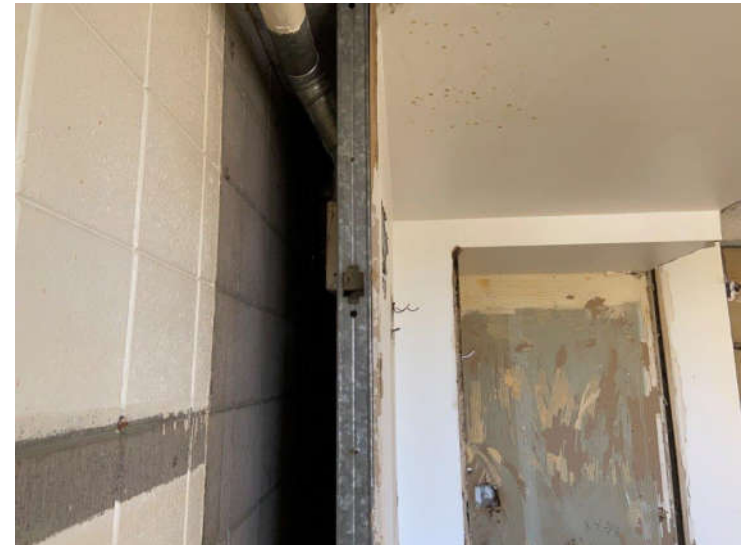
DESIGN STUDY – PUBLIC RESTROOMS

Considerations

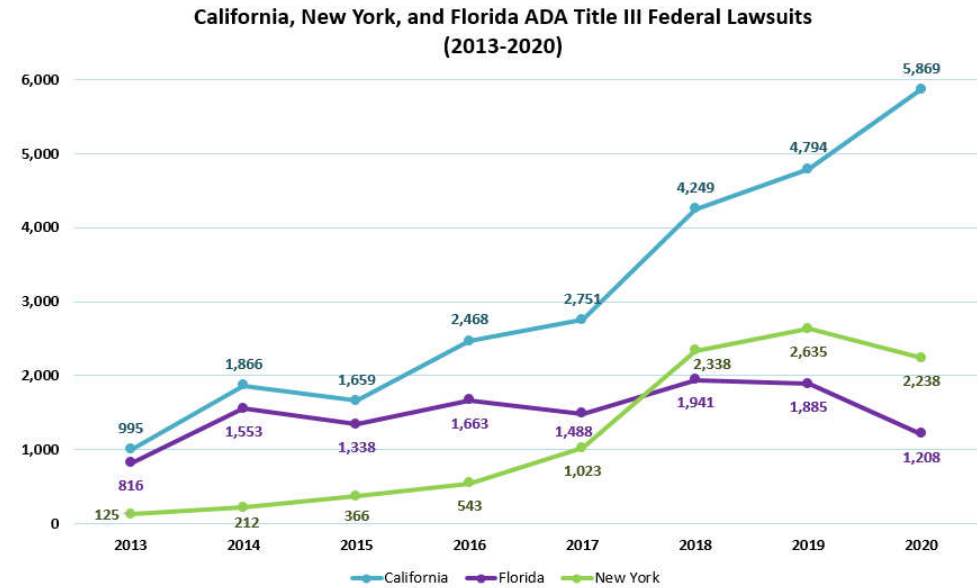
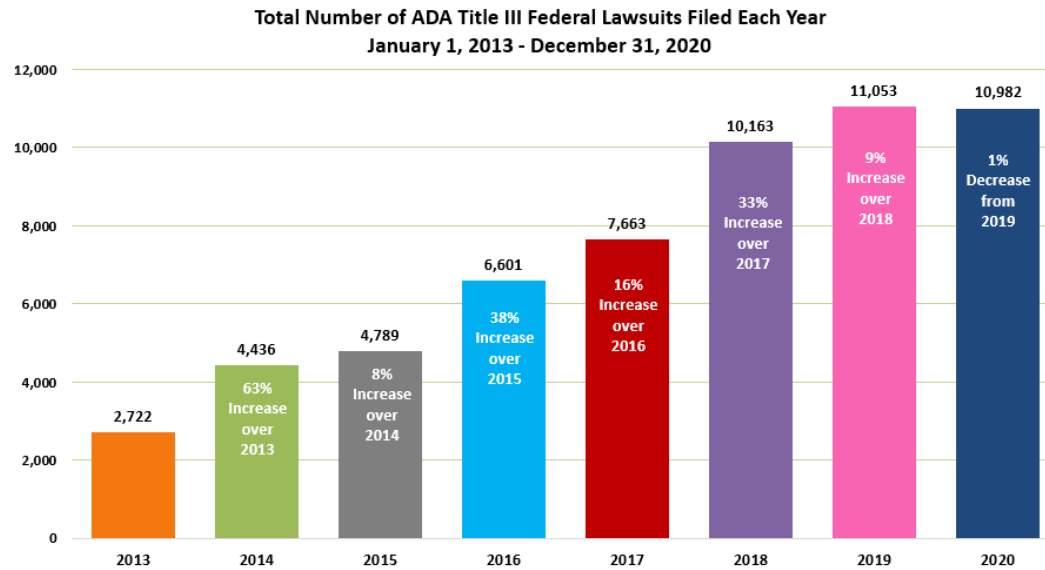
- Lighting
- Door Swings
- Floor Surfaces
- Plumbing Insulation



DESIGN STUDY - REHABILITATION



LONG-TERM IMPACT OF ADA - TITLE III



FHA LONG-TERM IMPACT

Since the Federal Fair Housing Act (FHA) was enacted, in the following three decades, FHA financing has produced millions of private apartment units for the elderly, disabled, and lower income citizens. As of 2020, the FHA insures an active eight million single family, twelve thousand multifamily, over thirty-seven hundred residential care facility, and one hundred hospital facility mortgages. The total unpaid balance of FHA's insurance portfolio tallies to more than \$1.3 trillion dollars.

While understanding ADA regulations is important for apartment Owners and Developers, the disability accessibility legislation that applies to multifamily properties should be considered in conjunction with the Fair Housing Act which mandates that all buildings with 4+ units built for first occupancy after March 13, 1991 must meet the Act's accessibility requirements.

While ADA guidelines do not generally require any changes to individual apartment units, the FHA specifically requires that apartment buildings constructed after March 13, 1991, have certain features that will make them adaptable for disabled residents. Every ground-floor unit in a building (and all units in buildings with elevators) must conform to an adaptable standard. However, "adaptable" is not the same as "accessible". An adaptable unit must meet specific design features, which will make it easier for a building Owner/Operator to make the unit accessible within a short timeframe.

Note, the U.S. Department of Housing and Urban Development (HUD) created the Fair Housing Act Design Manual, which can help Investors and Developers determine whether a current or proposed apartment property meets Fair Housing Act Standards.

CASE LAWSUIT - CALIFORNIA

Originally filed in 2012, settled in 2016, three non-profit groups sued the City of Los Angeles argued that the city and its redevelopment agency had flouted State and Federal anti-discrimination laws as they provided public money to affordable housing developments; more than 700 affordable housing projects, buildings with nearly 47,000 units approved over nearly three decades. Such buildings were typically constructed by private developers or non-profit groups and financed or otherwise assisted by the city and its redevelopment agency.

Disabled residents reported going to apartment buildings that were advertised as accessible, only to find they weren't. In some locations, apartments had doorways that were too narrow to accommodate wheelchairs, the lawsuit states. Bathrooms and kitchens lacked the room to accommodate wheelchair users. Many apartments did not meet the higher accessibility standards established for housing built with government assistance, which require additional features such as lower countertops and grab bars in bathrooms.

The Federal Court ruled against the City of Los Angeles as follows:

- (i) Ordered to spend \$200 Million over the next decade on 4,000 affordable accessible units.
- (ii) \$4.5 Million to the non-profits that sued the city.
- (ii) New affordable housing supported by City to include a larger percentage of units for people with disabilities.

* \$1 Million in Court costs and up to \$20 Million in Attorneys' fees. *

CASE LAWSUIT - OHIO

Filed in 2019 in Dayton, Ohio's U.S. District Court, alleged that an Ohio-based builder failed to design and construct housing units and other facilities to make them accessible to people with disabilities. Fifty-plus multi-family complexes across the mid-western states featured major accessibility barriers, including steps leading to building entrances; non-existent or excessively sloped pedestrian routes from apartment units to site amenities; inaccessible parking; inaccessible bathrooms and kitchens; inaccessible door hardware; and insufficient maneuvering space at unit entrances and entrances to common use areas that make those entrances inaccessible to many people with disabilities.

The lawsuit alleges the company failed to be in compliance with the Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA). The complexes contain more than 3,000 units required by the FHA to have accessible features and most contain public spaces required to comply with the ADA.

The lawsuit ordered requiring the Builder to bring the properties into FHA and ADA compliance, required the company to pay monetary damages to persons harmed by the lack of accessibility, and civil penalties to the United States.

CASE LAWSUIT - PENNSYLVANIA

The U.S. Department of Justice (DOJ) filed a lawsuit against an Architect and Owners of fifteen (15) multi-family properties designed/constructed by the firm, alleging Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA) violations, including “failing to design and construct housing units and related facilities to make them accessible to people with disabilities.” The lawsuit was filed in the United States District Court for the Eastern District of Pennsylvania.

The DOJ found senior living properties were constructed without having any “accessibility barriers,” including “inaccessible pedestrian routes to building entrances, inaccessible pedestrian routes from apartment units to amenities, inaccessible parking, door openings that are too narrow for a person using a wheelchair, environmental controls that are too high or too low for a person using a wheelchair to reach, and inaccessible bathrooms and kitchens.”

The government’s lawsuit sought to have the properties brought up to code and for the defendants to pay monetary damages (Attorney Fees, Fines, and Remediation Costs).

REFERENCES

Fair Housing Act Design Manual | HUD USER
<https://www.huduser.gov/portal/publications/destech/fairhousing.html>

ADA Enforcement
https://www.ada.gov/enforce_current.html

Department of Justice ADA Responsibilities
https://www.ada.gov/doj_responsibilities.htm

ADA Accessibility Standards (enhanced single file version)
<https://www.access-board.gov/ada/>

2017 ICC A117.1 Accessible and Usable Buildings and Facilities | ICC Digital Codes
<https://codes.iccsafe.org/content/ICCA11712017P2>

UFAS (1984)
<https://www.access-board.gov/aba/ufas.html>

Section 504 | HUD.gov / U.S. Department of Housing and Urban Development (HUD)
https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/sect504faq

FHEO Home | HUD.gov / U.S. Department of Housing and Urban Development (HUD)
https://www.hud.gov/program_offices/fair_housing_equal_opp

HUDCLIPS | HUD.gov / U.S. Department of Housing and Urban Development (HUD)
<https://www.hud.gov/guidance>

FHEO Guidance | HUD.gov / U.S. Department of Housing and Urban Development (HUD)
https://www.hud.gov/program_offices/fair_housing_equal_opp/fheo_guidance

Centers for Independent Living | ACL Administration for Community Living
<https://acl.gov/programs/aging-and-disability-networks/centers-independent-living>

What is Universal Design? - NAHB
<https://www.nahb.org/Other/Consumer-Resources/What-is-Universal-Design>

*** Select references listed, full list of cited references is available upon request. ***

QUESTIONS + ANSWER



Environmental Health & Safety
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