

LEGAL UPDATES

ASSOCIATIONS, ACCESSIBILITY, AND THE FAIR HOUSING ACT

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When we think about accessibility issues in our communities, we are likely to immediately think about the "Americans with Disabilities Act" or "ADA" as the primary tool. However, for many multifamily developments such as condominiums and certain homeowner associations, The Federal Fair Housing Act (or "FHA") imposes accessibility requirements that are "ADA-like" in certain circumstances where the ADA may not apply.

Regulations implementing the FHA require that "covered multifamily dwellings with a building entrance on an accessible route shall be designed in such a manner that the public and common use areas are readily accessible to and usable by handicapped persons" Fair Housing Act Regulations, 24 CFR 100.205. These regulations only apply to certain multifamily dwellings (including residential condominiums) built for first occupancy after March 13, 1991. These regulations also apply whether or not the facilities are considered places of "public accommodation," a question that concerns those working with ADA requirements.

First occupancy is determined on a building by building basis. The Fair Housing Act regula-

tions provide that "covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991 [and therefore exempt from the Act's accessibility requirements] if they are occupied by that date or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, county or local government on or before June 15, 1990."

Existing common area access is generally not brought into the Fair Housing Act accessibility requirements by virtue of construction of new units. In the event that new units were constructed on a condominium first created before March 13, 1991, the preexisting common use areas would not have to be made accessible. The Fair Housing Act applies to only new construction of covered multifamily dwellings. (See section 804(f)(3)(C)(i) of the Act.) However, reasonable modifications to the existing common use areas to provide access would likely have to be made, and any new common areas would have to be accessible.

Surprisingly, converted buildings (such as from office to residential, or warehouse to residential) are generally not brought into the act if the origi-

nal building was constructed for first occupancy before the effective date (March 13, 1991) even though they were not multifamily housing when first constructed. The Federal Government takes the position that the Fair Housing Act applies to "covered multifamily dwellings for first occupancy after" March 13, 1991, and the Fair Housing Act regulation defines "first occupancy" as "a building that has never before been used for any purpose."

If the project is required to comply because of the first occupancy date, how does one go about ensuring that it does comply? Fortunately, the Federal Government has put out a set of design guidelines which, if followed, provide a safe harbor for meeting FHA accessibility standards. These guidelines are provided by the U.S. Department of Housing and Urban Development ("HUD") and are available for download at <http://www.hud.gov/offices/theo/disabilities/thefhag.cfm>.

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