

CCD Housing Task Force Briefing on Accessible Affordable Housing



Michael Allen and Tim Lambert
Relman Colfax PLLC

www.relmanlaw.com

mallen@relmanlaw.com; 202/730-0318

tlambert@relmanlaw.com; 202/730-0334

What type of housing is required to be accessible?

- All “Public Housing” as defined by the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. Essentially, any subsidized housing that receives funding directly or indirectly from the federal government or a local public entity – almost all of the subsidized housing stock is covered.
- Broad and inclusive definition
- Requirements apply both to new construction **and** rehabilitation.
- Housing includes shelters, transitional housing, and supported housing.

Federal Architectural Accessibility Requirements

- Federal Fair Housing Act – requires base level accessibility in all units and common areas in both private market rate housing and public housing
- 2010 Americans with Disabilities Act Standards for Accessible Design – higher levels of mobility/sensory accessibility in housing funded by state/local governments or part of local government program.
- Section 504 of the Rehabilitation Act: - Uniform Federal Accessibility Standards (UFAS) impose requirements similar to ADA where federal funds are involved directly or indirectly.

What features are found in accessible housing?

- Mobility Units – apartments with features that enable people using mobility devices like wheelchairs, power chairs, scooters, and walkers to live independently.
- Hearing/Vision Units – apartments with features and technology that assist people who are Deaf, Blind, or have hearing or vision disabilities, to live independently.
- Accessible routes and common areas – wide doorways, no steps.
- All other units have **adaptable features** that can be modified to assist people with disabilities. (FHA units only have adaptable features.)

Program “viewed in its entirety”

“[E]ach program or activity that receives Federal financial assistance from HUD shall be operated so that the program or activity, when viewed in its entirety, is readily accessible to and usable by qualified individuals with handicaps.”

- Nondiscrimination Based on Handicap In Federally-Assisted Programs and Activities of the Department of Housing and Urban Development, 53 Fed. Reg. 20216, 20222 (June 2, 1988) (codified at 24 C.F.R. Section 8.24).

Program Accessibility

- Advertisement of Accessible Units
- Prioritization of Tenants who Need the Features for Accessible Units
- Reasonable Accommodations (Policy Change)
- Reasonable Modifications (Physical Change)
- Nondiscrimination Requirements
- Maintenance of Accessible Features

Individual v. Systemic Litigation

- Statute of Limitations: 2 Years + Continuing Violation
- Architectural Accessibility
- Program Accessibility
- Enforcement

Independent Living Center, et al. v. City of Los Angeles, et al.

- City received hundreds of millions of dollars in HUD funding, all of which required Section 504 certifications
- City had obligation under Title II of ADA to make its affordable housing program meaningfully accessible to people with disabilities.
- City could not identify accessible units
- No program to ensure accessible units built
- No units built that met required standards

Independent Living Center, et al.

v. City of Los Angeles, et al.

Case History

Case began when housing advocates at ILCSC and CALIF and a fair housing group started asking question City couldn't answer - where are accessible units? Then they came to us.

Filed both administrative complaint with HUD (to facilitate discovery) and then federal court complaint under FHA, 504, ADA, and California state claims. FHA claim dismissed early on. HUD also filed administrative claim against City.

Extensive discovery showed no accessible units.

Followed by extended settlement discussions, some jointly with HUD. Eventually settled without HUD. HUD entered into separate but similar VCA with City later.

Independent Living Center, et al. v. City of Los Angeles, et al.

Settlement Provisions

City to build/rehab 4,000 fully accessible affordable units by 2006 (timeline being extended.) Required to spend a minimum of \$20 million annually.

City to monitor subsidized portfolio to ensure compliance with fair housing and disability rights and appropriate tenanting (currently over 1,000 developments, with over 60,181 units, although only a small percentage of those units are accessible) .

Website Registry to match tenants who need features with accessible units (currently over 124,728 households on registry, with over 100,000 households on waitlists for accessible units.)

Plaintiff organizations received \$1,500,000 each.

Access Living v. City of Chicago

- Complaint filed 5/13/18
- Since 1988, Chicago directed hundreds of millions of dollars of federal funding to private developers to create an Affordable Rental Housing Program (with 45,000 units) that does not comply with the accessibility requirements of the ADA, Section 504 and the Fair Housing Act.
- Expert reviewed 177 buildings: 100% fail rate
- City could not identify location of accessible units
- No policies to ensure such units reserved for PWDs
- Result: PWDs living in nursing homes, homeless shelters and dangerously inaccessible housing

Access Living v. City of Chicago

- City's Summary Judgment Motion Denied, 752 F.Supp. 3d 922 (N.D. Ill. 2024):
- “[T]he City has a regulatory obligation to ensure that the private developments [funded by the City] comply with federal accessibility laws...”
- “[If Chicago] could evade liability by simply placing the burden on third parties with which [it] enters into a contract, then [the federal accessibility laws] would lose much of their force.”
- Continuing violation: The ruling permits Access Living's claims to stretch back as far as 1988.

Access Living v. City of Chicago

- “[The City’s housing] program in its entirety must comply with the federal accessibility laws—even those developments that do not directly receive federal funds via the City.”
- “[T]he City need not determine which individual buildings must comply with Section 504—because all the buildings that are part of the City’s ‘program’ are swept under Section 504’s purview.”
- A jury could hold the City liable for violations of the FHA “based on the City’s extensive role in the affordable housing scheme.”

Building this Case in a City Near You

- Informal Discovery
 - FOIA to HUD (for PR-22 Report from IDIS)
 - Public Records Requests
- Use of experts
- Federal Litigation
 - ADA, Section 504, FHA, Related state law claims

Resources

- [Campaign for Accessible Housing Flyer](#)
- [Campaign for Accessible Housing Fact Sheet](#)
- [ILCSC v. City of Los Angeles](#)
- [Access Living v. City of Chicago](#)