MULTI-HOUSING NEWS
THE NEWS AND INFORMATION SOURCE FOR THE MULTI-HOUSING PROFESSIONAL
ELECTRONICALLY REPRINTED FROM MARCH 2006

The Fair Housing Act and Americans with Disabilities Act: Are You Covered?

By Carolyn P. Osolinik
Mayer, Brown, Rowe & Maw LLP

A couple of years ago, four individuals visited four different apartment communities built by a single developer in Florida. Each of these individuals expressed interest in leasing an apartment and each toured a model unit. The developer later learned, by way of a lawsuit filed against it by the U.S. Department of Justice, that none of these people was interested in renting an apartment. They were "testers" paid by the federal government to inspect apartment communities and look for physical barriers prohibited by the Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA). The company settled the lawsuit with an agreement that included a payment of $50,000, extensive retrofitting of more than 400 apartment units, and construction of 420 accessible single-family homes.

An isolated incident? Unfortunately, no. The confusion and consternation in the multifamily industry about the requirements of FHA and ADA leaves it vulnerable to administrative claims and costly and disruptive lawsuits, like the one described above, brought by disability rights groups and the U.S. Department of Justice. Developers, managers, investors and architects can protect themselves from FHA/ADA lawsuits if they understand the requirements of the laws and implement compliance programs to assure that their multi-housing developments meet these requirements.

FHA and ADA are civil rights laws, not building codes. They are enforced by the federal government, not state permitting authorities. They do not concern safety; they are aimed at ensuring that multifamily dwellings are designed and constructed with features that make it possible for people with disabilities to have access to these homes. The FHA requires that covered units of multifamily dwellings completed after March 13, 1991 include an accessible route to public (such as the leasing office) and common areas (like the clubhouse, pool, exercise room); an accessible route into and through apartment units; accessible doors; accessible environmental controls (light switches, electrical outlets, thermostats); usable kitchens; and usable bathrooms, including reinforced walls for grab bars. Covered units are all ground-floor units of non-elevator buildings and all units of elevator buildings. The ADA, which pertains only to public areas in housing, applies to buildings completed after January 26, 1993.

Any person or entity (developer, architect, investor) involved in the design or construction of a covered property is responsible under FHA for assuring that the property meets the requirements of the law. ADA also holds a person or entity that owns or operates a public accommodation liable.

Generally, a claim by a private plaintiff must be filed not later than two years from the date of completion of a community. A claim by the U.S. Department of Justice can be filed at any time and can reach back to include all properties covered by FHA/ADA requirements.

The FHA and ADA also impose operations requirements. Both laws prohibit denying an individual access to housing because of a disability. The laws protect a person with a physical or mental impairment that substantially limits a major life activity, e.g. walking, speaking. In addition, both laws impose affirmative duties on owners and managers of covered properties to make "reasonable accommodations" and to permit a disabled tenant to make "reasonable modifications" to the property.

A "reasonable accommodation" is an adjustment in the rules, policies, procedures and/or services for the benefit of a person with a disability (e.g. allowing a service dog in a no pet building; changing rent due date to coincide with tenant's receipt of disability check). The cost of providing a reasonable accommodation is the responsibility of the owner or manager of the property. A "reasonable modification" is a structural change to a unit or common area that is paid for by the tenant, such as installation of grab bars in a bathroom or ramping a few steps. In dealing with a request for an accommodation or modification, an owner or manager should listen to

the request, respond with reasonable speed and explore an alternative if the requested accommodation or modification is not reasonable.

The owner or manager may require the tenant to provide a written statement by a healthcare provider attesting to the tenant's disability and need for the requested accommodation.

Instituting a compliance program is the best first line of defense against lawsuits based on operations violations. Such a compliance program should be developed in consultation with an attorney and should include: a written anti-discrimination policy, training for staff concerning the operations requirements of FHA and ADA, written procedures for processing accommodation/modification requests, written documentation of all accommodation/modification requests, including disposition, and written documentation of FHA/ADA-related complaints and incidents.

The FHA and ADA are here to stay. Development of compliance programs for these laws is a timely and valuable investment.

Carolyn Osolinik is an attorney based in Washington, D.C. She was an author of FHA and ADA and advises large and small multifamily housing developers and managers on compliance strategies. She can be reached at cosolinik@mayerbrownrowe.com

Creating an Effective FHA/ADA Compliance Program

The best time to begin compliance with the Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA) requirements is in the initial design. At this early stage, compliance is not very costly. An effective compliance program should be developed in consultation with an attorney who is an expert in the legal requirements of FHA and ADA and should involve the attorney and an accessibility expert/architect in the following:

- Training of development personnel concerning the requirements of FHA and ADA;
- Inspection of properties under construction and remediation of deficiencies;
- Review of design plans for properties in the pipeline and amendment of the plans as necessary;
- Inspection of any properties completed within the past two years and remediation of any deficiencies; and
- Maintenance of records of all plan reviews, inspections and remediation.