



NATIONAL
MULTIFAMILY
HOUSING
COUNCIL



ACCESSIBILITY: FAIR HOUSING AND ADA

NMHC/NAA Viewpoint

Accessibility enforcement efforts should recognize compliance methods that address real-world conditions. The opportunity to cure alleged incidents of non-compliance supports the goals of both the Americans with Disabilities Act and Fair Housing Act by improving access for persons with disabilities.

The apartment industry supports the goals of the Americans with Disabilities Act (ADA) and Fair Housing Act (FHA) and is committed to creating communities that are accessible to people with disabilities. The responsibilities of the apartment industry under the Acts sometimes require the inclusion of specific building design features. However, the complex and sometimes conflicting nature of guidance, building codes and statutory language have led to varying interpretations of design and construction compliance.

Apartment firms are further challenged by the failure of enforcement officials to recognize that existing standards and safe harbors represent just one way to make a property accessible. Research supports the use of alternative design and construction practices that promote usability and access for those with disabilities. These include the use of reasonable construction tolerances related to pathway site slopes, reach ranges in kitchens and bathrooms and site measurements. An acknowledgement of alternative approaches to compliance provides apartment owners and developers with the necessary flexibility to improve accessibility across the spectrum of unique apartment properties.

Conditions under which apartment firms currently operate can lead to allegations of non-compliance that result in litigation, significant unanticipated costs, operational barriers and other challenges. Businesses across the real estate sector are the targets of these lawsuits, many of which are motivated by monetary goals and do nothing to improve access for people with disabilities. Specifically, these complaints often result from tester visits to a business for the express purpose of finding violations and filing suit. Plaintiffs then typically demand settlement money in lieu of filing a lawsuit.

NMHC/NAA support Congressional legislation to stem the growing trend of ADA compliance complaints dubbed “drive-by” lawsuits. This legislation strives to address what should be the primary concern in ADA compliance – fixing design issues and increasing access for people with disabilities. Specifically, this legislation ensures that business owners receive proper notice of alleged compliance problems and provides an opportunity to cure an alleged ADA deficiency prior to the initiation of a lawsuit. This would eliminate the incentive for complaints motivated purely by financial gain.

From 2013 to 2017, the number of ADA public accommodation and access lawsuits surged by more than 181 percent.