

**Prepared Remarks of
Principal Deputy Assistant Attorney General Rena J. Comisac
Multi-Family Housing Access Forum
Minneapolis, Minnesota
May 22, 2007**

“Good Access is Good Business”

Thank you, [U.S. Attorney] Rachel [Paulose], for the kind introduction.

I am pleased to welcome you to this meeting. It is designed to bring together government officials, building professionals, and advocates for individuals with disabilities to work together on housing and disability issues that affect a key segment of our population. I am pleased to see so many of you here this morning and appreciate your taking time out of your schedules to come.

As [Housing and Civil Enforcement Section Chief] Steve [Rosenbaum] mentioned, the Civil Rights Division enforces the Fair Housing Act’s requirement that multi-family housing be “accessible to and usable by” persons with disabilities. Where design professionals and builders fail to comply with the Act, we are authorized to enforce it. We may seek remedies from the court including retrofits of non-compliant features, monetary damages for persons who may have been harmed, and civil penalties for violation of the Act. But litigation and retrofits are costly. We want you to succeed in making your housing projects accessible from the outset. As we have come here to underline for you today, doing so is good business.

It pays to comply with the accessibility requirements not only because it is the law and the right thing to do, but because it is the right business choice as well. In the coming years, Minnesota will face growing challenges to keep up with the increasing demand for housing. In April 2005, the seven-county Twin Cities area was home to 2.81 million people. That is an increase of over 6% since the 2000 Census, which placed the population at 2.64 million. This growth is the equivalent of adding two cities the size of Bloomington to the region in just five years.¹

¹Metropolitan Council Twin Cities Area Population at <http://www.metrocouncil.org/about/facts/TwinCitiesPopulationFacts.pdf>.

As of 2004, 12% of Minnesota's population over 5 years old and not living in an institution had a disability.² From 1990 to 2000, Minnesota's population of persons aged 65 or older grew almost 9%.³ For those aged 65 or older, the incidence of disability was 38%.⁴ Clearly, the demand for accessible housing will steadily increase with these numbers. Builders seeking to serve this market and meet the increased housing demand may include both those who are not as familiar with federal accessibility requirements as well as those who have been "on board" and leading the way on these issues for many years.

Our enforcement efforts are targeted to ensuring that newly constructed multi-family housing is built in accordance with the Act's requirements so that it is accessible to and usable by people with disabilities. Where necessary, we can and do litigate these cases quite successfully.

Since January 1, 2001, the Civil Rights Division has filed 220 lawsuits under the Fair Housing Act; 45, or 20%, were based on the Act's design and construction provisions. In the same period, we have resolved through consent order 209 fair housing cases; 50 of those or 24% involved the Act's accessible design and construction provisions.

Case Examples

On March 30, 2007, in separate lawsuits filed by the Department of Justice, two federal courts found developers and architects liable for violating the Fair Housing Act by building housing without required accessible features. By granting in part the Department's "motion for summary judgment," each court determined that a trial as to whether particular defendants violated the Fair Housing Act will not be necessary.

²Center for Personal Assistance Services: State Information - Minnesota Disability Data Table from the 2004 American Community Survey, at http://pascenter.org/state_based_stats/state_statistics_2004.php?state=minnesota.

³Census 2000 PHC-T-13, Table 4, States and Puerto Rico Ranked by Percent Change of Population 65 Years and Over: 1990 and 2000, at <http://www.census.gov/population/cen2000/phc-t13/tab04.pdf>.

⁴See n.2 *supra*.

The first case, in Illinois, involves 24 ground-floor units in the five completed buildings with a sixth under construction. Among other problems with the accessible route, each of the ground-floor units has at least two stairs at the entrance. The doors into and within the units were insufficiently wide to allow passage by a person in a wheelchair, there were no reinforcements to allow installation of grab bars on bathroom walls, and the required 30" x 48" clear floor space in the kitchens and bathrooms was not centered on the appliances.

The Defendants argued that they should be entitled to an accessibility exemption for the entrance steps because the terrain or unusual characteristics of the site made accessible entrances impractical. The court rejected this defense, finding that in order to assert the defense, the site analysis must have been done *before* construction. Here, the defendants had regraded the property prior to construction, installed the steps down to the ground-floor units, then claimed when they were sued that the site itself made the steps necessary. The court called the belated attempt to claim site impracticality after construction a "desperate" defense. The court also found that the 30" x 48" clear floor space must be centered on the appliance in making bathrooms and kitchens accessible to and usable by persons with disabilities.

In the second case, a New York court found that the principal defendants violated the Fair Housing Act by failing to construct seven apartment complexes, with 362 covered ground-floor units, near Albany, New York with required accessibility features for people with disabilities. Here again, among other problems, the front entrances to the ground-floor units had at least one stair, and there was no accessible route from the sidewalk to any of the ground-floor apartment entrances. The doors into and within the units were not sufficiently wide, the accessible routes on the public and common use areas included cross slopes in excess of 2% and running slopes in excess of 5%, the inside threshold of ground floor units included an abrupt change in level of more than an inch, and the 30" by 48" clear floor space was not centered on the ranges in the kitchens of the covered units.

The court rejected the defendants' attempt to establish that the complex was accessible through declarations from several disabled tenants that the complexes were accessible to them. The court ordered the defendants to produce detailed remedial plans showing how the complexes would be brought into compliance with federal accessibility standards.

Both these court orders are available on the Department's website, which we will provide you later.

Since fiscal year 2005, we have also obtained settlements that, when fully implemented, will make well over 13,000 housing units in 24 states – as well as the accompanying public and common use areas – accessible to persons with disabilities.

For example, in October 2006, we settled through consent order a suit against a group of architects, engineers, developers, builders, and owners of two, multi-family residential complexes constructed in Austin, Texas, through the use of Low Income Housing Tax Credits. Under the terms of the settlement, the defendants will make accessibility modifications to 162 apartment units, parking areas, paths and walkways, and other public and common-use areas, establish a fund of \$50,000 to compensate individuals harmed by the inaccessible housing, and pay \$10,000 in civil penalties to the government.

In September 2005, we obtained a consent order resolving a design and construction lawsuit filed against housing professionals in the state of Washington. Under the consent decree, the defendants, a developer and an architectural firm, agreed to retrofit 10 apartment complexes in Spokane to increase accessibility. Those complexes house roughly 700 ground floor apartments. The defendants also agreed to pay \$540,000. Of that sum, up to \$500,000 was earmarked for individuals harmed by the lack of accessible features at the properties, \$15,000 was to be spent on accessibility training for local designers and developers of multifamily housing, and \$25,000 was paid to the United States as a civil penalty.

Finally, also in September 2005, we settled through the entry of a consent order the largest design and construction case in our history. It involves a developer and several architectural firms who agreed to retrofit 5,400 ground floor apartment units in 49 apartment complexes in Michigan, Indiana, Illinois, Ohio, Wisconsin, Virginia, and Nebraska to provide accessibility. Additionally, the companies in this case agreed to pay up to \$950,000 to individuals harmed by the lack of accessible features at the properties and a \$110,000 civil penalty to the United States.

As you can see, we've gotten great results in our cases. However, for everyone involved – the federal government, disability advocates, and housing providers – achieving compliance at the design and planning stages is a more

timely and cost effective means of ensuring that the housing needs of those with disabilities are met.

One way of achieving compliance at an earlier stage is by promoting compliant state and local building codes. The incorporation of the design and construction requirements of the Fair Housing Act into building codes represents an opportunity to enhance compliance with the federal law. Thus, for example, the International Building Code 2000 and 2003, with some supplemental material, are considered “safe harbors” by the Department of Housing and Urban Development. That means that, if adopted and enforced at the state and local levels, these may satisfy the Fair Housing Act accessibility requirements.

I understand that HUD has been reviewing the 2006 IBC, as well as the 2003 ANSI A117.1 standard to determine whether each of these standards should become safe harbors. HUD expects to publish information about these reviews in the Federal Register once they are complete.

Another way of promoting compliance with the federal law is through communication and outreach, which is why we are here today. As I’ve noted, compliance is important not only because it is the law, and not only because it helps persons with disabilities fully enjoy their homes and surroundings, but also because, on a practical, dollars and cents level, it makes sound business sense.

First, the accessibility features required by the FHA are not particularly expensive. A 1997 HUD-commissioned study found that if builders comply with the Fair Housing Act during construction, their costs rise by only one-third of one percent. Accessible features are vastly more expensive to add after the fact, in response to a lawsuit by the Department or private party.

Second, as I noted at the outset, there is a growing market need for such housing and you are positioned to serve that market. Millions of “baby boomer” Americans will “age in place” – in multi-family housing communities and senior apartments in neighborhoods they know are accessible for their daily activities.

Third, compliance is not particularly complicated. Technical assistance is available from the HUD-supported training program, Fair Housing Accessibility First, and from many people in this room – developers, disability advocates, and government workers – who have experience and knowledge in this area.

Finally, retrofits can be expensive, so designing and constructing things correctly up front is much more cost efficient, especially because it obviates the need for litigation and all the costs associated with litigation. In short, as we are emphasizing today, good access is good business.

It is our hope that during the course of the Forum, you will get to know the people sitting around you, and that you will continue to talk with one another across disciplines to form allegiances and partnerships that further your complementary interests. On behalf of the Department of Justice, thank you all again for being with us this morning. Working together, I know we can help ensure that there is a place for everyone, including people with disabilities, in America's neighborhoods.