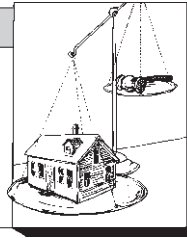


New Handicapped Housing Rules

by Patricia A. Ayers



New federal requirements could affect how you build or remodel multi-family housing. The Federal Fair Housing Amendments Act, which took effect last March, adds handicapped to the classes protected by Title VIII of the Civil Rights Act of 1968, which had included race, religion, sex, and national origin. The Department of Housing and Urban Development (HUD) was authorized to issue regulations and to implement the new rules. A "handicap" is defined as a "physical or mental impairment which substantially limits one or more of such person's major life activities, a record of having such an impairment, or being regarded as having such an impairment."

Under this fair housing law, discrimination in the sale, rental, or advertising of dwellings based on handicap is now illegal. Consequently, as it has been with race, color, religion, sex, or national origin, it is now illegal to, (a) on the basis of handicap, (a) refuse to sell or rent a home; (b) provide different services or facilities; (c) "steer" or to encourage or discourage persons from seeking housing in a particular community, neighborhood, or development; (d) advertise a particular type of housing as available or not available for handicapped; (e) give inaccurate or untrue information about the availability of dwellings for sale or rent; (f) "blockbust," or attempt to induce a person to sell or rent a dwelling by representations regarding entry into the neighborhood by a class; (g) provide or not provide brokerage services; (h) make or not make loans; and (i) sell, broker, or appraise residential property differently.

The exceptions to Title VIII, which include the sale or rental of single-family houses by the owner and rentals of rooms in dwellings in which the owner also occupies a room, still apply.

Effects on Construction

The HUD regulations provide additional protections more directly affecting the construction industry.

Remodeling. Under the regulations, disabled rental tenants or condominium unit owners can make reasonable modifications, at their own expense, to the existing "premises" in which they live if the proposed modifications are necessary for the tenant's full enjoyment of the premises.

The definition of "premises" is so broad that it includes not only the interior of a dwelling unit, but other components or elements of the building containing the dwelling unit, including the public and common use areas. Thus a handicapped individual can make reasonable modifications to lobbies, main entrances, laundry rooms, and recreational areas. In the case of a rental, the landlord may, if it is reasonable to do so, allow the renters to change the premises only if they agree to restore the interior of the

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unit to its former condition, excepting reasonable wear and tear. Modifications to the remainder of the building do not need to be restored by the tenant.

Multi-unit dwellings. Perhaps the most significant provision of the regulations applies to multi-family buildings having four or more dwelling units (if the units are to be first occupied after March 12, 1992). Each ground floor flat and each unit having elevator access in such a building must have a handicapped-accessible entrance and access route. The entrance route must be a continuous, unobstructed path through the building that can be negotiated by a person using a wheelchair and that is also safe and usable by people with other disabilities. The entrance must be one normally used by non-handicapped residents; thus, a service entrance would not qualify.

In addition, the public and common use areas of the building must be reasonably accessible to and usable by handicapped people. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, and passageways. If the building has no elevator, only the public and common use areas on the ground floor must be accessible.

These new regulations will result in

substantial changes in design and construction of units and buildings. Stairways between building entrances on the ground floor and parking lots will have to be eliminated by either lowering or raising the parking lot or installing an elevator. Split levels or sunken areas must be eliminated in areas accessible to the handicapped, unless ramps are provided.

In addition, the handicapped-accessible dwelling unit itself must be "usable" by handicapped persons. At a minimum, light switches, electrical outlets, thermostats, and other environmental controls must be accessible, that is, located between 15 and 54 inches from the floor. Bathroom walls must be reinforced to allow later installation of grab bars around the toilet, tub, shower stall, and shower seat. Kitchens and bathrooms must be designed so that an individual in a wheelchair can maneuver about the space.

The regulations also state that other modifications may be necessary to make a dwelling unit "usable," but do not specify what these modifications may be. The regulations do, however, state that compliance with the requirements of ANSI (American National Standards Institute) Document A117.1 satisfy the "usable" criteria. Under ANSI A117.1, for example, kitchen cabinets must either be fixed at a proper height for use by someone in a wheelchair (34 inches or lower) or be capable of being adjusted to the proper height. Range and cooktop controls must be accessible to a person in a wheelchair. All rooms and spaces must meet minimum space allowances allowing for wheelchair turning space. (For a copy of ANSI A117.1, contact American National Standards Institute, Inc., 1130 Broadway, New York, NY, 10018; 212/354-3300.)

The new regulations' impact on the housing industry is just now beginning to be understood. But it is clear that, at a minimum, contractors will need to know the new requirements when designing, adding to, or constructing new multi-family housing. Violation of the regulations could result in substantial civil penalties, actual damage awards, and punitive damage awards.

However, the new regulations can also be used as a positive marketing tool. Contractors familiar with the regulations' requirements will have an advantage in securing new building contracts and contracts for modifications to existing buildings. ■

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