

# THE HFA INSTITUTE 2024

## Fair Housing Compliance Strategies



National Council of  
State Housing Agencies



**MRBs and  
Other Federal  
Homeownership  
Programs**  
JANUARY 10 – 12



**Housing Credit**  
JANUARY 9 – 11



**Section 8 and  
Other Federal  
Multifamily  
Programs**  
JANUARY 10 – 12



**HOME and  
Housing Trust  
Fund**  
JANUARY 7 – 9



## DISCUSSION LEADER

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# Best Practices for Fair Housing & Section 504 Accessibility Compliance



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Providing Solutions in Affordable Housing

Most people think ADA when they think about accessibility.

But this creates risk by not understanding what Laws and Regs actually apply to your property.

Just because you have blue paint and the “little blue wheelchair man” sign on your property does not mean you are in compliance with ADA, Section 504 & Fair Housing.





Handicap Units

ADA Units

Covered Units

Accessible Units

Adaptable Units

Type A Units

Type B Units

Universal Design & Visitability

**The industry for the last 30 years has made it so confusing, it's like there is a *Secret Language of Accessibility***

There are two  
types of units

**Section 504 units**

**Fair Housing units**

If we could get everyone to use the correct terminology, based on type of funding and date of occupancy, then we might make some progress

## Section 504 Units

- Accessible Unit
- 5% Units
- Section 504 Units
- Type A Units
- UFAS Units
- ADA Units

## Fair Housing Units

- Covered Units
- Adaptable Units
- Type B Units

# HANDICAP UNITS

**What is  
a Handicap  
Unit?**

**A door off  
its  
hinges?**



# To sum up the differences

## Section 504 Units

- Accessible Unit
- 5% Units
- Section 504 Units
- Type A Units
- UFAS Units
- ADA Units

## Fair Housing Units

- Covered Units
- Adaptable Units
- Type B Units

HANDICAP UNITS

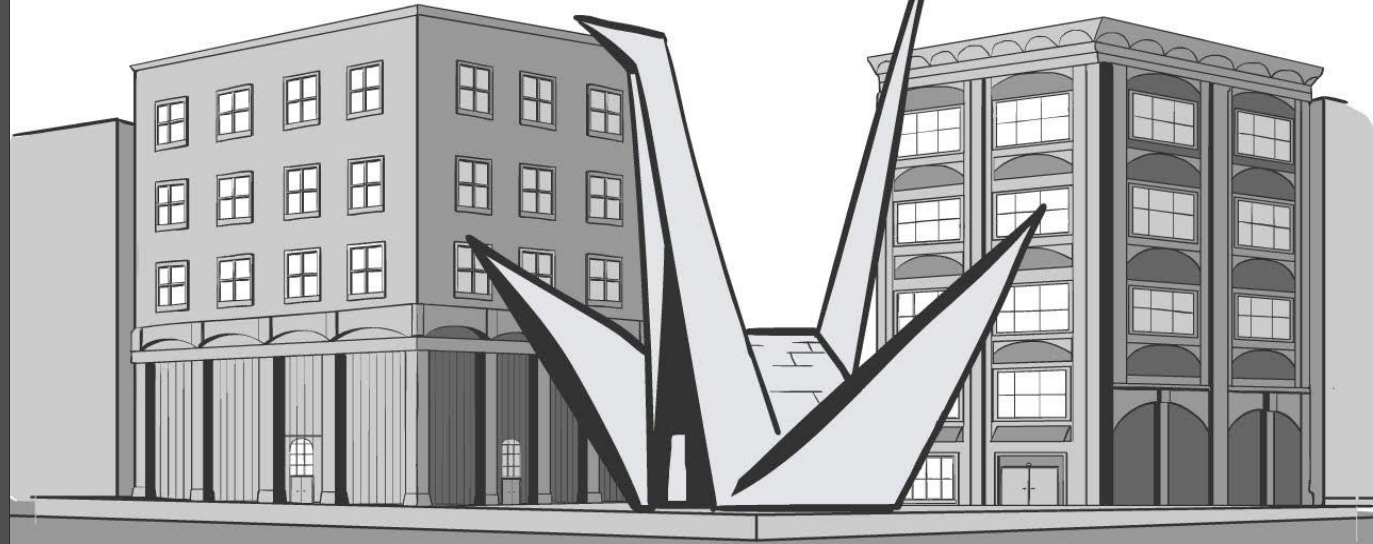


Let's **stop** using this phrase  
and use the correct  
terminology

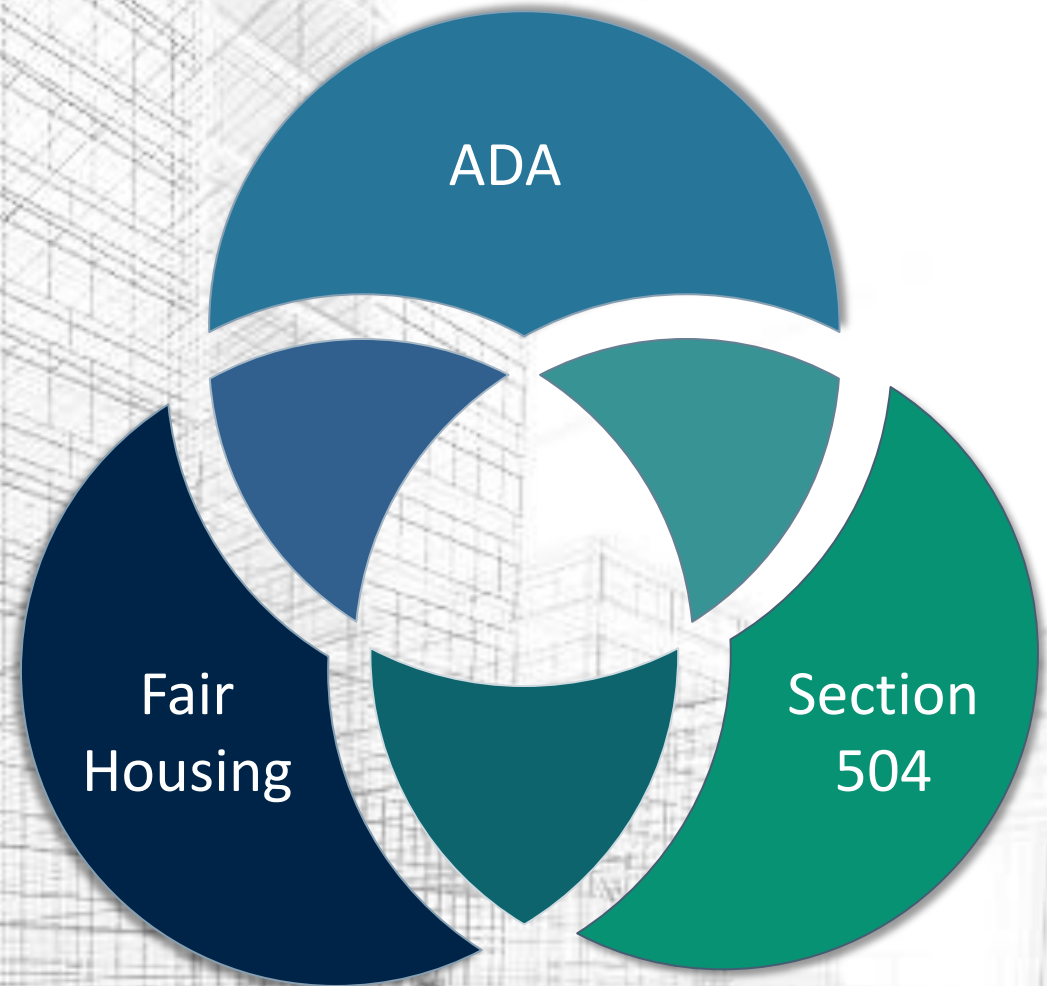
All Architecture Schools in  
the country teach ADA

Last fall when we checked  
there was only one  
Architecture School that  
taught  
ADA, Fair Housing and  
Section 504  
(Harvard)

# ARCHITECTURE SCHOOL



Before we look into how each of these codes work together, let's get a broad overview for what they are individually





ADA covers areas of public accommodation

By law, tenants and their guest are Not considered public

# Americans with Disability Act (ADA)



Applies to *areas of public accommodations*



This means an on-site office and its parking spaces *must* comply with ADA requirements. **(Red Circle)**



It also means that **if there are places that are open to the public**, like tennis courts, clubhouse, pool, etc., then they *must* comply with ADA also. **(Purple Circle)**



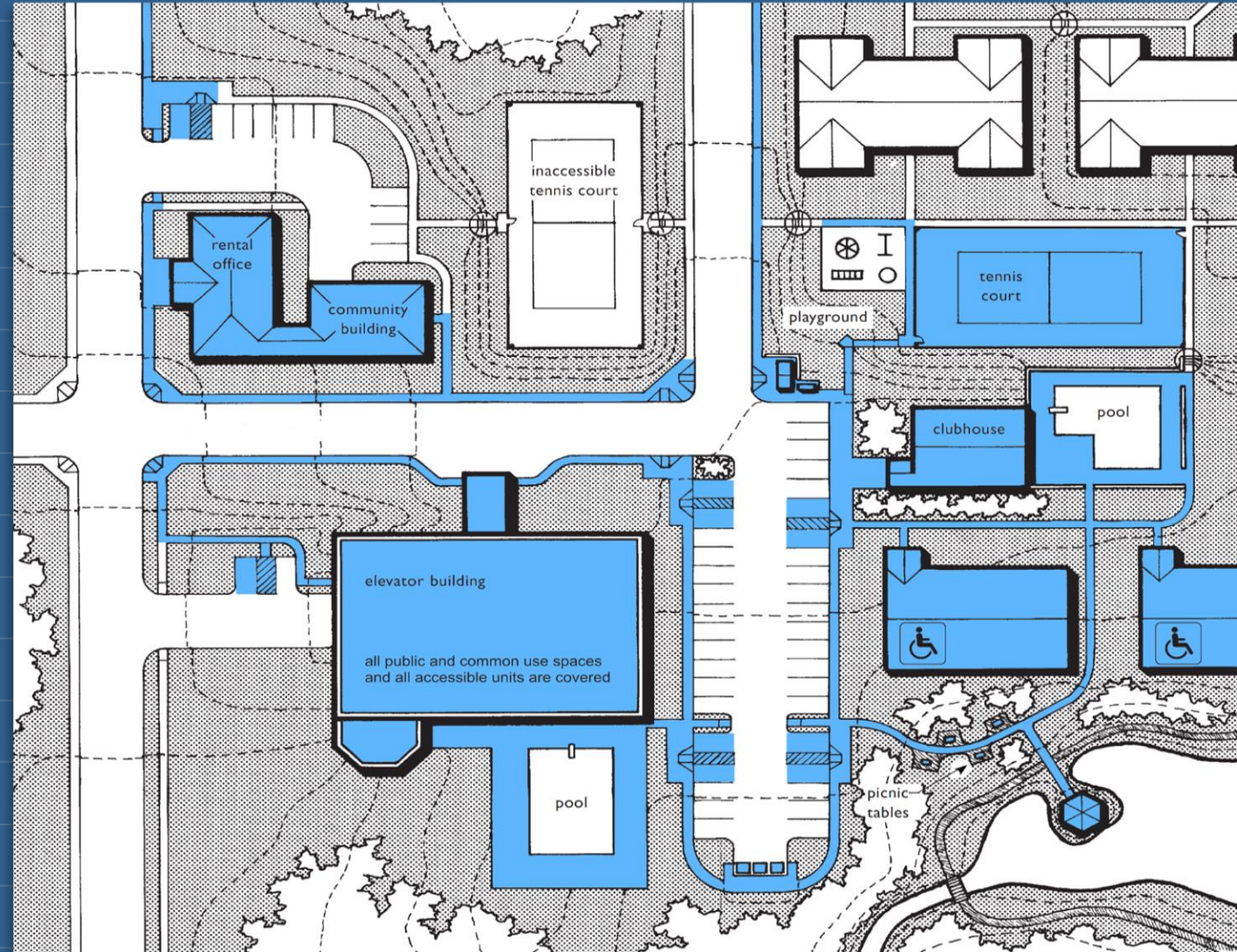
# Section 504 Federally Funded (RD,HOME, HUD, CDBG)

(Accessible Units, 504 Units  
UFAS Units, Type A Units, 5% Units)

Section 504 requires accessibility in all common areas, and accessible parking spaces at the office and the 5% Accessible Units.

Required to have 5% of units Accessible for persons with mobility impairments plus 2% for persons with sensory impairments

For Accessible units- units must be disbursed among unit types.  
(Ex. 1BR, 2BR, 3BR)



# Fair Housing Act (FHA)

## (Covered Units, Adaptable Units, Type B Units)



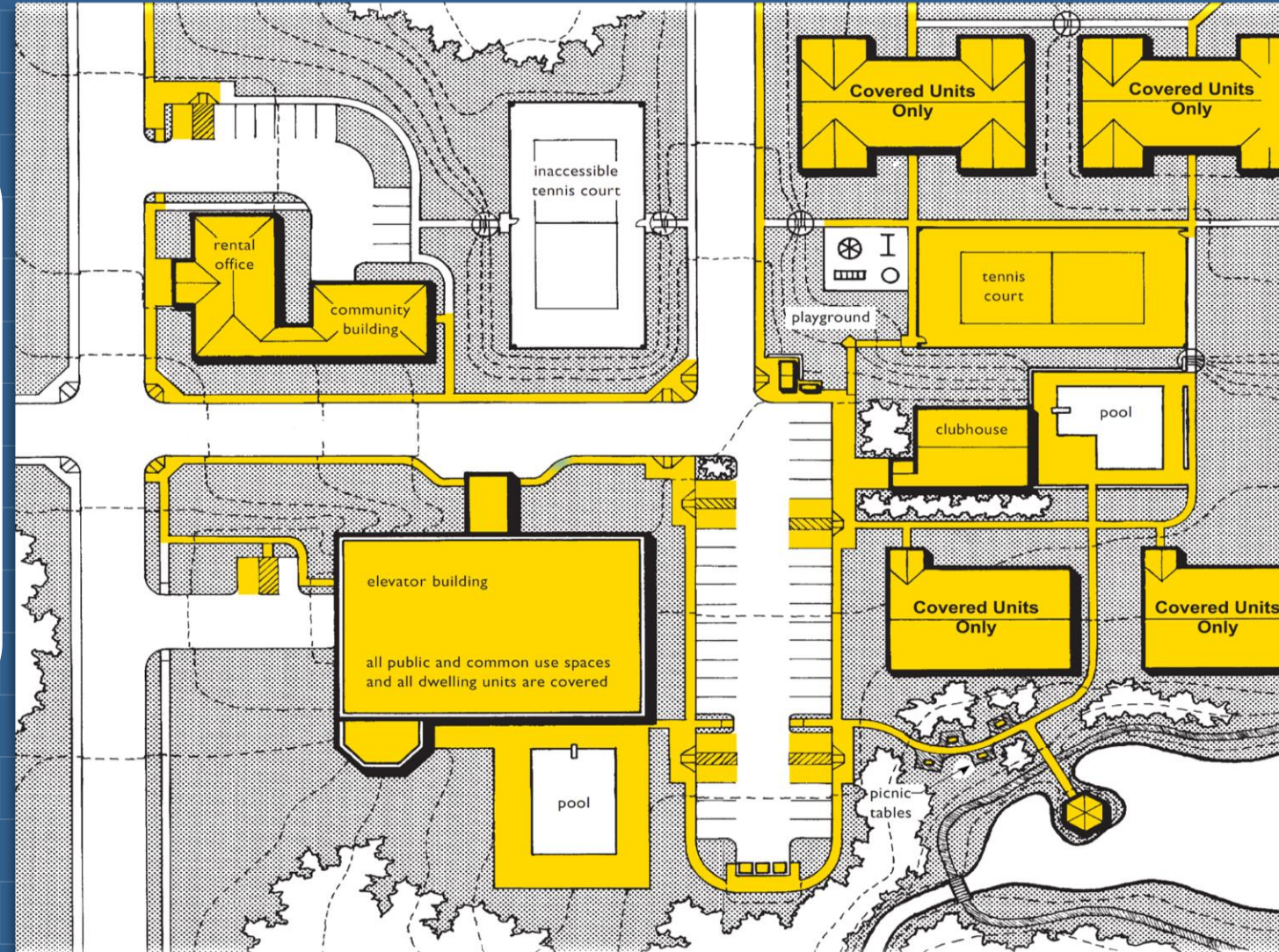
FHA requirements apply regardless of funding source



Applicable to units designed and constructed for first occupancy on or after March 13, 1991, with 4 or more units per building.



FHA will apply to all ground floor units in buildings with no elevator, and if the building has an elevator, then all units will be covered.





**Housing Credit property owners are required to certify annually to the state agency**

- **Any findings of discrimination under the Fair Housing Act**
- **Including both disparate treatment**
- **And disparate impact of protected classes**

**OWNER'S CERTIFICATE OF CONTINUING LIHTC PROGRAM COMPLIANCE**

To: State Housing Finance Agency  
000 Mainstreet  
Somewhere, USA 123456

No buildings have been Placed in Service  
 At least one building has been placed in Service but owner elects to begin credit period in the following year.  
 If either of the above applies, please check the appropriate box, and proceed to page 3 to sign and date this form.

<b>Certification Dates:</b>	<b>From:</b> January 1, 20	<b>To:</b> December 31, 20	
<b>Project Name:</b>		<b>Project No:</b>	
<b>Project Address:</b>		<b>City:</b>	<b>Zip:</b>
<b>Tax ID # of Ownership Entity:</b>			

V. All units in the project were for use by the general public (as defined in Section 1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;

YES  NO

**Note: Failure to complete this form in its entirety will result in noncompliance with program requirements. In addition, any individual other than an owner or general partner of the project is not permitted to sign this form, unless permitted by the state agency.**

The project is otherwise in compliance with the Code, including any Treasury Regulations, the applicable State Allocation Plan, and all other applicable laws, rules and regulations. This Certification and any attachments are made UNDER PENALTY OF PERJURY.

By: \_\_\_\_\_ (Signature) \_\_\_\_\_ (Ownership Entity)  
 \_\_\_\_\_ (Please Print Name) \_\_\_\_\_ (Owner Phone Number)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Signed sealed and delivered in the presence of:**

Notary: \_\_\_\_\_

Witness: \_\_\_\_\_ My commission expires: \_\_\_\_\_


Date of Execution: \_\_\_\_\_ (NOTARY PUBLIC SEAL)

# You need to ask yourself two questions

*Q: Is there anyway to avoid this happening to me?*

*Q: Is there anything I can do to minimize the impact to my property or to my organization if I do make a mistake and am not compliant with something?*

*Answer: Yes!*

A close-up photograph of a hand reaching down towards a row of white letter blocks. The blocks are arranged to spell out the word 'PROACTIVE'. The background is a soft, out-of-focus green and blue gradient. The entire image is framed by a solid red border.

**The Department of Justice  
"Accessibility Initiative"  
& NCSHA  
Best Practices  
(Processes and Protocols)**

**P R O  
R E A C T I V E**



We recommend implementing these basic **Processes and Protocols** into your QAP's if you are an HFA and into your business if you are a developer .

These things can be thought of as **Guardrails**

Best Practices: Processes and Protocols/Guardrails	Dept of Justice Accessibility Initiative	NCSHA Recommended Best Practices
1. Having your complete set of plans & specs reviewed by an Accessibility specialist (other than your architect)	✓	✓
2. H sup		✓
3. E		✓
•		
•		
•		✓
•		
•		
4. A		✓

When your Architect draws the plans,  
as a standard practice they list  
Reference Codes and Standards they used

Make sure your architect is  
list on the plans which  
Accessibility Safe Harbor  
they used

**REFERENCED CODES AND STANDARDS**

- 2018 International Residential Code
- 2018 International Mechanical Code w/ Local Amendments
- 2020 National Electrical Code w/Local Amendments
- 2018 International Plumbing Code and International Fuel Gas Code Amendments
- 2015 International Energy Conservation Code Adoption and Amendments
- 2018 International Fire Code w/Local Amendments
- NFPA 101 Version 2018

Fair Housing Act- 2018 International Build Code w/Local Amendments  
Section 504 – Uniform Federal Accessibility Standard

# Let's make some assumptions

These Best Practices  
(Processes and Protocols)  
are really your Guardrails

So, let's ask a question:

Q: *Why do we install Guardrails anywhere?*

A: To make them safer and/or lessen the severity of a crash.

So, if Guardrails are installed correctly and put in the correct locations, then they are a good thing.

“I was relying on my architect to design it correctly”

“I was relying on my contractor to build it correctly”

So, I think it begs the question, what Guardrails have you installed?

If you do have an action brought against you alleging noncompliance with accessibility,

**what is your defense going to be?**

“I was relying on the local building inspector, who issued the Certificate of Occupancy for every building, **so I assumed...**”

“I was relying on the HFA that asked for a copy of my plans and specs, and they sent them back with no comments about accessibility, **so I assumed...**”

# Are **YOUR Current** Guardrails strong enough to do what you thought they would do?

1. Will your guardrails reflect how Pro-active or Re-active you really have been?

2. Will your guardrails demonstrate how you tried to accomplish what the purest intent of the letter of the law is asking for?

They could be, if you implement the recommended Best Practices as your guardrails

Best Practices: Processes and Protocols/Guardrails	Dept of Justice Accessibility Initiative	NCSHA Recommended Best Practices
1. Having your complete set of plans & specs reviewed by an Accessibility specialist (other than your architect)	✓	✓
2. Having your Team go through an Accessibility training for Architect, Contractor, Job superintendent, and representative from all trades (except painter and roofer)	✓	✓
3. Engage an Accessibility Specialist for Accessibility construction inspections	✓	✓
<ul style="list-style-type: none"><li>• (1st Inspection -rough in framing complete, electrical &amp; plumbing complete</li><li>• (2nd Inspection -Insulation/drywall complete, cabinets, counters, fixtures &amp; appliances installed)</li><li>• (3rd Inspection –Project substantially completed; exterior flatwork (sidewalks, parking) complete</li><li>• (Final Inspection – Final physical clearance inspection</li></ul>	✓	✓
4. At this point your Accessibility provider can write a Certification and Clearance letter	✓	✓



We discussed new  
construction

**But what about your  
existing portfolio?**

**Do you have  
guardrails in place  
for those properties?**

During the course of an average year while your property management team is handling all the normal day to day madness

- Moves in & move outs
- Reasonable accommodations requests
- Bedbugs
- Busted pipes
- Evictions
- Recertifications
- Scheduling all the different types of inspections
- Filling out all the crazy paperwork
- All the Fair Housing issues

Do you think it is possible your site manager or maintenance person might miss trip hazards that were caused by the ground shifting, moving, freezing and thawing that popped up?

Or maybe your maintenance staff solved one problem on a work order but created two more accessible issues without even knowing it (remember maintenance usually is not trained on Accessibility).

Face it, accessibility issues tend to fall way down the priority list, *not because they are not important but **because people get distracted.***



Best Practices: Processes and Protocols/Guardrails	Dept of Justice Accessibility Initiative	NCSHA Recommended Best Practices
1. Having your complete set of plans & specs reviewed by an Accessibility specialist	✓	✓
2. Having your Team go through an Accessibility training for Contractor, Job superintendent, and representative from all trades (except painter and roofer)	✓	✓
3. Engage an Accessibility Specialist for Accessibility construction inspections	✓	✓
<ul style="list-style-type: none"> <li>• (1st Inspection -rough in framing complete, electrical &amp; plumbing complete</li> <li>• (2nd Inspection -Insulation/drywall compete, cabinets, counters, fixtures &amp; appliances installed)</li> <li>• (3rd Inspection –Project substantially completed; exterior flatwork (sidewalks, parking) complete</li> <li>• (Final Inspection – Final physical clearance inspection</li> </ul>	✓	✓
4. At this point your Accessibility provider can write a Certification and Clearance letter	✓	✓
5. Because ground shifts and moves, freezes and thaws, and because maintenance staff is not regularly trained on accessibility, <u>you should have an Accessibility elevation every 3-4 years on your properties to maintain the Pro-Active protocols and processes that you would have developed</u>	✓ PROACTIVE	✓ PROACTIVE

# What is an Attorney's Legal Opinion Letter

Another guardrail to consider is having a Fair Housing Attorney write you a Legal Opinion Letter



It is a formal document that provides their professional assessment and analysis of a specific legal matter.

It outlines the attorney's understanding of the relevant laws, regulations, and legal principles related to the issue at hand and the quality of **your Accessibility Consultants work.**

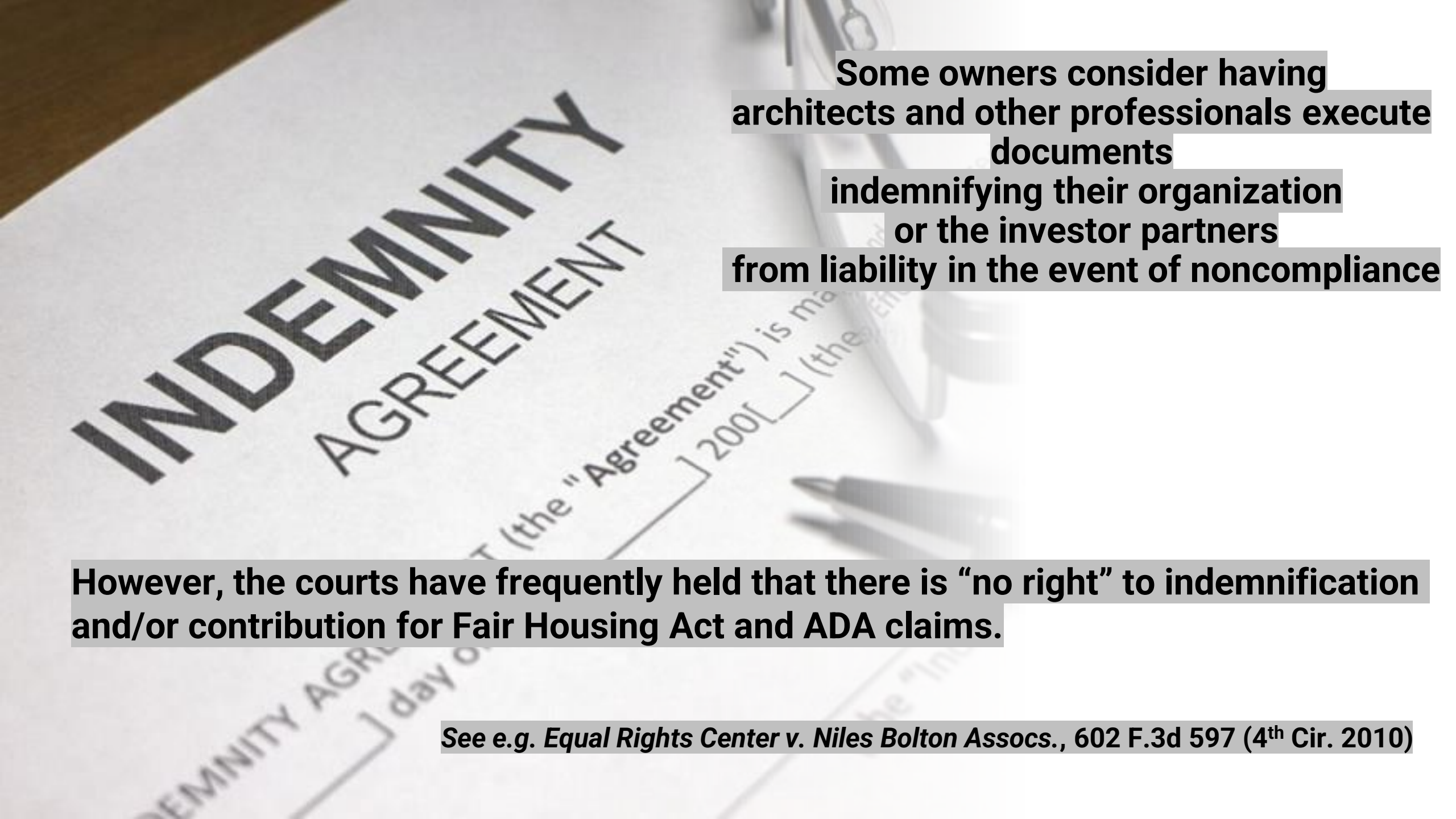
We recommend submitting:

- The plans and specs and your Accessibility Consultants review, including their clearance letter
- Proof of Accessibility training of your entire Team
- Copies of the Accessibility Construction Inspections, which include items out of compliance and photo proof of their corrections

Best Practices: Processes and Protocols/Guardrails	Dept of Justice Accessibility Initiative	NCSHA Recommended Best Practices
1. Having your complete set of plans & specs reviewed by an Accessibility specialist (other than your architect)	✓	✓
2. Having your Team go through an Accessibility training for Contractor, Job superintendent, and representative from all trades (except painter and roofer)	✓	✓
3. Engage an Accessibility Specialist for Accessibility construction inspections	✓	✓
<ul style="list-style-type: none"> <li>• (1st Inspection -rough in framing complete, electrical &amp; plumbing complete</li> <li>• (2nd Inspection -Insulation/drywall compete, cabinets, counters, fixtures &amp; appliances installed)</li> <li>• (3rd Inspection –Project substantially completed; exterior flatwork (sidewalks, parking) complete</li> <li>• (Final Inspection – Final physical clearance inspection</li> </ul>	✓	✓
4. At this point your Accessibility provider can write a Certification and Clearance letter	✓	✓
5. Because ground shifts and moves, freezes and thaws, and because maintenance staff is not regularly trained on accessibility, you should have an Accessibility elevation every 3-4 years on your properties to maintain the Pro-Active protocols and processes that you would have developed	✓ PROACTIVE	✓ PROACTIVE
6. We recommend a <u>Fair Housing Attorney</u> with background in accessibility take these reports and documentation and then write a <u>legal opinion</u> that the project is in compliance	✓ PROACTIVE	✓ PROACTIVE

# Please don't assume anything





**Some owners consider having architects and other professionals execute documents indemnifying their organization or the investor partners from liability in the event of noncompliance**

**However, the courts have frequently held that there is “no right” to indemnification and/or contribution for Fair Housing Act and ADA claims.**

**See e.g. *Equal Rights Center v. Niles Bolton Assocs.*, 602 F.3d 597 (4<sup>th</sup> Cir. 2010)**

# Is there a “Get out of Jail FREE Card?”



- **If you can't shift your liability:**

- On your architect
- The funding agency (the plan)

**RELY ON YOU!!!**

...review the plans  
...building codes and issue  
... (occupancy) but NOT accessibility

...can you rely on to insure you are doing the  
best and right thing?

Make sure you have the  
right people on your team  
and have these  
**Guardrails**  
in place that mirror  
The DOJ Accessibility Initiative  
and NCSHA's  
Recommended Best Practices



## Examples of why these Best Practices can and will save you money

- This is a 4-story building with an elevator
- Construction began January 2022
- It has LIHTC and HOME funds

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- The QAP required an accessibility consultant to be on board. They required the plans to be reviewed and construction inspections to be done.

- We were told after we were invited to come in and help correct all the items that were missed by the original Accessibility Consultant that was let go, that they intentionally contracted with the cheaper consultant that didn't appear to be ***“such a stickler”*** for details because they **believed their architect had everything under control and this seemed to be “over kill”**.

- At the end of the job, it was calculated that it cost the owner over \$295,000 in cost over runs, time delays, ripping out, reinstalling all of these items



Here are good examples of why you want an Accessibility Consultant to **follow the process** of:

- Review plans and specs
- Require training BEFORE construction begins
- Require Accessibility Construction Inspections

All the units on the first floor had the proper blocking in place.

There was no blocking behind any of shower walls on the 20 units on the 2<sup>nd</sup> or the 3<sup>rd</sup> floor of this elevator building

So, they had to rip out all 40 units tub walls, remove the tub/showers combos, order new showers, install the correct blocking, replace the showers, re-sheet rock with reinforcement in the proper location.

The shower manufacture was 6 weeks behind, so all the trades were delayed.



# New Construction

Maneuvering space  
at door found to be  
over 2%

and  
not enough space  
beyond the latch of  
the door.



- Blocking must cover 32" - 38" (6" range) vertical for most locations.

- Based on actual width, a 2 X 6 (1½" X 5½") cannot be used to cover the full range of 32" - 38"

- A 2 X 8 (1½" X 7¼") would be required to minimally cover using one piece of lumber



- Floor thickness can affect these numbers. To achieve better placement, place the bottom edge of the blocking at 32"



**New Construction**  
The top of the  
blocking is 40"  
the bottom is 33"

It should have been  
the top of the  
blocking 38" and  
the bottom 32"

*Good news they did use a 2x8*



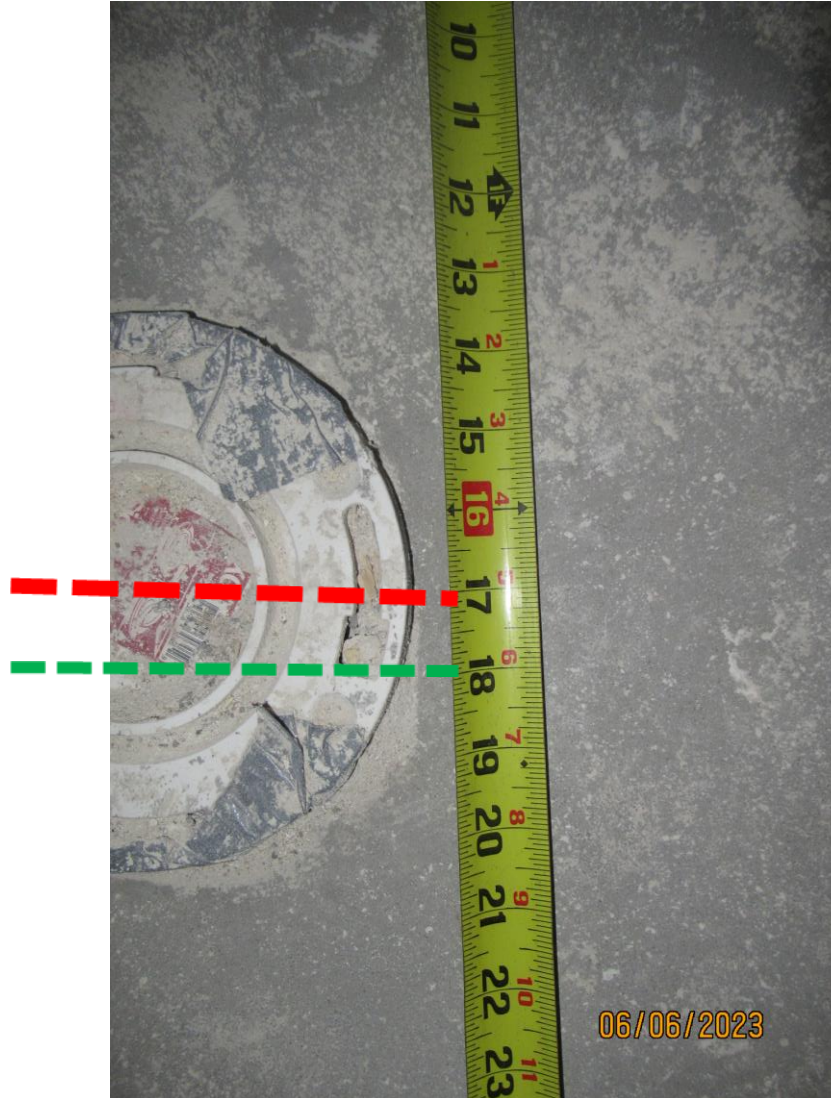


Side Wall

Toilet drain

06/06/2023

Benefit of having inspections done at the rough in stage is catching this now is easier and less costly to fix than in a finished bathroom.



06/06/2023

Based on location of toilet drain at rough in inspection it is unlikely the finished location will meet the 18" off the side wall requirement.

*Section 504  
Requires the centerline  
of the toilet to be 18"  
from the sidewall*

**Another example that's close.**

**This could present compliance problems if not addressed.**



## Acq/Rehab property

Newly poured  
section of concrete  
found to be over the  
allowable slope of  
5% for an  
accessible route

*Even though it was  
specifically marked on the  
plans*



# Acq/Rehab property

Results of freeze thaw  
creating noncompliance  
trip hazard along  
accessible route.



# Accessible Route Issues

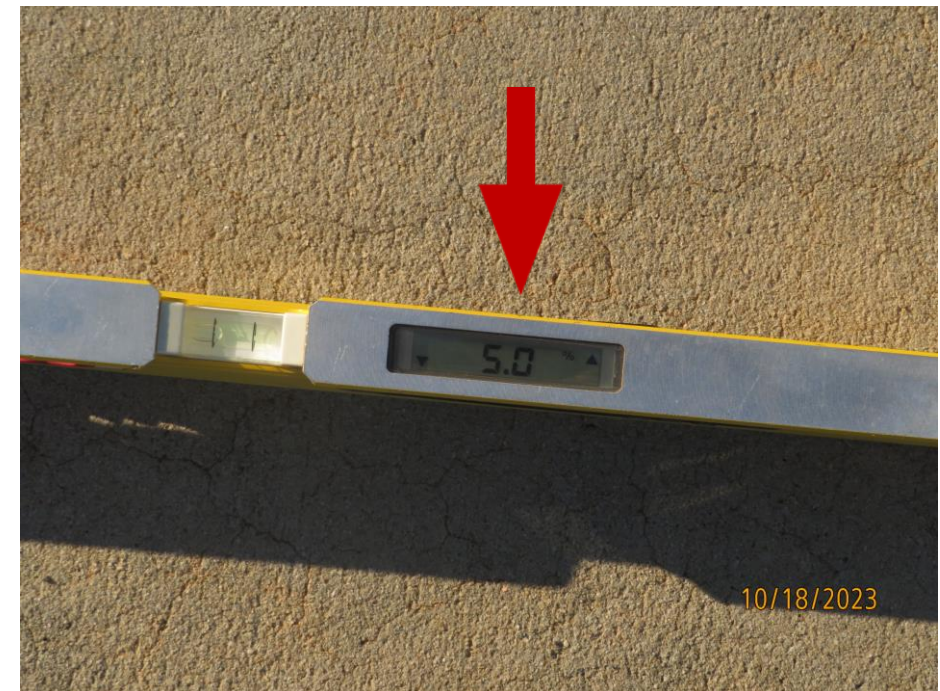
Frost heave in the winter causes ground shifting, moving, freezing and thawing, which all cause trip hazards



Nice new blue paint and it looks pretty and well labeled.



The only problem is 5% exceeds allowable slope of 2% for the access isle.



Newly poured concrete failed to provide the accessible route connection although it was planned for and specified in the plans.

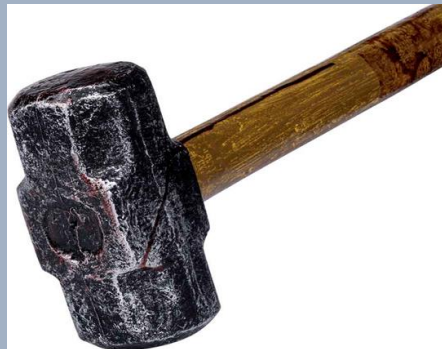


Remember what the famous architect  
Frank Lloyd Wright once said...

“You can use an eraser on the  
drafting table



or a sledgehammer on  
the construction site.”



Mark English  
President

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E&A TEAM INC.

“Providing Solutions in Affordable Housing”