

2023 BOSTON

Perspectives on Accessibility



The Kelsey

Advancing Disability- Forward Housing Solutions

Today's Speaker:

Isaac Haney-Owens, Communications Analyst



My Housing Story

61 million Americans with disabilities don't have their basic housing needs met. The barriers include:



Cost

People with disabilities reliant on SSI would need to spend 131% of their entire income to afford basic housing.



Access

Less than 6% of the housing market is accessible to people with disabilities.



Discrimination

Over 55% of housing discrimination is based on disability, more than any other type of housing discrimination.



Supply

Only 12% of adults with disabilities rent or own their own homes and people with disabilities are 4x more likely to experience homelessness.

The Kelsey pioneers disability-forward housing solutions that open doors to **homes and opportunities for everyone.**

More **affordable** to all incomes – from the very lowest up to market rents.

More **accessible** to meet diverse access needs and more person-centered design.

More **inclusive** for people with and without disabilities to live in true community with access to the supports they need.



The Kelsey creates **inclusion** by making Resident Services a priority

Our Resident Services program, called Inclusion Concierge, operate with the following goals. Inclusion Concierge sit at the front and center of our properties.

Resident Centered Experience

From initial contact to connecting with community, the Inclusion Concierge is available to support every step of the way through fostering inclusion, promoting connections, and delivering a quality resident experience.

Social Connectedness

Through thoughtful planning of Inclusion Hours that are fully accessible, the Inclusion Concierge engages each resident to connect and experience the value and joy of being with community.

Integration with Home and Community Based Services

Through a collaborative, team based approach with service system provider and information support networks cultivated in their community, we support our residents with disabilities to gain access to their constitutional right of independent living

Inclusive Design Standards

The Inclusive Design Standards include 300 Elements. Elements reflect design choices, building features, development strategies, or operational policies that support accessibility and inclusion.

Download at thekelsey.org/design

Team

1.1 Disability Representation on the Project Team

Impact Areas

- Mobility and Height
- Hearing and Acoustics
- Vision
- Health and Wellness
- Cognitive Access
- Support Needs

Additional Benefits

- Affordability
- Racial Equity
- Environmental Sustainability
- Safety
- Beauty and Better Design

Sources

The Kelsey

1
Point Value

Level 1 - People with disabilities are part of advisory groups / focus groups shaping the project with documented ability to shape and define the project. **ESSENTIAL ELEMENT** ✓


- Advisory or focus groups are people with lived experience assembled by the project team

2
Point Value

Level 2 - People with disabilities are paid consultants on the project team.

3
Point Value

Level 3 - People with disabilities are full-time members of the project team and/or developer/owner team.



2.3 Building Approach and Entry Arrival Wayfinding

Impact Areas

- Mobility and Height
- Hearing and Acoustics
- Vision
- Health and Wellness
- Cognitive Access
- Support Needs

Additional Benefits

- Affordability
- Racial Equity
- Environmental Sustainability
- Safety
- Beauty and Better Design

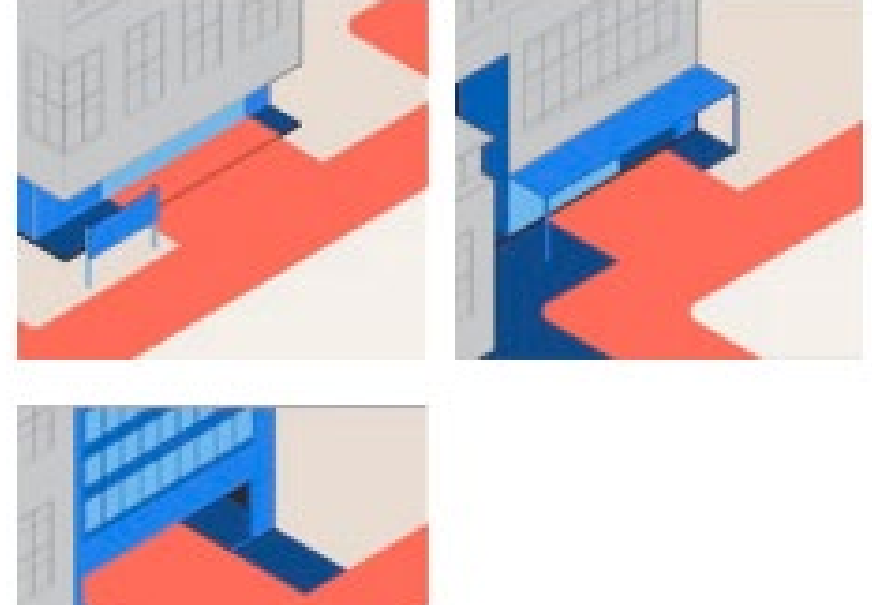
Sources

auD

1
Point Value

Architectural Landmarks.
ESSENTIAL ELEMENT ✓

- Architectural features distinguish all primary entrances and exits from other entrances and exits (e.g., prominent signs, graphics, architectural features, landmarks, etc.).
- Landmark elements have unique lighting to assist in locating them.
- They are visible along the primary approach route of motor vehicles, pedestrians, and cyclists.



4.2 Vertical Circulation Dual Handrails

Impact Areas

- Mobility and Height
- Hearing and Acoustics
- Vision
- Health and Wellness
- Cognitive Access
- Support Needs

Additional Benefits

- Affordability
- Racial Equity
- Environmental Sustainability
- Safety
- Beauty and Better Design

Sources

Mikien Architecture

1
Point Value

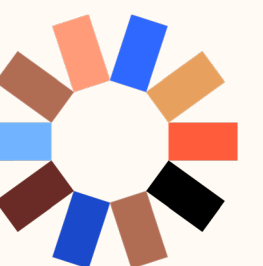
Stairs and ramps have high and low handrails.

- One handrail at 36" and another at 30" above the nosing.
- Provides safety for children and shorter adults.
- For ramps, someone in a wheelchair can slow their descent or pull themselves up the ramp more easily with better leverage than pushing a wheelchair wheel.

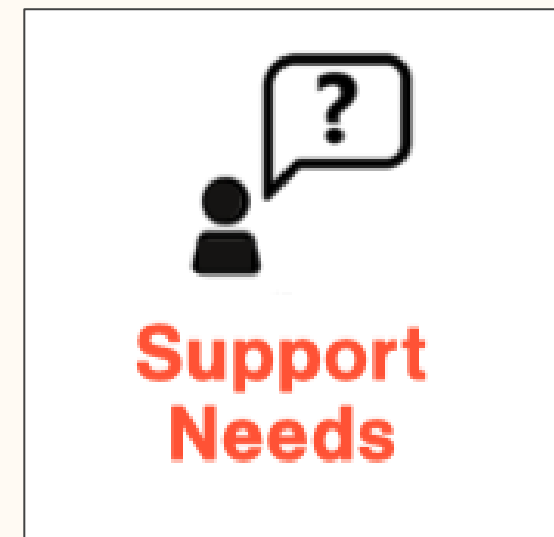
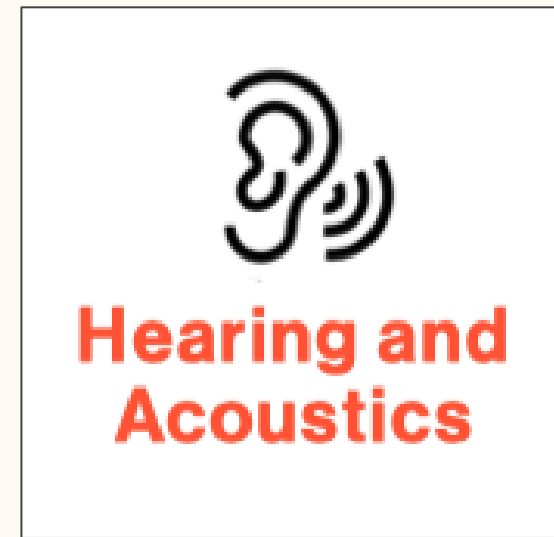


The Inclusive Design Standards aim to equip designers, builders, and developers with guidelines and frameworks for disability-forward housing creation. They are:

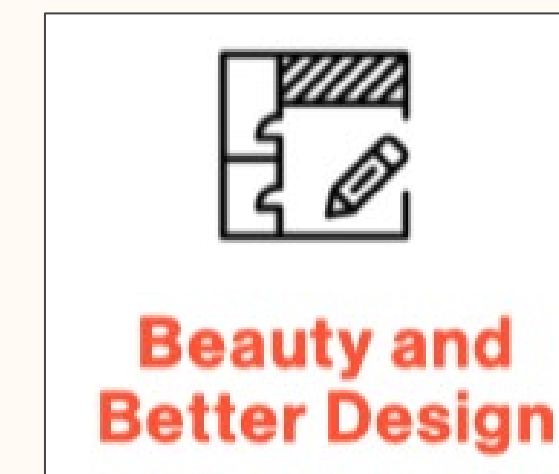
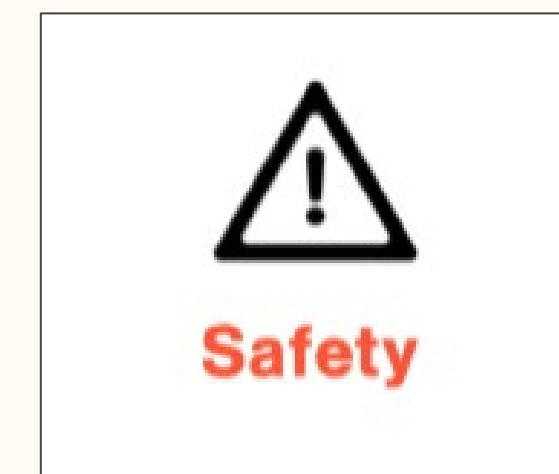
- **Cross Disability** to support access and inclusion for the broad and diverse needs of people with disabilities.
- **Cover Both Design and Operations** to address the many elements of housing development that impact accessibility and inclusion.
- **Provide a Menu of Options** to create more accessible spaces across many contexts; they can be used as an idea generator to make your project better
- **Value Creation** where disability-forward design supports better, more efficient, equitable, building development.



Impact Areas



Additional Benefits



Plain Language Leasing Project

Visit PlainLanguageLeasing.org



- Leasing documents are typically written at a 15th grade reading level - many residents do not understand their rights and responsibilities of their current housing.
- Plain language is writing designed to ensure the reader understands documents as quickly, easily, and completely as possible. It has been adopted by many other government programs but not housing.
- The Kelsey assembled a diverse team of professionals to collaborate on translating and simplifying six commonly used affordable housing documents for practical use.

Thank you.

Accessibility Perspectives

NCSHA Conference
Tuesday, October 17, 2023



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Most people think “ADA” when they think about accessibility.

But this creates risk by not understanding which laws and regulations 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.



Questions for HFA's and Owners to consider

What Questions do you really need to ask?

1. Are we taking Accessibility seriously?
2. Do we understand our responsibilities as HFA's or Owners?
3. How confident are we that what we have funded, is truly in compliance?
4. Is our QAP wording enabling compliance? Do we understand the impacts on our partners based on the wording in our QAPs?
5. Do our clients (the borrowers) understand their responsibilities defined in our QAP?
6. As an HFA are we "certifying" that our borrowers' plans meet all Accessibility regulations?
7. How do we change the "culture" in our state?

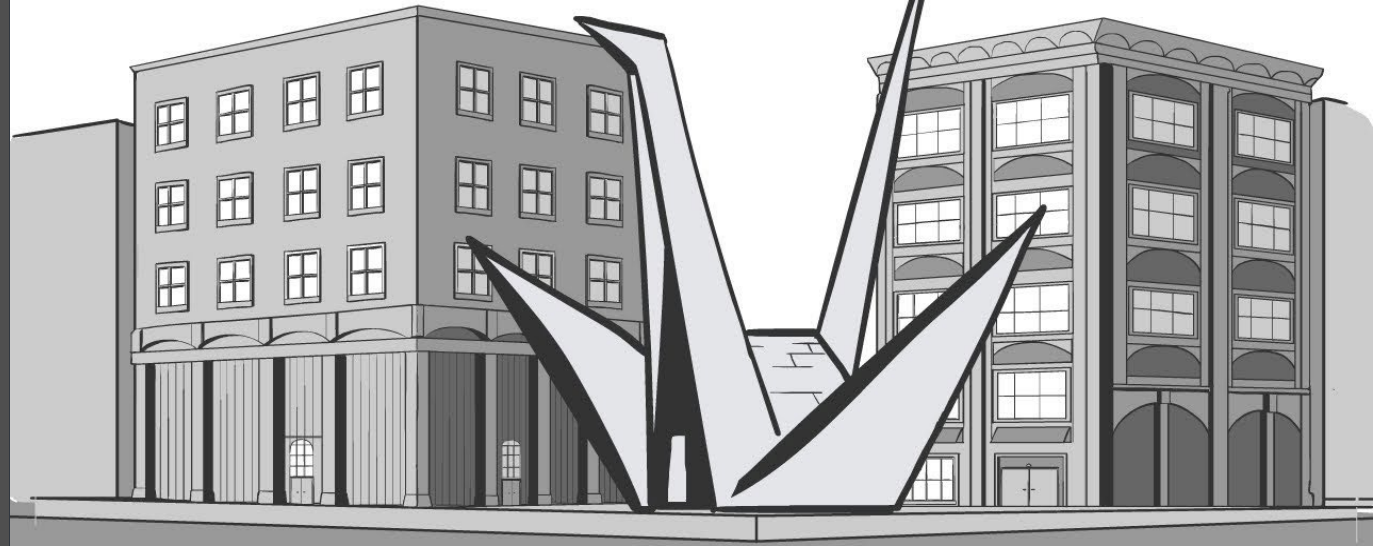
F **A** **C** **T**
K **E**

The image shows seven wooden blocks arranged on a light-colored wooden surface. The blocks are stacked to form two words: 'FACTS' and 'KEY'. The top row consists of four blocks with the letters 'F', 'A', 'C', and 'T'. The bottom row consists of three blocks with the letters 'K', 'E', and an empty space. The blocks are made of light-colored wood with a visible grain. The background is a plain, light gray wall.

All Architecture Schools in the
country teach
ADA

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

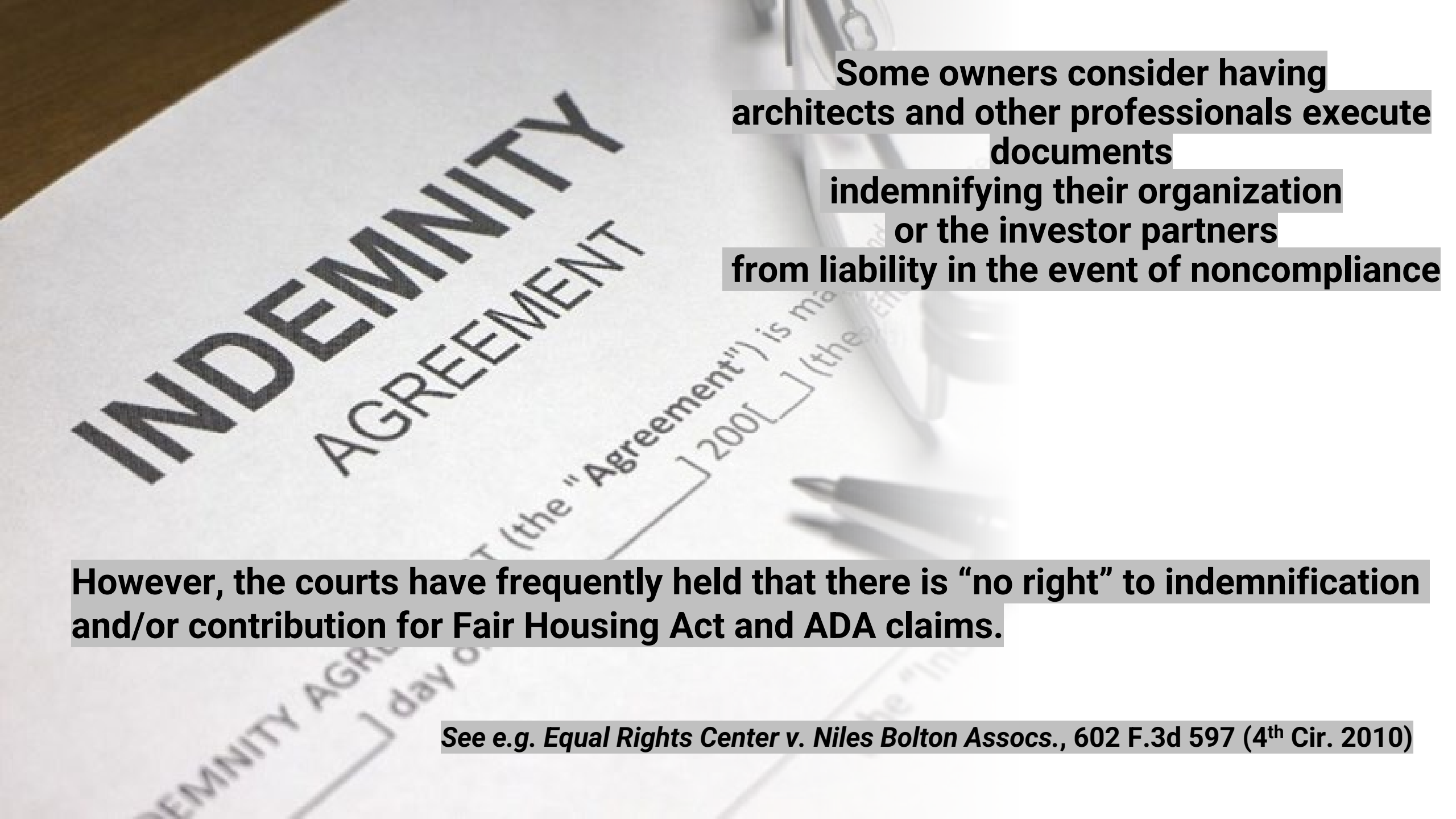
ARCHITECTURE SCHOOL



**Teach everything an Architect
will need to know about
Accessibility**

F **A** **C** **T**
K **E**

The image shows seven wooden blocks arranged on a light-colored wooden surface. The blocks are stacked to form two words: 'FACTS' and 'KEY'. The top row consists of four blocks with the letters 'F', 'A', 'C', and 'T'. The bottom row consists of three blocks with the letters 'K', 'E', and an empty space. The blocks are made of light-colored wood with a visible grain. The background is a plain, light gray wall.



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

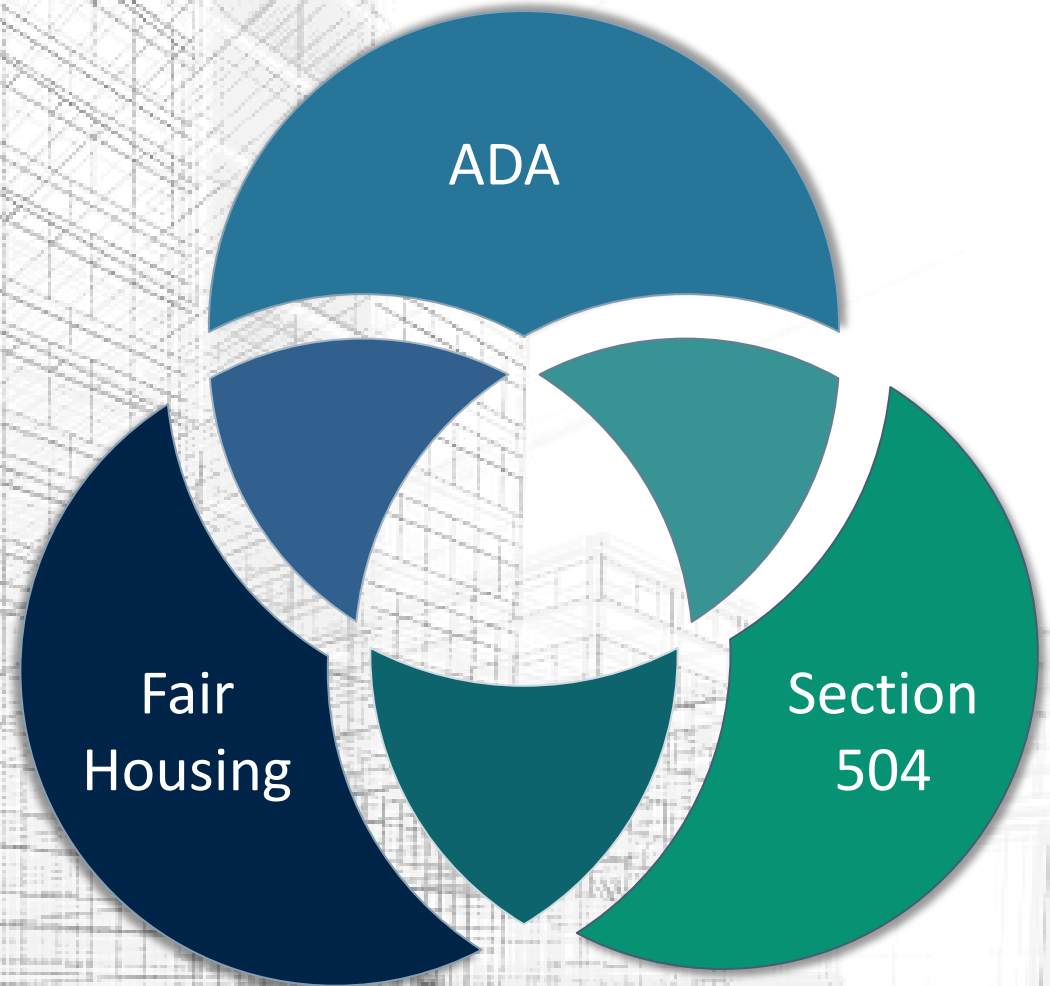
However, the courts have frequently held that there is “no right” to indemnification and/or contribution for Fair Housing Act and ADA claims.

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

Let's connect the dots
between Federal Codes



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)**



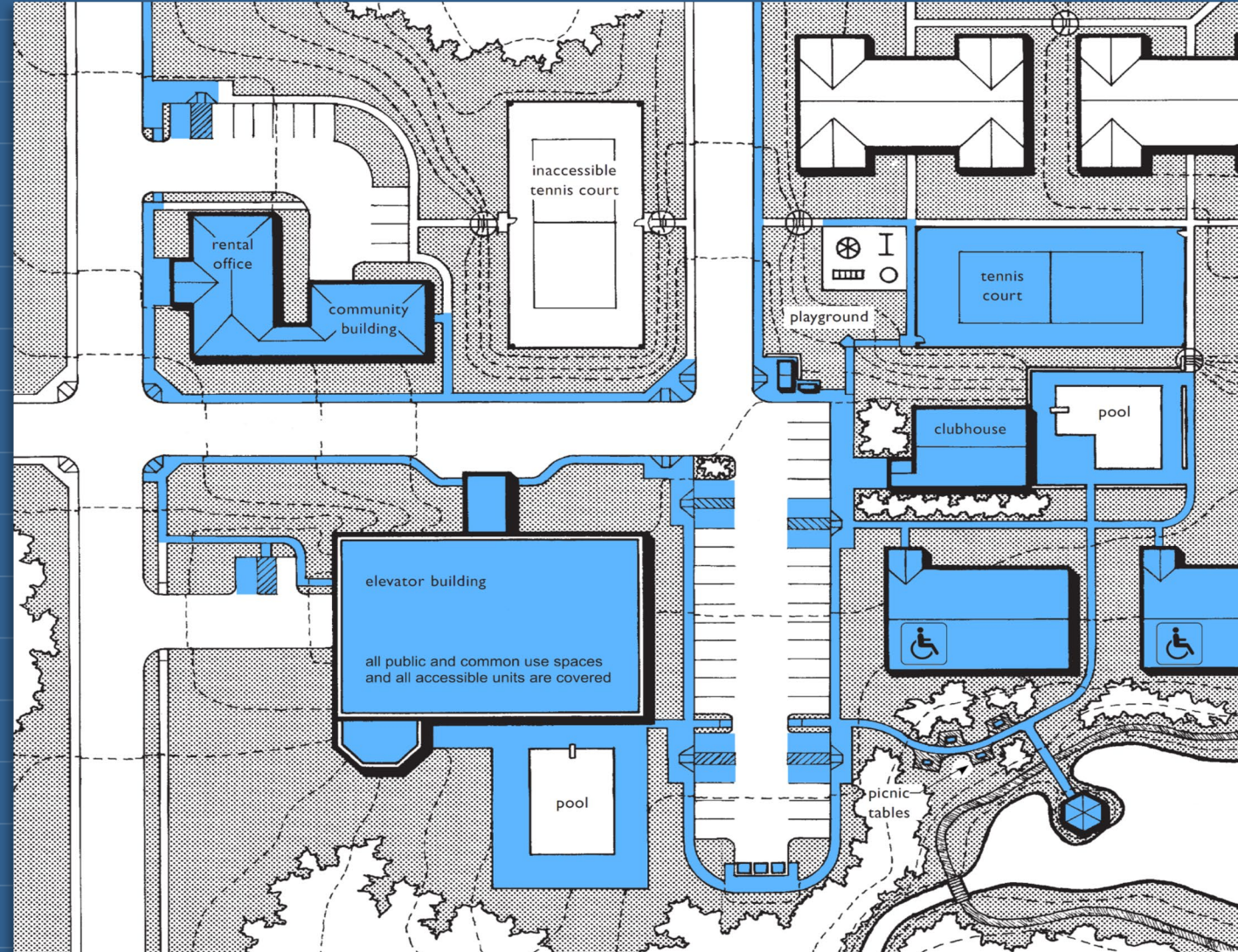
Section 504 Federally Funded (RD, HOME, HUD, CDBG)

(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 (2% for HUD, not RD)

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



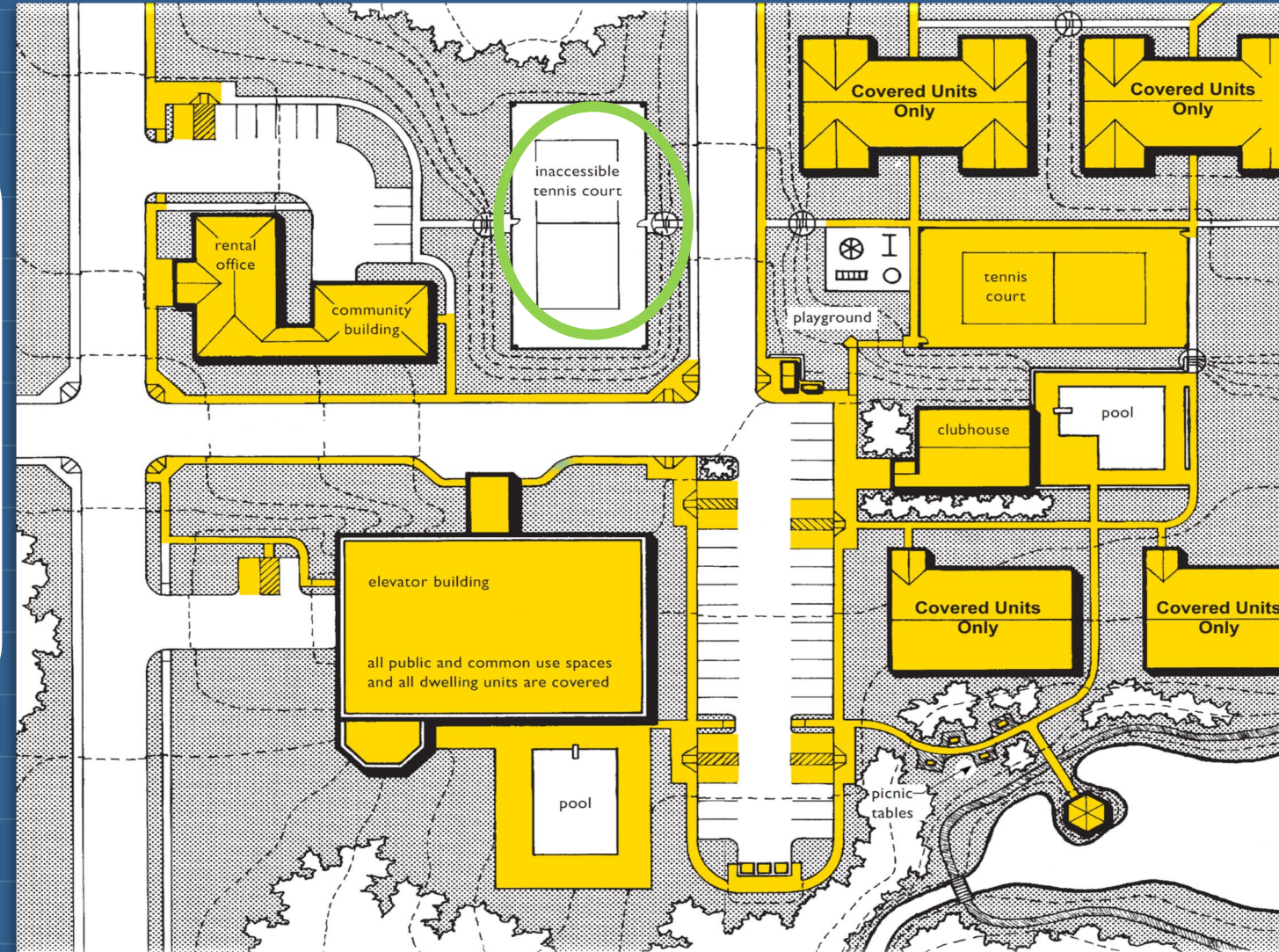
Applicable to units designed and constructed for first occupancy on or after March 13, 1991, with 4 or more units per building.



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.



For amenities- a “sufficient” number, at least 1 of each, must be accessible.



Is there a cost of noncompliance and if so what could it be?





An example
of a Settlement
Concerning Design and
Construction of
Multifamily Housing
with
The Department of
Justice

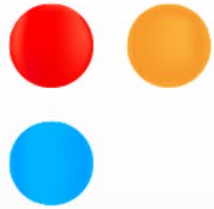
United States v. Miller Valentine

The Justice Department settled a disability-based housing discrimination lawsuit with the owners and developers of 82 apartment complexes located in 13 states.

Owners agree to:

- ➔ Make extensive modifications to their properties
- ➔ Pay \$475,000 to resolve claims
- ➔ Pay \$400,000 to establish a settlement fund to compensate individuals with disabilities
- ➔ Pay \$75,000 in civil penalties
- ➔ **TOTAL \$950,000**

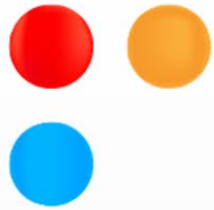




82 Properties



\$25,000?



82 Properties

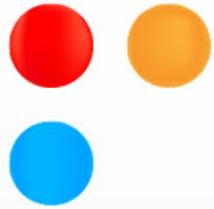
X \$25,000

\$2,050,000

+ \$ 950,000

1. Extensive modifications
2. Resolve Claim
3. Settlement Fund & Civil Penalties

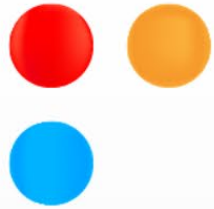
Over \$3 Million!



82 Properties



\$50,000



82 Properties

X

\$50,000

\$4,100,000

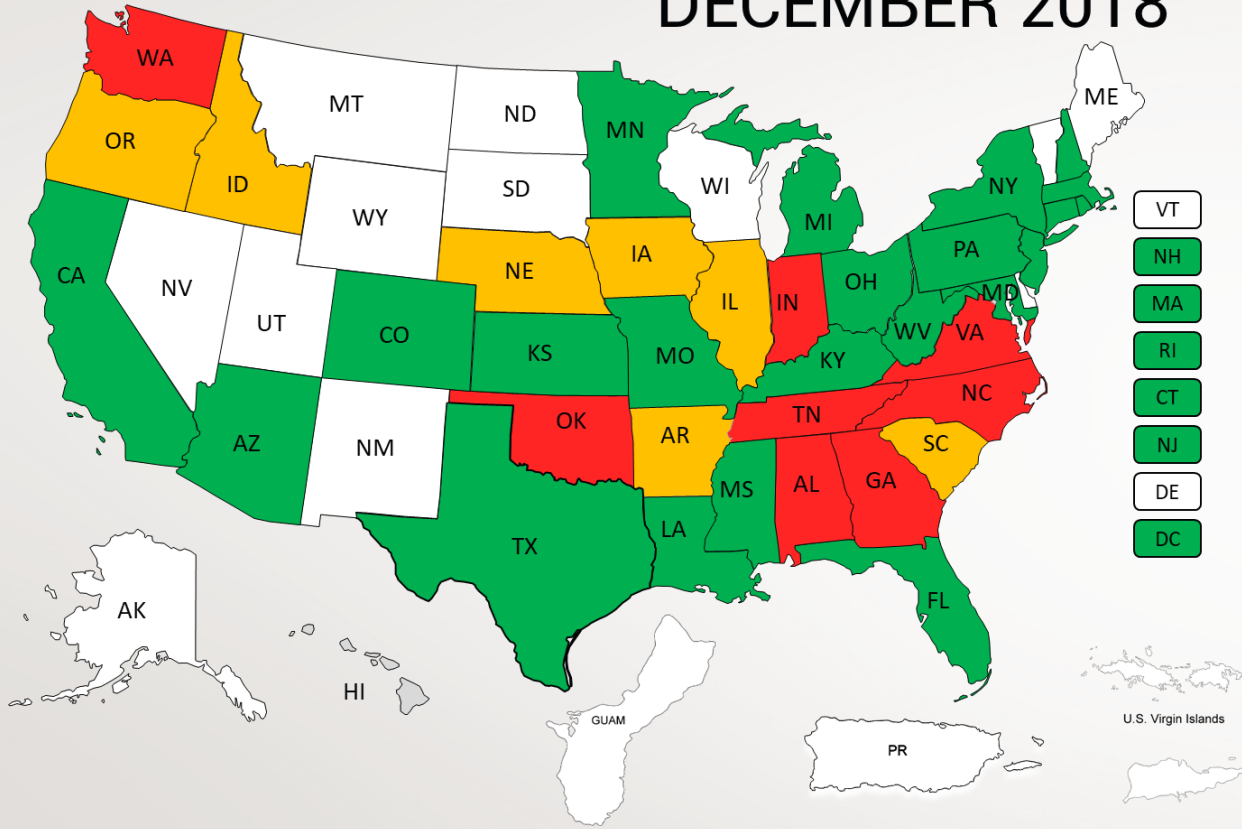
+

\$ 950,000

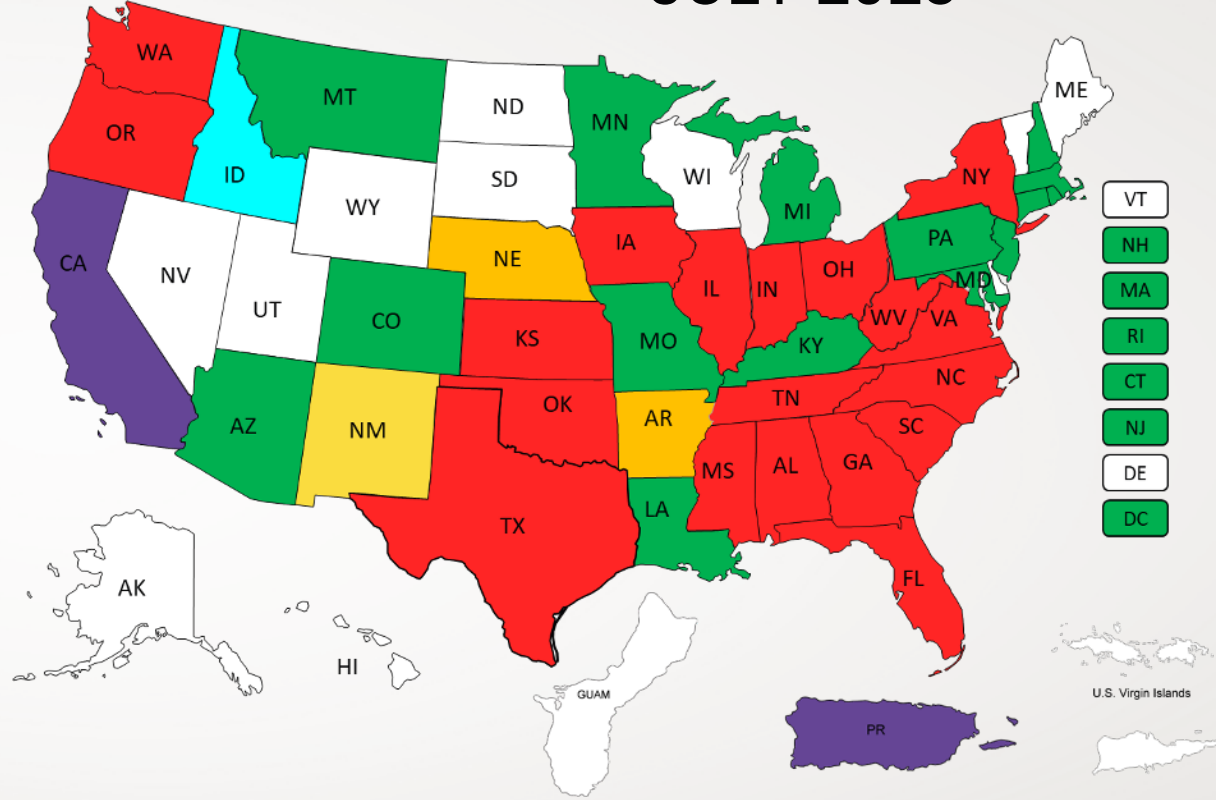
1. Extensive modifications
2. Resolve Claim
3. Settlement Fund & Civil Penalties

Over \$5 Million!

DECEMBER 2018



JULY 2023



Legend for both maps:

- Green: DOJ
- Yellow: Fair Housing Agency
- Red: DOJ & Fair Housing Agency
- Cyan: HUD
- Purple: DOJ, Fair Housing Agency & HUD



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.

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

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)

What can I do?

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-focus green and blue gradient. The text is overlaid on the right side of the image in white, bold, sans-serif font.

**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 business.

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

Have you ever thought about why roads
have **guardrails**?



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 you 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 in your company?

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 Guardrails strong enough to do what you thought they would do?

1. Will your guardrails reflect how proactive or reactive 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">• (1st Inspection -rough in framing complete, electrical & plumbing complete• (2nd Inspection -Insulation/drywall complete, cabinets, counters, fixtures & appliances installed)• (3rd Inspection –Project substantially completed; exterior flatwork (sidewalks, parking) complete• (Final Inspection – Final physical clearance inspection	✓	✓
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 team 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 and just don't understand accessibility requirements.*



What could possibly
Go wrong?

Really???

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"> • (1st Inspection -rough in framing complete, electrical & plumbing complete • (2nd Inspection -Insulation/drywall compete, cabinets, counters, fixtures & appliances installed) • (3rd Inspection –Project substantially completed; exterior flatwork (sidewalks, parking) complete • (Final Inspection – Final physical clearance inspection 	✓	✓
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"> • (1st Inspection -rough in framing complete, electrical & plumbing complete • (2nd Inspection -Insulation/drywall compete, cabinets, counters, fixtures & appliances installed) • (3rd Inspection –Project substantially completed; exterior flatwork (sidewalks, parking) complete • (Final Inspection – Final physical clearance inspection 	✓	✓
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



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





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President

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“Providing Solutions in Affordable Housing”